



**GOVERNMENT OF  
THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

**REVIEW OF PROCUREMENT SYSTEM FOR THE MINISTRY OF  
FINANCE**

July 2012

Review of Procurement in the Ministry of Social Solidarity for the  
period 1 January 2009 to 30 June 2011

# Contents

|  |           |
|--|-----------|
| 1. EXECUTIVE SUMMARY   | 3         |
| <b>1.1 BACKGROUND</b>  | <b>3</b>  |
| <b>1.2 SCOPE AND OBJECTIVES</b>  | <b>3</b>  |
| <b>1.3 APPROACH TO ENGAGEMENT</b>  | <b>3</b>  |
| <b>1.4 KEY FINDINGS AND RECOMMENDATIONS</b>                                    | <b>4</b>  |
| <b>1.5 FOLLOW UP ON RECOMMENDATIONS</b>  | <b>7</b>  |
| <b>1.6 ACKNOWLEDGEMENT</b>   | <b>7</b>  |
| 2. DETAILED FINDINGS AND OBSERVATIONS  | 8         |
| <b>2.1 PROCUREMENT PROCEDURES &amp; INTERNAL CONTROLS</b>                      | <b>8</b>  |
| <b>2.2 COMPLIANCE WITH DECREE LAW &amp; BEST PRACTICE GUIDE PROCEDURES</b>     | <b>12</b> |
| <b>2.3 OTHER COMPLIANCE ISSUES</b>   | <b>16</b> |
| <b>2.4 ORGANIZATIONAL ARCHITECTURE</b>   | <b>17</b> |
| <b>2.5 PEOPLE MANAGEMENT</b>   | <b>18</b> |
| <b>APPENDIX 1: BUDGET &amp; ACTUAL EXPENDITURE FOR FY 2010</b>                 | <b>20</b> |
| <b>APPENDIX 2: MAJOR SUPPLIERS</b>   | <b>21</b> |
| <b>APPENDIX 3: EXPENDITURE THRESHOLDS UNDER DECREE LAW &amp; BEST PRACTICE</b> | <b>23</b> |
| <b>APPENDIX 4: DIRECT AWARD PROCUREMENT CIRCUMSTANCES</b>                      | <b>24</b> |
| <b>APPENDIX 5: CONTRACT REVIEW</b>   | <b>25</b> |
| <b>APPENDIX 6: PROCESS FOLLOWED IN ORDER TO OBTAIN FY2009 DOCUMENTATION</b>    | <b>27</b> |

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# 1. Executive Summary

## 1.1 Background

Historically the Ministry of Finance (MoF), through the agency of the Central Procurement Unit, was responsible for the planning and management of major contracts. This was changed in February 2010 with the enacting of Decree Law 1/2010 that vested this responsibility in the Procurement Technical Secretariat (STA) of the Vice Prime Minister's Office. This was part of a Government initiative to decentralise procurement to the Ministries but proved unsuccessful due to capacity constraints in the STA. The STA was abolished and replaced by temporary measures until the National Procurement Commission was established under Decree Law 14/2011 in February 2011.

The National Procurement Commission remains in existence but has been bolstered considerably through further Decree Laws and the establishment of chartered agencies to oversee specific areas of procurement. To complement this approach the MoF developed Best Practice Guidelines in an effort to improve and clarify procurement processes across all Ministries in the Government. As the process of decentralisation continues there is a need to specifically examine the effectiveness of the procurement reform agenda and the processes that have been adopted by Ministries in the Government.

The purpose of this examination is to assist the Government in gaining an understanding of the procurement systems and processes in place throughout the various Ministries within the Government. By extension this examination will also focus on the alignment and conformity of the existing system with the requirements of the Decree Law and the Best Practice Guidelines that have been promulgated by the Government to support these efforts. This specific review will focus on the processes and procedures that exist in the Ministry of Social Solidarity.

## 1.2 Scope and Objectives

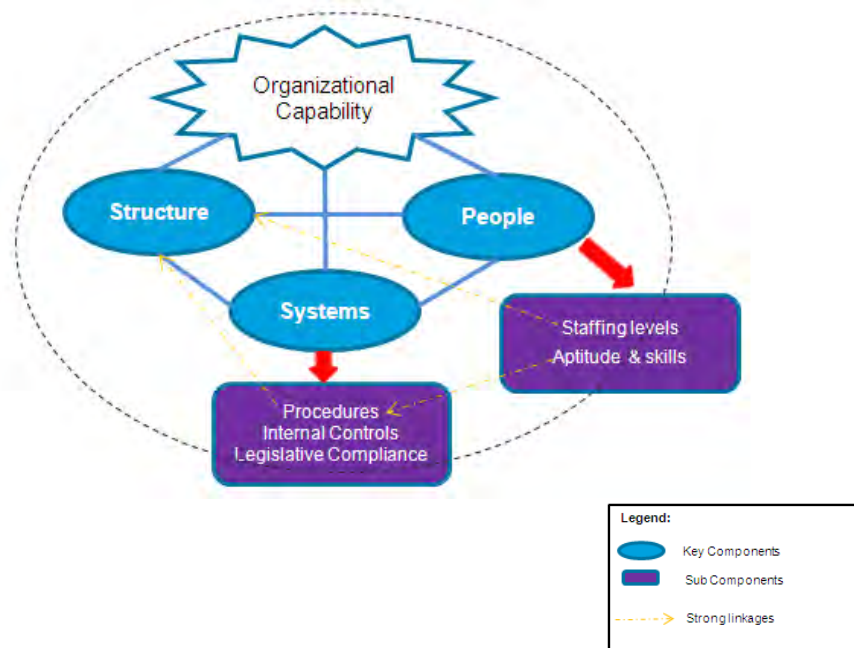
The Ministry of Finance requested that we:

- Examine procurement procedures and internal controls for the Ministry of Social Solidarity
- Inspect the Ministry of Social Solidarity's compliance with Decree Law and Best Practice Guideline procedures through examination of procurement supporting documentation on a sample basis for the period 1 January 2009 to 30 June 2011
- Prepare a report of findings and recommendations

## 1.3 Approach to engagement

The approach to this engagement primarily entailed examination of procurement documentation and interviewing key stakeholders to obtain their perspectives on the procurement process. The objective being to critically analyse procurement procedures and internal controls in the Ministry of Social Solidarity, both to assess their effectiveness as well as their compliance with Decree Laws and the Best Practice Guides.

The framework for the analysis was to examine the elements of organisational architecture that support the procurement process – notably structure, systems and people. The following diagram provides an overview of what those components are and how they fit together:



**Figure 1.** Organisational capability testing framework

The elements of the procurement environment are complementary and need to align for the procurement system to function correctly. For example, if the structure and systems are in place but the staff lacks the appropriate aptitude, skills and knowledge of the procurement system to fully utilise its capability, the system will be dysfunctional.

## 1.4 Key Findings and Recommendations

There are a number of key issues affecting the performance of the Procurement Department in the Ministry of Social Solidarity. The detailed findings and recommendations are included in Section 2. The key findings and recommendations are:

### 1.4.1 Systems

#### 1.4.1.1 Procurement procedures & internal controls

There are a number of deficiencies in the procurement procedures and internal controls including instances where:

- Purchase orders were created after the invoice date
- There was missing supporting documentation
- The widespread and inappropriate use of the “Commitment Only” process has resulted in the standard approvals process being avoided and large volumes of goods and services being directly awarded without sufficient justification
- The use of expired central procurement contracts has resulted in the Ministry relying upon expired contracts with an incorrect counterparty. This has also contributed to the direct awarding of purchased goods and services
- The quality of contracts observed is assessed as poor with wide ranging issues with missing or inadequate terms, conditions and annexures
- There is no established and effective contract management
- Procurement Conduct Checklists were not used in the procurement process
- The controls in the operation of the fuel voucher system post issue of the voucher coupons are considered weak and susceptible to misappropriation.

## Recommendation

It is recommended that the Procurement Department of the Ministry of Social Solidarity implement standard operating procedures that regulate procurement processes at the functional level.

While some direction is provided by the Decree Law and the Best Practice Guides in providing a strategic overview, specific directives on the procedures to be followed are to be created and made available in the Procurement Department of the Ministry of Social Solidarity.

### 1.4.1.2 Non Compliance with Decree Law

The Procurement Department of the Ministry of Social Solidarity did not comply with the Decree Law in the following instances:

- There was no Supplier Registry prepared in accordance with Decree Law
- There is no notification available to confirm that the accreditation process for the Ministry required in the Decree Law and the complementary Best Practice 10: Decentralisation and Accreditation has been followed
- The Procurement Department should provide the Procurement Plan to the Ministry of Finance as mandated by Decree Law 10/2005
- There was no formal process for managing procurement performance
- Tenders were not published in accordance with the Decree Law
- Contracts were awarded directly (sole sourced) without sufficient justification

## Recommendation

There are a number of steps that can be taken by the Procurement Department of the Ministry of Social Solidarity to resolve issues of non-compliance with Decree Law and the Best Practice Guides. These actions include:

- Create and maintain a Suppliers Registry.
- The Procurement Department should access the registry administered by the National Director of Registry and Notary in the Ministry of Justice to ensure that when assessing quotes or tenders there is no evidence of beneficial ownership by one party in separate supplier submissions.
- The Ministry should request the level of accreditation appropriate for the respective needs from the MoF.
- The Procurement Department should provide the Procurement Plan required by the Ministry of Finance as mandated by Decree Law 10/2005.
- The Procurement Department should provide the Compliance Report to the Ministry of Finance as required as part of the Annual Procurement Report submission.
- An extension of the above is to create a more effective performance management system based on the SMART criteria (specific, measurable, achievable, relevant and time-bound). The performance management system should be designed to ensure predictable goal achievement. It should possess the three essential features:
  1. The goals against which performance is measured
  2. The ability to measure performance
  3. The ability to correct deviations.

Commonly used approaches include the Balanced Scorecard encompassing financial, internal business, customer and innovation and learning measures.

However, Deloitte notes that the MoF has developed the report “Establishing Performance and Compliance Indicators in Public Procurement in Timor-Leste” under the auspices of a

World Bank IDF grant. Deloitte understands further that the World Bank is providing comments, following which the MoF will roll out the performance system to line ministries.

- The tender requirements articulated within the Decree Law must be abided by
- The direct award of contracts should only be applied in circumstances strictly permitted by the Decree Law.

### 1.4.1.3 Other Compliance issues

Other compliance issues include:

- The widespread use of non-government email hosting sites
- Poorly developed standard operating system

### Recommendation

There are several recommendations in relation to other compliance issues. These include:

- The Procurement Department should use official government email accounts.
- The Procurement Department should access or create standardised documentation to support their procurement activities. There is some standardised documentation but this should be reconciled against the objectives of the Procurement Department to ensure that it is both effective and complete.
- Significant items bought in volume by line ministries such as vehicle, fuel and travel should be procured centrally to exploit the advantages of volume discounts available.

## 1.4.2 Organizational Structure

### 1.4.2.1 Roles & responsibilities

The organisational structure of the procurement department appears appropriate to the task.

## 1.4.3 People Management

### 1.4.3.1 Staffing levels

Deloitte's examination of the level of transactional activity and staffing levels indicate that there appears to be sufficient staff to meet the demands of the department.

### 1.4.3.2 Aptitude & training

The level of experience of the Procurement staff meets the required levels of experience stated in the Positions Descriptions for all procurement staff. The levels in the Position Descriptions appear adequate for the roles being undertaken. However, there is a need to have succession planning in place.

There are also several recommendations in relation to training that should be adopted. These include:

- Instituting more effective training tailored to the requirements of the Procurement Department.
- It was noted that all staff attended the 21 Day Procurement Cycle Course. However, no procurement staff attended for the complete 21 days of the course. It is recommended that staff attend the courses on offer in full to ensure that consistent information is made available to members and team members can have greater access to learning the skills necessary for their roles.
- Improving the training development apparatus for staff through improved performance measurement to ensure that individual staff members are monitored and the training required is delivered.

- The commissioning of a better accreditation system to complement the above and provide a formal basis for continuing professional development of staff.
- Adopting a people management strategy that focuses on productivity and embraces, amongst other elements, selection based on current skills and knowledge.

## 1.5 Follow up on recommendations

Due to the critical importance of procurement to both the delivery of government services and the development of Timor-Leste, a process should be implemented to monitor the progress of the Procurement Department of the Ministry of Social Solidarity have made against these recommendations.

## 1.6 Acknowledgement

We would like to take this opportunity to thank the management and staff of the Ministry of Social Solidarity and the Ministry of Finance for their co-operation and assistance during the course of this examination.



Deloitte Touche Tohmatsu

July 2012

## 2. Detailed Findings and Observations

### 2.1 Procurement procedures & internal controls

#### 2.1.1 Purchase Order Preparation

##### 2.1.1.1 Purchase orders created after the invoice date

In our sample we noted the following instances where the purchase order was dated after the invoice indicating the purchase order was created after invoicing had occurred:

| Year | Vendor               | Description       | Purchase Order Date | Invoice Date | Amount      |
|------|----------------------|-------------------|---------------------|--------------|-------------|
| 2010 | Jose Tito Funu Timur | Pag Para Servicos | 18-Aug-10           | 3-May-10     | \$56,000    |
| 2011 | Panca Sekawan Jaya U | Farda ba          | 25-Aug-11           | 23-Aug-11    | \$1,878,578 |
| 2011 | Quidgest             | Instalasaun Base  | 10-Jun-11           | 25-May-11    | \$125,000   |

**Table 1.** Purchase orders created after the invoice

The purchase order process establishes the Ministry of Social Solidarity's acceptance and authority to pay an invoice. Actions that circumvent this can result in payments that have not been approved by the Ministry of Social Solidarity being paid. This has the potential to permit fraud or error.

#### Recommendation

Procurement should follow the established procedure. Purchase orders should be created and approved prior to receipt of goods and services. The subsequent receipt of the goods and services should be accompanied by goods receipt information such as Goods Receipt Note that should be reconciled to the original Purchase Order and original supplier invoice. Provided that all agree, the Request for Payment can be lodged with the Ministry of Finance and the supplier paid.

### 2.1.2 Other purchasing issues

#### 2.1.2.1 Missing supporting documentation

There was several samples noted where the supporting documentation for a selected transactions could not be provided to us by the Procurement Department. These were as follows:

| Year | Vendor          | Description       | Amount    |
|------|-----------------|-------------------|-----------|
| 2009 | Oceano Pty Ltd  | Compra de Veiculo | \$81,887  |
| 2010 | Commitment Only | Fundo de Maneio   | \$50,000  |
| 2010 | Commitment Only | Outros Despesas   | \$69,988  |
| 2010 | UD Palma MTC    | Motorzadas Honda  | \$121,000 |
| 2011 | Commitment Only | Imprest Fund      | \$2,500   |
| 2011 | Commitment Only | Imprest Advance   | \$81,000  |

**Table 2.** Samples with missing supporting documentation

The retention of critical procurement information is essential for the proper functioning of procurement controls. An absence of this information means that there is no mechanism to verify that the correct procedures are being applied or assess the reasonableness of the payment. The potential outcome of failing to apply these principles is fraud or error.

Refer to Appendix 6 for the process followed in order to try and obtain FY2009 documentation.

#### Recommendation

The procurement department should obtain or create and retain all the necessary procurement documentation.



2.1.2.2 Use of the Commitment Only purchasing mechanism

The use of the “Commitment Only” procurement approach is common in the procurement process for the Ministry of Social Solidarity. The table below illustrates the extent of the practice through providing the volume of transactions undertaken through both “Commitment Only” and the prescribed procurement methodology in the Decree Law and Best Practice Guides (“Standard Procurement”) in the FY2010. The table is as follows:

| Process              | Grouping         |               |                       | Grand Total |
|----------------------|------------------|---------------|-----------------------|-------------|
|                      | Goods & Services | Minor Capital | Capital & Development |             |
| Commitment Only      | 609              | 0             | 0                     | 609         |
| Standard Procurement | 203              | 50            | 23                    | 276         |
| Grand Total          | 812              | 50            | 23                    | 885         |

**Table 3.** Number of transactions performed using the Standard and “Commitment Only” processes

Most of the “Commitment Only” disbursements are related to salaries, Per Diems and petty cash payments. These will be paid by the Finance Officer to the intended parties after Treasury has approved the preceding CPV and payment request.

There are systems for both payroll disbursements and procurement that are being underutilised or avoided. This avoidance may be for reasons of expediency, a lack of knowledge or confidence in the procurement or payroll systems or to take advantage of a weakness in the current systems. Table and Graph A2-3 of Appendix 2 detail the extent of these “Commitment Only” purchases.

The issues arise through the misuse of the “Commitment Only” approach are as follows:

1. There is no purchase order created for the purchase of goods and services. This means that the approval process for these acquisitions has been avoided.
2. These items are being direct awarded. For purchases in excess of \$5,000 there is a need to adopt a competitive process by the mechanisms provided for in the Decree Law and included at Appendix 4 to this review.
3. The large volumes of cash payments (\$563,149 in total for FY2010 for both petty cash and cash advances) indicate that this approach is being overused. There does not appear to be an effective acquittal process for these payments as the Commitment and Obligation Report records these payments simply as cash payments. As a result no vendors are recorded and the process for vendor selection cannot be readily understood. As a result there is a high potential for misappropriation given the extent to which cash is being handled.
4. There are substantial payments made using manual payments through the “Commitment Only” process. This approach is substantially less controlled payment option than the system that pays directly into a bank account. The manual system should only be used where access to banks is limited such as the districts. The manual approach has the potential for misappropriation given the difficulties associated with administering such a system.
5. The approach is a violation of the Decree Law due both to the direct award nature of the procurement and avoidance of the Ministry’s obligations to undertake procurement in accordance with the Decree Law.

## Recommendation

The practice of using the “Commitment Only” approach for the purchase of goods and services and the disbursement of payroll related monies should cease. In limited cases the payment of per diems and salaries may be appropriately handled through this mechanism but under conditions of strict control.

### 2.1.2.3 Reliance on expired central procurement contracts

There were was one selection identified in the testing where the Ministry purchased fuel from Esperanca Timor Oan (\$10,000 in total). The details are provided below:

| Year | Vendor                | Description    | Invoice No | Amount   |
|------|-----------------------|----------------|------------|----------|
| 2010 | Esperanca Timor Oan J | Esperanca Fuel | 433        | \$10,000 |

**Table 4.** Direct award procurement without sufficient justification

Per discussions with the Procurement Department, these purchases were undertaken under the authority of the contracts maintained by Central Procurement for the supply of fuel to all government ministries and agencies. However, these contracts have expired and should no longer be relied upon.

There implication of these issues is twofold:

1. The current situation is that the contracts in use are both expired and made between the Government of Timor-Leste (whole government) and not the line ministry as the counter party. As a result no existing legal and operative (extant) contract is in place. The Ministry of Social Solidarity should establish contracts with suppliers in accordance with the decentralisation principles established in Decree Law 1/2010.
2. The Ministry of Social Solidarity are not taking advantage of a competitive tendering process that could provide significant advantages through the provision of discounts, volume rebates and other preferred supplier arrangements.

## Recommendation

The Procurement Department is required, under the decentralized procurement regime established under Decree Law, to establish their own procurement arrangements with suppliers. In establishing these requirements there is a need to acquire three quotes for transactions between \$5,000 and \$100,000 for one-off procurement events or proceed to tender for amounts greater than this threshold that would accommodate larger, longer term supply contracts.

### 2.1.2.4 Contract Quality

There are notable issues with the contracts observed during the examination of procurement documentation for the Ministry of Social Solidarity. The issues identified in one contract for the Ministry has been provided at Appendix 5 to this document. These issues (in the Appendix 5) are restricted only to clauses in the contract rather than elements that were not in the contract but could potentially have been included in the contract. The latter are extensively covered by the “Checklist; 22 Commercial Principles for Procurement Contracts” in Best Practice Guide 6: Establishing Contracts.

It appears that there are significant issues with the contracts in both what has been covered and the terms of the contract that should have been included.

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**Recommendation**

The standard of contracting should be improved to provide understandable terms and conditions for contracts and adequately protect the interests of the government in their contractual arrangements. The adoption of the Commercial Principles in Best Practice Guide 6: Establishing Contracts would assist the Ministry to improve the standard of contracting presently being undertaken.

**2.1.2.5 Contract Management**

There are no established procedures, allocation of tasks or dedicated personnel to manage contracts.

The framing of contracts should deliver the platform for the effective delivery of goods and services but it must be managed or those anticipated benefits will not be achieved. Best Practice Guide 7: Managing Contracts provides comprehensive guidance on all aspects of contract management and administration.

**Recommendation**

There is a need to have contract management processes and dedicated personnel allocated to the task of managing contracts. The Best Practice Guide 7: Managing Contracts provides extensive guidance on the requirements for management process and this should be overseen by adequately trained and experienced staff.

**2.1.2.6 Procurement Conduct Checklists**

The Best Practice Guide 3: Tender Processes & Documents recommends that Procurement Departments use the Procurement Conduct Checklists in conduct of all tenders. An examination of documentation indicates that the checklists are not being used.

The Procurement Conduct Checklist itemises each person and issue that will be relevant in the tender process and in doing so is a valuable tool in ensuring that the process is conducted properly.

**Recommendation**

The Procurement Department of the Ministry of Social Solidarity should use the Procurement Conduct Checklist in the development of all tenders.

**2.1.2.7 Fuel Voucher Controls**

The controls surrounding the issue and use in purchasing of fuel using the fuel voucher coupons is considered weak. Some of the issues identified include:

- Coupon books being issued to Director Generals and above with no accounting for their usage;
- There is no sign off by the vendor (fuel station) of the fuel voucher to ensure that the receiving vehicle is the authorised recipient;
- There is no statement provided by the vendor and subsequent reconciliation performed against the fuel usage; and
- There are no log books maintained to check mileage performed by the vehicles and ensuring this agrees with the amount of fuel that would reasonably have been consumed.

The outcome of this process is that there opportunities to misuse this system and misappropriate fuel.

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**Recommendation**

The controls surrounding the management of the purchasing of fuel using coupons require improvements. The development and introduction of a basic procedures manual for use of fuel vouchers that eliminates these shortfalls is a simple solution that could be adopted by the Procurement Department.

**2.2 Compliance with Decree Law & Best Practice Guide Procedures****2.2.1 Non-compliance with Decree Law****2.2.1.1 Suppliers Registry**

The Decree Law 10/2005 requires that adequate supplier records be maintained for Government bodies involved in procurement. In the practical application of this requirement, the Procurement Department of the Ministry of Social Solidarity has not adopted any form of supplier registry.

The adoption of a Supplier Registry is critical to maintaining control over suppliers. In an absence of this control there is scope for companies to fraudulently misrepresent themselves in the procurement process or conceal participants that may have a conflict of interest.

Furthermore, it was noted that the Procurement Department of the Ministry of Social Solidarity does not have access to a Directors and Shareholders registry that would commonly be available through a corporate regulator in other jurisdictions. This creates the potential for suppliers to create a number of corporate entities in which to bid (thereby satisfying the requirement for three quotes for purchases less than \$100K) but in reality being one provider.

**Recommendation**

The Procurement Department of the Ministry of Social Solidarity should institute a Supplier Registry as soon as is practicable.

**2.2.1.2 Accreditation Procedures Not Followed**

Decree Law 24/2008 required that the each Ministry, as part of the decentralisation process, undergo a process of accreditation. In this process each Ministry and their related entities was required to request the Ministry of Finance for a level of accreditation appropriate to their needs. This is supported by Best Practice Guide 10: Decentralisation and Accreditation.

The initial change was for the Ministry of Finance to allow procurement to level 2 (\$250,000) across all line Ministries. However, the discontinuing of the Procurement Technical Secretariat (STA) prompted the Council of Ministers to amend (by Decree Law) that line ministries would be permitted to procure to their budget. Subsequent changes in the Decree Law resulted in the creation of the National Procurement Commission that controls expenditure in excess of \$1M.

At issue is the situation where the accreditation requirements of the Decree Law and complementary Best Practice 10 have not been followed. The numerous changes in Decree Law may have resulted in some confusion.

**Recommendation**

It is recommended that some form of notification be provided by the MoF to indicate the accreditation process required in the prior Decree Law and the complementary Best Practice 10: Decentralisation and Accreditation have been set aside.

### 2.2.1.3 Mandated Procurement Plan Requirements

The Decree Law 10/2005 Article 24 requires that an Annual Procurement Plan be prepared and submitted to the Ministry of Finance. The Best Practice Guide 1: Procurement Planning provides advice on how this is to be approached including the planned expenditure ranges that are required to be reported on. These ranges are:

- \$1 - \$50,000
- \$50,000 - \$100,000
- \$100,000 - \$250,000
- \$250,000 - \$500,000
- \$500,000 - \$1,000,000
- \$1,000,000 +

However, the Procurement Department of the Ministry of Social Solidarity has interpreted this to mean they are required to submit an annual budget. This submission is provided for the total planned spend only and not by the procurement ranges required by the Best Practice Guide.

#### **Recommendation**

The Procurement Department of the Ministry of Social Solidarity should prepare a procurement plan in accordance with the planned expenditure ranges detailed in Best Practice Guide 1.

### 2.2.1.4 Procurement performance management system

There is no formal process for reporting procurement performance against the governing legislative instruments. Furthermore, there are no procedures or reporting for the identification of non-compliance in the procurement system.

The Annual Procurement Report required under the Decree Law states that a Compliance Report be included in the submission to the Ministry of Finance. This has not been performed.

The absence of a performance review process limits the effectiveness of the procurement process. Diagnostic systems measure and monitor Key Performance Indicators (KPI) on the procurement system. Discussions have indicated that a "procurement dashboard" reporting system is being developed by the MoF but Deloitte has only viewed a draft copy. Based on discussions with the MoF, progress toward the establishment of a "procurement dashboard" is thoroughly endorsed and will significantly address this existing shortfall.

The non-issue of the Compliance Report within the annual procurement reporting framework is a violation of the Decree Law.

#### **Recommendation**

There are two recommendations relating to the performance reviews and non-compliance reporting:

- A performance monitoring system requires implementation. This system requires KPIs to be developed that benchmark against acceptable outcomes. This system needs to report monthly and the consolidated annual results from part of the Compliance Report within the Annual Procurement Report. The KPI reporting can be used for performance assessment of procurement officers.
- The Compliance Statement needs to be completed and included in the submission of the Annual Procurement Report in accordance with the Decree Law.

### 2.2.1.5 Tenders not published in accordance with Decree Law – Language promulgation

There were a number of tender documents observed in the course of the examination. The Decree Law (and further explained in Best Practice Guide 3) requires that tenders, both local and international, require publication in the media in English and either Tetum or Portuguese. The following three tenders were published only in English:

| Year | Vendor               | Description   | Process Used                 | Amount    |
|------|----------------------|---------------|------------------------------|-----------|
| 2009 | Encosta Lorosae Pty  | Warehouses    | ITB (National Public Tender) | \$139,300 |
| 2009 | Maravilha Co Lda     | Warehouses    | ITB (National Public Tender) | \$108,000 |
| 2011 | Ghess Auto Unipessoa | Compra Toyota | ITB (National Public Tender) | \$108,000 |

**Table 5.** Tenders not published in the correct language

The failure to publish these tenders in the media has several consequences:

1. The action violates Decree law
2. The lack of dissemination will likely limit the field of potential bidders and opportunity to gain value for money
3. There is potential for stakeholders to influence (in this case restrict) the field of bidders by not adopting the correct publishing requirements.

### Recommendation

The requirement for publication of tenders must be followed in accordance with Decree Law. The Ministry should ensure that when a National Public Tender process is followed, publications in nation-wide newspapers are either made in Portuguese or Tetum.

### 2.2.1.6 Tenders not published in accordance with Decree Law – Incorrect process

As per the Decree Law 10/2005 Article 61, it is compulsory to follow the international public tender process where the purchase of goods or technical services exceeds USD\$250,000.

However, the following case was found where a National Public Tender process was followed instead of an International Public Tender process:

| Year | Vendor             | Description      | Invoice Number | Amount    |
|------|--------------------|------------------|----------------|-----------|
| 2010 | Ramavana Motor Lda | Supply of Hearse | 1210-05        | \$255,500 |

**Table 6.** Tender that exceeded threshold for ITB process but followed the NPT process

This is a breach of the Decree Law 10/2005 Article 61.

### Recommendation

As per the Decree Law 10/2005 Article 61, an International Public Tender process should be followed by the Ministry when the purchase of goods or technical services exceeds USD\$250,000.

### 2.2.1.7 Tenders not published in accordance with Decree Law –Splitting of contract to avoid the obligations of the Decree law

During the procurement review a single commitment for the purchase of construction services was identified as being split into two separate contracts with the same company. This may have been done in order to avoid the requirements of the Decree Law. The details of the two contracts that should have been a sole contract are as follows:

| Year | Vendor                | Description      | Purchase Requisition Date | CPV Amount  | Payment Request Date | Amount    |
|------|-----------------------|------------------|---------------------------|-------------|----------------------|-----------|
| 2010 | Carya Timor Leste Pty | Construcao para  | 16.08.2010                | \$1,310,000 | 30.12.2010           | \$814,912 |
| 2010 | Carya Timor Leste Pty | New Construction | 16.08.2010                | \$1,310,000 | 30.12.2010           | \$495,088 |

**Table 7.** Details of the contract split to avoid the obligations of Decree Law

According to the Decree Law and the Best Practice Guide, amounts over USD\$1,000,000 that involve public works procurement require an International Public Tender. The contract identified above was split into two separate purchases that utilised the National Public Tender procedures instead of International Public Tender procedures. The latter would have applied if the whole contract went through procurement without being split in two. If this was the intent, the actions are a breach of the Decree Law.

### Recommendation

Contracts should not be split for the purpose of avoiding Decree Law obligations. The Decree Law 10/2005 Article 61 and Best Practice guide sets out the terms of each tender process and in which case it should be followed. The thresholds to be applied can be viewed at Appendix 3.

### 2.2.1.8 Direct Award without sufficient justification

There were a number of purchases observed in the examination that were undertaken using the Direct Award provisions of the Decree Law. The Article 92 of the Decree Law 10/2010 states that circumstances for using direct award (including Emergency Procurement) must be accompanied by mandatory documentation (the conditions are provided at Appendix 5 to this document). However, there were a number of cases where the supporting documentation provided does not appear to adequately address the needs prescribed by the Decree Law. These are as follows:

1. The company Hat Balu Leten Ltd (construction company) was engaged to perform repairs and maintenance work in the offices of the Ministry (value USD\$78,405). The rationale for adopting the direct award approach was the supplier promised to perform the work in a short time period and possessed the quality and experience to undertake this work.

Condition 10 of Article 92 states that “for reasons of practicability or inconvenience duly justified and documented”. The presence of construction companies in Timor-Leste is widespread and the promise to complete the work in a timely fashion could possibly be acquired from other firms. Therefore, the rationale for direct award in this instance appears inadequate.

2. The company Panca Sekawan Jaya Unip LDA was engaged to provide uniforms for veterans and national liberation fighters to the value of USD\$4,367,580. There was a need to have the uniforms ready in a short time and had to conform to the design approved by the Office of the Prime Minister. A team had been sent to Indonesia to find a suitable supplier but they had not found one of sufficient quality to meet their needs.

The use of condition 4 (where the goods or services may only be supplied by a specific entity and no reasonable or substitutive alternatives exist in the market) of Article 92 may be inadequate given the existence of other quality manufacturers of uniforms. The size of this contract (USD\$4.37M) required that an International Public Tender be undertaken – doing so would have increased the pool of available suppliers and eliminated the need to individually source the supplier.



It should be noted that the procedures followed in the above cases were correct. However, it is assessed that, for the reasons given above, the direct award caveats of the Decree Law may have been utilised for convenience rather than actual need.

When direct award cases are processed without the required documentation, or when the justifications do not strictly satisfy the requirements listed under Article 92 of Decree Law 10/2010, it can result in procurement procedures being circumvented under the guise of being urgent or special matters.

### **Recommendation**

All direct award (including emergency cases) are to be processed according to the Decree law and Best Practice Guides, with adequate documentation being maintained as proof of the urgency or special nature involved in procuring the item(s). The rationale for adopting a direct award contract should be warranted and not resorted to out of convenience. In support of this the direct award should include adequate approvals to substantiate the need to resort to this approach.

## **2.3 Other compliance issues**

### **2.3.1.1 Government Procurement Contact Details**

The contact details of a number of Procurement Officers in each Ministry under examination were supplied. In all cases (no government email addresses were provided) either a yahoo, Gmail or hotmail web email account was provided. Furthermore, two of the contact details provided were not correct.

The provision of inaccurate or incomplete information will hinder the delivery of important information to the procuring entity. Furthermore, the use of publically accessed email services does not provide adequate security particularly in the transmission of 'commercial-in-confidence' information.

### **Recommendation**

All procurement team members are provided with a Government email account. This should be used to disseminate information to the Procurement teams and be one of the mediums for reporting back to Central Procurement. With the launch of the e-procurement system it is essential that all procurement officers are online.

The Government should ensure that only Government email addresses are used for business purposes.

### **2.3.1.2 Internet Accessibility**

The internet and intranet services for the Ministry of Social Solidarity are slow and unreliable. As a consequence most of the staff does not have access to the Government server during these periods of poor service performance. This issue will affect access to the e-Portal system.

It was also noted that most senior officials utilise internet services provided by Timor Telecom that is separate from the intranet service commented on above.

### **Recommendation**

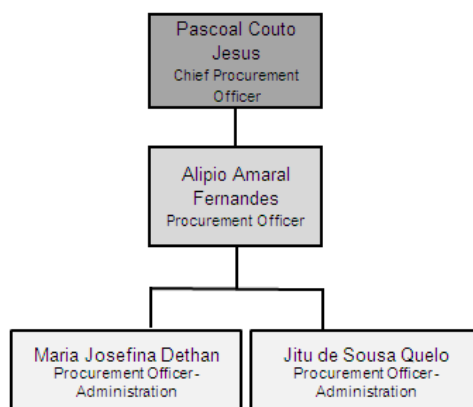
The Director General of State Finances is currently sponsoring a Management Information Strategy (MIS) Report that comments extensively on this issue. For the purposes of this report the comments above are for information only and more detailed commentary can be gained from the MIS Report.



## 2.4 Organizational Architecture

### 2.4.1 Organizational structure

The organizational structure for the Procurement Department of the Ministry of Social Solidarity is provided in the organizational chart that follows:



**Figure 2.** Organizational chart for the Procurement Department of the Ministry of Social Solidarity

The organizational chart establishes limits of authority and responsibility. The structure appears reasonable given the quantum of people employed and lines of authority that have been constructed.

What requires clarification is whether the structure meets the objectives of the Procurement Department by adequately providing the expertise in the correct areas. Arguably, this is better examined in the roles and responsibilities section provided below.

### 2.4.2 Roles & responsibilities

The Ministry provided Position Descriptions that defined the roles and responsibilities for all employees in the Procurement Department of the Ministry of Social Solidarity. The Position Descriptions provided the following information:

- Title
- Responsible Manager
- Brief description of role
- Details of specific duties
- Academic qualifications
- Experience
- Minimum competencies

Overall the information provided was sound but two issues were noted:

1. There was a minor inaccuracy with the Chief of Procurement being tasked with liaising with Central Procurement for purchases over \$250,000. This is no longer required due to associated changes in Decree Law.
2. The Position Descriptions do not contain the Pay Level required for each respective position.

This information assists in recruitment, succession planning and training of staff (note the connection between structure and human resources issues in this case). It also provides the basis for reconciling the roles and responsibilities of the department with the objectives they are attempting to achieve.

Apart from understanding roles and responsibilities of there is also a need to provide adequate contract development and management capabilities. At present these are absent as reflected in sections 2.1.2.4 – Contract Quality and 2.1.2.5 – Contract Management.

## Recommendation

It is recommended that each Position Description be reviewed for accuracy and updated as required. The pay level for each position requires inclusion in each Position Description.

It is also recommended that the structure be amended to cover responsibility for contract development and management.

## 2.5 People Management

### 2.5.1 Staffing Levels

Examination of the documentation for the complete FY2010 in Ministry of Social Solidarity's Procurement Department indicates that there were 276 payments made to suppliers following the procurement processes stipulated in the Decree Law and Best Practice Guides (this excludes 609 commitment only payments processed by the Finance Officer) for the period. The details of this can be viewed in Table 3 attached to paragraph 2.1.2.2.

Presently the Procurement Department has three staff. Based on the current tempo of activity, the number of personnel appears to be adequate for the level of activity experienced by the Procurement Department.

### Recommendation

The levels of staffing appear adequate to the volume of transaction being processed in the Procurement Department.

Should any changes be contemplated in reducing the amount of "Commitment Only" transactions, it is assessed that the potential for efficiency gains in the use of improved standard operating procedures are sufficient to allow the existing staff to handle any increases in workload.

### 2.5.2 Aptitude & Skills

#### 2.5.2.1 Existing Capability

The following are the qualifications and experience of the personnel in the Procurement Department of the Ministry of Social Solidarity:

| Name   | Position                             | Qualifications | Experience             |
|--|--------------------------------------|----------------|------------------------|
| Pascoal Cuoto Jesus                                      | Chief of Procurement                 | SMA *          | 6 Years in procurement |
| Alipio Amaral Fernandes                                  | Procurement Officer                  | SMA *          | 3 Years in procurement |
| Maria Josefina Dethan                                    | Procurement Officer - Administration | SMA *          | 3 Years in procurement |
| Jitu de Sousa Quelo                                      | Procurement Officer - Administration | SMA *          | 3 Years in procurement |
| Note:  |                                      |                |                        |
| * SMA is Sekolah Menengah Atas (Senior Secondary School) |                                      |                |                        |

**Table 8.** Ministry of Social Solidarity procurement staff particulars.

The qualifications and experience appear adequate for the tasks required in the Procurement Department. The experience of the staff provided above meets the experience requirements stipulated in the Position Description (refer paragraph 2.4.2.). It is assumed that those levels assigned in the Position Description are adequate for undertaking the respective role.

There was no apparent succession planning in place.

## Recommendation

There is a need to have a succession plan in place which should include training needs (addressed further below) and candidate selection.

### 2.5.2.2 Training

Discussions with the Procurement staff in the Ministry of Social Solidarity indicate that the procurement team was able to attend the Procurement Cycle 21 Day training at the Ministry of Finance and their certificates of attendance at this training were sighted. However, no staff has attended the E-procurement training being provided prior to the adoption of this system. The details of attendance at training is as follows:

| Name                    | Position                             | Training              |                |
|-------------------------|--------------------------------------|-----------------------|----------------|
|                         |                                      | MoF Financial Process | E- Procurement |
| Pascoal Cuoto Jesus     | Chief of Procurement                 | 18 Days training      | No             |
| Alipio Amaral Fernandes | Procurement Officer                  | 18 Days training      | No             |
| Maria Josefina Dethan   | Procurement Officer - Administration | 12 Days training      | No             |
| Jitu de Sousa Quelo     | Procurement Officer - Administration | 12 Days training      | No             |

**Table 9.** Ministry of Social Solidarity training attendance.

The Procurement Team at the Ministry feel that they require additional training, and that the training is too short to cover all material in detail. Moreover, there is a view that the training does not adequately address the specific needs of the procurement staff in the conduct of their day to day activities. Evidence provided would appear to support this view and suggests that a lack of consistency in training durations may also detract from training value as participants miss portions of the Procurement Cycle 21 Day training course.

The institution of a formal training regime is essential to the effective operation of the procurement system. Training is the linkage that aligns the people (both in terms of capability and motivation) to the systems and organisational structure in operation. The issue appears to be the provision of job specific training that meets the training needs of procurement staff in performing routine procurement activities.

## Recommendation

There is a need to provide more comprehensive training that supports the achievement of clear objectives. Specifically, the training must support the routine activities of the procurement department. Furthermore, there is a need to manage this so that the training development needs of individual staff are monitored and the training required is delivered. To ensure that this occurs adequate training support and accreditation should exist.

There are no recommendations or opinions provided on the adequacy of the training provided.

## Appendix 1: Budget & Actual Expenditure for FY 2010

| Category/Item                             | 2010              | 2010               | Variance           |
|---|-------------------|--------------------|--------------------|
|   | Budget            | Actual             |                    |
| Salaries and Wages                        | 1,632,000         | 1,632,000          | 0                  |
| Goods and Services                        | 2,983,000         | 3,150,685          | -187,685           |
| Minor Capital                             | 886,000           | 948,315            | -62,315            |
| Capital and Development                   | 1,955,002         | 3,075,002          | -1,120,000         |
| Transfers                                 | 62,141,000        | 94,941,000         | -32,800,000        |
|   | <b>69,597,002</b> | <b>103,747,002</b> | <b>-34,150,000</b> |
| <b>Directorates:</b>                      |                   |                    |                    |
| <b>Minister of Social Solidarity</b>      |                   |                    |                    |
| Salaries and Wages                        | 64,000            | 64,000             | -                  |
| Goods and Services                        | 50,000            | 50,000             | -                  |
|   | <b>114,000</b>    | <b>114,000</b>     | -                  |
| <b>Social Audit Inspection Office</b>     |                   |                    |                    |
| Salaries and Wages                        | 23,000            | 23,000             | -                  |
| Goods and Services                        | 33,000            | 33,000             | -                  |
| Minor Capital                             | 11,000            | 11,000             | -                  |
|   | <b>67,000</b>     | <b>67,000</b>      | -                  |
| <b>Office of the Director-General</b>     |                   |                    |                    |
| Salaries and Wages                        | 34,000            | 34,000             | -                  |
| Goods and Service                         | 24,000            | 23,300             | 700                |
| Minor Capital                             | 11,000            | 11,700             | -700               |
|   | <b>69,000</b>     | <b>69,000</b>      | -                  |
| <b>Social Solidarity Finances – Admin</b> |                   |                    |                    |
| Salaries and Wages                        | 391,000           | 391,000            | -                  |
| Goods and Service                         | 875,000           | 935,510            | -60,510            |
| Minor Capital                             | 188,000           | 239,340            | -51,340            |
| Capital and Development                   | 1,190,406         | 1,000,406          | 190,000            |
| Transfers                                 | -                 | -                  | -                  |
|   | <b>2,644,406</b>  | <b>2,566,256</b>   | <b>78,150</b>      |
| <b>Former Sec Comba East Affairs</b>      |                   |                    |                    |
| Salaries and Wages                        | 47,000            | 47,000             | -                  |
| Goods and Service                         | 46,000            | 46,000             | -                  |
|   | <b>93,000</b>     | <b>93,000</b>      | -                  |
| <b>DN Affairs Combatants Libert</b>       |                   |                    |                    |
| Salaries and Wages                        | 283,000           | 283,000            | -                  |
| Goods and Services                        | 426,000           | 426,000            | -                  |
| Minor Capital                             | 42,000            | 42,000             | -                  |
| Capital and Development                   | -                 | 1,310,000          | -1,310,000         |
| Transfers                                 | 22,954,000        | 47,864,000         | -24,910,000        |
|   | <b>23,705,000</b> | <b>49,925,000</b>  | <b>-26,220,000</b> |
| <b>Sec Est Des Welfare</b>                |                   |                    |                    |
| Salaries and Wages                        | 47,000            | 47,000             | -                  |
| Goods and Services                        | 46,000            | 46,000             | -                  |
| Capital and Development                   | 250,000           | 250,000            | -                  |
|   | <b>343,000</b>    | <b>343,000</b>     | -                  |
| <b>DN Social Assistance</b>               |                   |                    |                    |
| Salaries and Wages                        | 179,000           | 179,000            | -                  |
| Goods and Services                        | 880,000           | 996,650            | -116,650           |
| Minor Capital                             | 369,000           | 370,500            | -1,500             |
| Capital and Development                   | 514,596           | 514,596            | -                  |
| Transfers                                 | 2,432,000         | 6,285,160          | -3,853,160         |
|   | <b>4,374,596</b>  | <b>8,345,906</b>   | <b>-3,971,310</b>  |
| <b>DN Probation</b>                       |                   |                    |                    |
| Salaries and Wages                        | 248,000           | 248,000            | -                  |
| Goods and Services                        | 239,000           | 233,000            | 6,000              |
| Minor Capital                             | 164,000           | 170,000            | -6,000             |
| Transfers                                 | 2,515,000         | 5,886,400          | -3,371,400         |
|   | <b>3,166,000</b>  | <b>6,537,400</b>   | <b>-3,371,400</b>  |
| <b>DN Disastrous Management</b>           |                   |                    |                    |
| Salaries and Wages                        | 138,000           | 138,000            | -                  |
| Goods and Services                        | 252,000           | 249,225            | 2,775              |
| Minor Capital                             | 90,000            | 92,775             | -2,775             |
| Transfers                                 | 1,700,000         | 2,700,000          | -1,000,000         |
|   | <b>2,180,000</b>  | <b>3,180,000</b>   | <b>-1,000,000</b>  |
| <b>Est Sec Social Security</b>            |                   |                    |                    |
| Salaries and Wages                        | 47,000            | 47,000             | -                  |
| Goods and Services                        | 46,000            | 46,000             | -                  |
|   | <b>93,000</b>     | <b>93,000</b>      | -                  |
| <b>DN Social Security</b>                 |                   |                    |                    |
| Salaries and Wages                        | 131,000           | 131,000            | -                  |
| Goods and Services                        | 66,000            | 66,000             | -                  |
| Minor Capital                             | 11,000            | 11,000             | -                  |
| Transfers                                 | 32,540,000        | 32,205,440         | 334,560            |
|   | <b>32,748,000</b> | <b>32,413,440</b>  | <b>334,560</b>     |
| <b>Total Expenditure</b>                  | <b>69,597,002</b> | <b>103,747,002</b> | <b>-34,150,000</b> |

**Table Graph A1-1.** Ministry of Social Solidarity Budget & Actual Expenditure for FY 2010.

(Source: Democratic Republic of Timor-Leste Annual Consolidated Financial Statement for the Fiscal Year 2010)

## Appendix 2: Major Suppliers

The following table reflects the 40 largest suppliers in US Dollar terms for the FY 2010:

| Vendor                | Supply                 | YTD Actual | %      |
|-----------------------|------------------------|------------|--------|
| Commitment Only       | Commitment Only        | 1,801,407  | 29.89% |
| CARYA TIMOR LESTE PT  | Construction           | 1,310,000  | 21.74% |
| RAMAYANA MOTOR LDA    | Vehicle                | 255,500    | 4.24%  |
| UD PALMA MTC          | Vehicle                | 183,200    | 3.04%  |
| AUTO TIMOR LESTE      | Vehicle                | 158,688    | 2.63%  |
| THALIA CONSTRUCTION,  | Construction           | 158,554    | 2.63%  |
| FITUN KADUAK OFICINA  | Vehicle                | 138,515    | 2.30%  |
| AITULA FUELS LTD      | Fuel                   | 135,431    | 2.25%  |
| ESPERANCA TIMOR OAN   | Fuel                   | 133,931    | 2.22%  |
| JOEL CONSULTANT, UNIP | Consultant             | 110,657    | 1.84%  |
| LAIR SUPPLIER LDA     | Information Technology | 104,230    | 1.73%  |
| ENCOSTA LOROSAE PTY.  | Construction           | 82,000     | 1.36%  |
| HAT BATU LETEN LTD    | Construction           | 78,405     | 1.30%  |
| RAELETE UNIPessoal L  | Construction           | 70,000     | 1.16%  |
| ELFADRA, UNIPessoal L | Construction           | 58,375     | 0.97%  |
| JOSE TITO FUNU TIMUR  | Consultant             | 56,000     | 0.93%  |
| LICE SANDINHO UNIPES  | Office Supplies        | 44,980     | 0.75%  |
| VISIO DEI UNIPessoal  | Construction           | 44,730     | 0.74%  |
| CLARDEL INTERPRISE U  | Other                  | 42,659     | 0.71%  |
| ELDORADO LDA          | Construction           | 41,990     | 0.70%  |
| MANE HITU UNIPessoal  | Construction           | 41,750     | 0.69%  |
| NENO UNIPessoal, LDA  | Construction           | 40,647     | 0.67%  |
| MAKLAIK, UNIPessoal L | Construction           | 40,404     | 0.67%  |
| UHACAE LDA            | Construction           | 40,255     | 0.67%  |
| SUN RISE CO. LDA      | Construction           | 40,079     | 0.67%  |
| SARA NERU CO. LTD     | Construction           | 39,900     | 0.66%  |
| RITA PU, UNIPessoal   | Construction           | 39,658     | 0.66%  |
| ISASAR, UNIPessoal L  | Construction           | 39,321     | 0.65%  |
| BACHY TRANSPORT UNIP  | Office Supplies        | 38,029     | 0.63%  |
| PLANALTO STAR LDA     | Construction           | 37,865     | 0.63%  |
| ANDREW UNIPessoal LD  | Office Supplies        | 37,790     | 0.63%  |
| All STAR LDA          | Office Supplies        | 36,800     | 0.61%  |
| ARVEC TRADING LDA     | Construction           | 30,620     | 0.51%  |
| BUKMER UNIPessoal LD  | Construction           | 29,754     | 0.49%  |
| ERNUBA MASIMIDAR UNI  | Office Supplies        | 29,090     | 0.48%  |
| BOA VENTURA           | Office Supplies        | 28,542     | 0.47%  |
| NALO BUL UNIPessoal   | Construction           | 27,762     | 0.46%  |
| CAMANASA CONSTRUCTIO  | Construction           | 27,659     | 0.46%  |
| CAMBOTA LDA           | Construction           | 26,590     | 0.44%  |
| CASABAUK UNIPessoal   | Other                  | 24,830     | 0.41%  |

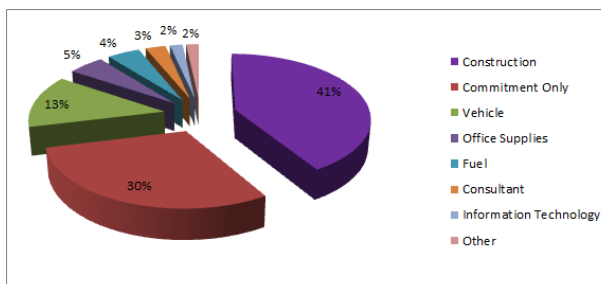
**Table & Graph A2-1.** List of suppliers to the Ministry of Social Solidarity in FY2010.

This represents the actual purchases for FY10 including the uncategorised commitment only payments.

Source: MoF Commitment & Obligation Report from MoF Accountability System.

## Total Suppliers (including uncategorised “Commitment Only”):

| Category               | Total            |
|------------------------|------------------|
| Construction           | 2,487,670        |
| Commitment Only        | 1,801,407        |
| Vehicle                | 794,123          |
| Office Supplies        | 297,385          |
| Fuel                   | 270,412          |
| Consultant             | 166,657          |
| Information Technology | 105,370          |
| Other                  | 102,921          |
| <b>Grand Total</b>     | <b>6,025,945</b> |

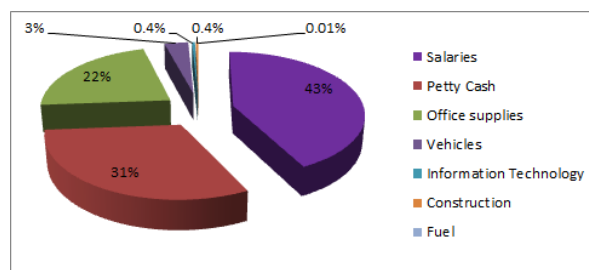


**Table & Graph A2-2.** List of suppliers to the Ministry of Social Solidarity in FY2010.

This represents the actual purchases for FY10 including the uncategorised commitment only payments.

## “Commitment Only” Supplies:

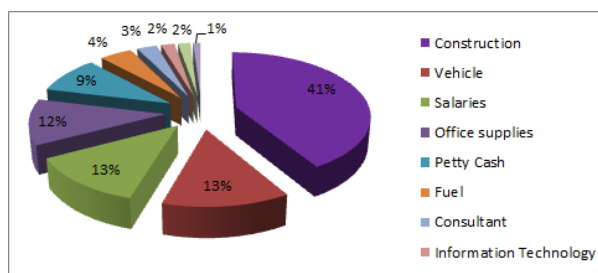
| Category               | YTD Actual       |
|------------------------|------------------|
| Salaries               | 766,042          |
| Petty Cash             | 563,149          |
| Office supplies        | 396,589          |
| Vehicles               | 60,873           |
| Information Technology | 7,692            |
| Construction           | 6,885            |
| Fuel                   | 177              |
| <b>Grand Total</b>     | <b>1,801,407</b> |



**Table & Graph A2-3.** Commitment only suppliers for FY2010.

## Total Supplies by Category (including categorised “Commitment Only”):

| Category               | YTD Actual       |
|------------------------|------------------|
| Construction           | 2,494,555        |
| Vehicle                | 794,123          |
| Salaries               | 766,042          |
| Office supplies        | 693,975          |
| Petty Cash             | 563,149          |
| Fuel                   | 270,588          |
| Consultant             | 166,657          |
| Information Technology | 113,062          |
| Other                  | 102,921          |
| Vehicles               | 60,873           |
| <b>Grand Total</b>     | <b>6,025,945</b> |



**Table & Graph A2-4.** Total payments to suppliers and others for FY2010.

This represents the actual purchases for FY10 including the categorised commitment only payments.

Source: MoF FreeBalance Accountability System

## Appendix 3: Expenditure thresholds under Decree Law & Best Practice

|                 | Decree Law   | Best Practice Guide   |
|-----------------|--|---|
| 0 - \$5K        | Simplified Procedures -<br>DL 24/2008 Article 45 & 95  |   |
| \$5K - < \$100K | Request for Quotation (RFQ) -<br>3 Quotes<br>DL 24/2008 Article 43   | Request for Quotation (RFQ) -<br>3 Quotes                                       |
| \$100K +        | National Public Tender<br>DL 24/2008 s2 Article 38 & 61<br>DL 24/2008 Article 37                                 | National Public Tender  |
|                 | International Public Tender<br>Goods & Services: >\$250K<br>Public Works: >\$1M<br>DL 24/2008 s2 Article 39 & 61 | International Public Tender<br>Goods & Services: >\$250K<br>Public Works: >\$1M |

| Competence to sign & approve Decree Law 1/2010 Article 15  |                                      |                             |
|--|--------------------------------------|-----------------------------|
| <\$1M USD  | \$1M - \$3M USD                      | >\$3M USD                   |
| Holders of organs of<br>sovereignty<br><br>Ministers & Secretaries of State<br><br>All other public bodies subject<br>to Government Budget<br>Discipline | The Prime Minister -<br>can delegate | The Council of<br>Ministers |



## Appendix 4: Direct Award Procurement Circumstances

Decree Law 10/2010 Article 92 prescribes the conditions under which procurement that requires at least three quotes (or to be undertaken through the tender process) can be awarded directly to a supplier (sole source). These conditions are as follows:

| No | Reason for Sole Source   |
|----|--|
| 1  | In <b>cases of emergency</b> following an unforeseen event that <b>jeopardizes public health and security</b>  |
| 2  | <b>Where no bids exist</b> , or where <b>those existing do not comply</b> with the criteria provided for in the tender, or where the candidates do not comply with the requirements for participating in the tender  |
| 3  | Where <b>no competition</b> exists for technical reasons   |
| 4  | Where the goods or services may <b>only be supplied by a specific entity</b> and <b>no</b> reasonable or substitutive <b>alternatives</b> exist in the market  |
| 5  | In case of additional supply of <b>goods and services</b> , or of goods the purpose of which is to <b>replace parts, to extend, or to proceed with services or goods for existing equipment</b> , software, services of facilities in which the substitution of the supplier would result in the acquisition of goods and services that do not comply with the requirements of adaptability or compatibility |
| 6  | <b>Where the intention is to obtain a prototype</b> for original service or good or for purposes of <b>limited experimentation</b> , or that is created for a specific contract for research, experiment, study or original creation   |
| 7  | Where the <b>intention is to protect patents, copyrights</b> or other exclusive or <b>intellectual property rights</b>   |
| 8  | Where the <b>intention is to acquire commodities</b> or to make purchases under <b>advantageous conditions</b> , including unsolicited innovative proposals  |
| 9  | As a result of a drawing competition   |
| 10 | For reasons of impracticability or <b>inconvenience duly justified and documented</b> .  |



## Appendix 5: Contract Review

### STATEMENT OF COMPLIANCE MINISTRY OF SOCIAL SOLIDARITY CONTRACT No. RDTL – 10003804

With Ramayana Motor.  
for the Supply of Hearse Cars

| Clause number                      | Nature of Issue     | Explanation of Issue  |
|------------------------------------|---------------------|---|
| Clause 1 - Definitions             | Missing Information | The contract number referred to under the definition of “contract” was not included in the “Special Conditions of Contract”.<br><br>It was provided in the recitals at the beginning of the contract.   |
| Clause 1 - Definitions             | Missing Information | The supplier name referred to under the definition of “contractor” was not included in the “Special Conditions of Contract”.<br><br>It was provided in the recitals at the beginning of the contract.   |
| Clause 3 - Specifications          | Missing Information | There were three issues with the Specifications: <ul style="list-style-type: none"> <li>1. They were initially not attached to the contract; and</li> <li>2. They were in Indonesian – the contract is written in English as required by the Special Conditions of Contract.</li> <li>3. The capital “S” in the text indicates a defined term but there was no definition available at Clause 1.</li> </ul> |
| Clause 7 – Warranty                | Missing Information | The minimum period was to be included in the Special Conditions of Contract. This subsequently referenced the Supplier’s Technical Proposal.<br><br>This warranty period is 12 months – it should be included in the Special Conditions of Contract as it states it is.   |
| Clause 17 – Resolution of Disputes | Incomplete          | This clause is not adequate for providing a framework for resolving disputes. Issues that require coverage include: <ul style="list-style-type: none"> <li>1. Escalation process</li> <li>2. Jurisdiction</li> <li>3. Advocacy and mediation</li> </ul>   |
| Special Conditions of              | Missing Information | Deloitte requires clarification as to whether the Performance Bond is being held.   |

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| Clause number                                   | Nature of Issue       | Explanation of Issue  |
|---|-----------------------|---|
| Contract  |                       | The required bond is 10%.   |
| Special Conditions of Contract – 1. Definitions | Incorrect Information | The supplier is not stated – instead the supply has been included eg “Supply of Hearse Cars”. |
| Annex 3 – Specifications & Price List           | Missing Information   | This annex has no information provided.   |

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## Appendix 6: Process followed in order to obtain FY2009 documentation

The following process was followed in order to try and obtain the 2009 documentation:

- The documentation was requested from the appropriate ministry with sufficient lead time to allow the relevant agencies time to prepare. The request extended across all relevant documentation required for testing including the FY2009 documentation. However, no ministries could provide DTT with the 2009 documentation as the procurement were done centrally at Ministry of Finance (Central Procurement). This situation is considered reasonable as procurement was centrally controlled prior to 26 February 2010 and the promulgation of Decree Law 1/2010. However, what is problematic is that neither the relevant Ministry (nor the Ministry of Finance) could access the relevant documents in a timely fashion.
- DTT was directed to the National Procurement Commission (NPC) presumably as they represented a legacy component of the former Central Procurement. DTT specifically spoke to Mr. Aniceto do Rosario and Hermingardo 'Ardo' A Soares at the National Procurement Commission but they were unable to assist as the NPC was only established on 27 April 2011 and the NPC's charter is to assist in procurement over \$1 000 000 normally involving the procurement for the Infrastructure Fund.
- The representatives at NPC directed DTT to speak to Central Procurement Department in the Ministry of Finance. Specifically, DTT spoke with Luciano Henri Ques Andrade (Ms Evangelina Gutteres was not available) who made it clear that the mandate of the department was to provide procurement training and not procurement. DTT was directed to Corporate Services in the Ministry of Finance for further investigation.
- DTT then spoke to Ms Santana (DG) at Corporate Services where it was made clear that they only procure for the Ministry of Finance and no central procurement was done at Corporate Services on behalf of any line ministries. It was then noted that the documents could be obtained from the former Head of Central procurement, Mr Manuel Montiero.
- DTT then spoke to Mr. Manuel Montiero the current National Director of Autonomous Public Authority. He said that he could only provide us with documents for after June 2009. We requested all the relevant 2009 documents but only received a few document batches from him. These batches were found to be incomplete. .
- DTT did not go further in trying to get the 2009 documentation as Central procurement no longer exists and there was no concern or responsibility taken for whereabouts of this documentation.

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