



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

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

JULY 2012

Review of Procurement in the National Parliament for the period 1
January 2009 to 30 June 2011

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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 National Parliament.

1.2 Scope and Objectives

The Ministry of Finance requested that we:

- Examine procurement procedures and internal controls for the National Parliament
- Inspect the National Parliament'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 National Parliament 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:

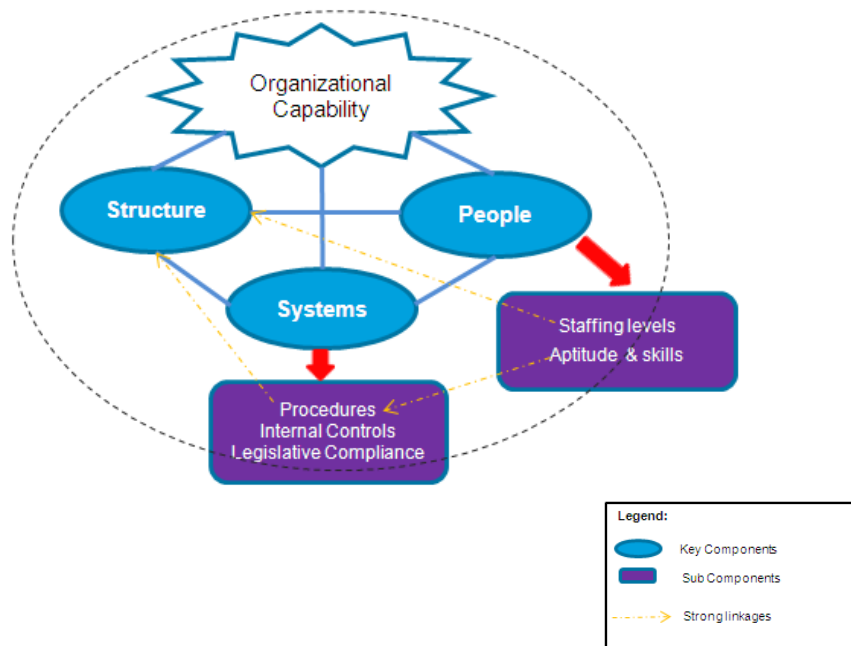


Figure 1. Organisational capability testing framework

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 Division for Planning, Finance and Procurement (DIPFA) in the National Parliament. 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:

- Three quotations not obtained for purchases between \$5,000 and \$100,000
- Purchase orders were created after the invoice date
- Purchase orders created after the signing of contracts
- Purchase requisitions were prepared without a purchase requisition number
- There were instances where no evidence was provided for the receipt of goods and services
- The payment request and subsequent remittance payment to the supplier did not match the invoice amount
- There was missing supporting documentation for the procurement process
- 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 National Parliament 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 is assessed as poor with wide ranging issues including 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

- Contracts were directly awarded without sufficient justification in contravention of Decree Law

Recommendation

It is recommended that DIPFA in the National Parliament 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 DIPFA in the National Parliament.

1.4.1.2 Non Compliance with Decree Law

There were instances where DIPFA in the National Parliament 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
- There was no Procurement Plan prepared in accordance with Decree Law
- Contracts appear to have been split to avoid the tendering obligations under the Decree Law
- Tenders were not published in accordance with the Decree Law
- There was no formal process for managing procurement performance

Recommendation

There are a number of steps that can be taken by DIPFA in the National Parliament to resolve issues of non-compliance with Decree Law and the Best Practice Guides. These actions include:

- Create and maintain a Suppliers Registry.
- DIPFA should access the registry administered by the National Director of Registry and Notary in the Ministry of Justice to reduce the risk 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.
- DIPFA should provide the Procurement Plan required by the Ministry of Finance as mandated by Decree Law 10/2005.
- DIPFA 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.

- 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

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

- DIPFA 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 DIPFA 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

There were several issues identified in the examination of structure and human resource management systems in DIPFA. These include:

- The procurement operations are currently being handled by both the Procurement Department and the Department of Planning and Finance. It is recommended that all matters pertaining to procurement be handled by the procurement department. This will ensure greater accountability and the roles and responsibilities of those involved can be structured to suit the discrete requirements of the Procurement Department.
- There are no position descriptions for staff in DIPFA. The Position Descriptions describe the essential characteristics of the role such as the reporting lines involved, the task to be performed in the position and the minimum requirements needed to perform the role.

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. It should be noted the procurement activity appears low due to the high volume of "Commitment Only" transactions being undertaken outside of the Procurement Department (refer to paragraph 2.1.4.1 for further discussions on this issue).

1.4.3.2 Aptitude & training

The level of experience of the Procurement staff appears to meet the required levels of experience noted in other line ministries. A more suitable assessment would have been to compare the existing requirements within each Position Description for each member of staff to the levels attained. However, no position descriptions exist and this could not be performed.

Furthermore, there are several recommendations in relation to training that should be adopted. These include:

- Instituting more effective training tailored to the requirements of DIPFA.
- 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 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 DIPFA in the National Parliament in actioning these recommendations.

1.6 Acknowledgement

We would like to take this opportunity to thank the management and staff of the National Parliament 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 Three quotations not obtained for purchases between \$5,000 and \$100,000

There is a requirement to obtain three quotations for purchases between \$5,000 and \$100,000 under Decree Law, Best Practice Guides and the Simplified Procedures. From the sample, the following transaction was found to have not met this criterion during examination:

Vendor	Amount (\$USD)	CPV No.	Remarks
Stat Group	\$53,395	91165	Air tickets
Harvey World Travel	\$80,754	91166	Air tickets

Table 1. Three quotes not obtained for purchases less than \$100K

The consequence of a lack of adherence to the requirement to obtain three quotes is that the National Parliament may fail to receive value for money in their procurement. This does not necessarily mean that they adopt the cheapest quote but one that is based on a balance of price, quality and surety of supply that best meets their purposes. Gaining one quote undermines this and may lead to inferior procurement results.

The amended Decree Law 24/2008 Article 43 (the requirement also existed in Decree Law 1/2005 but the threshold for its application was only \$50,000) requires three quotations for all purchases to \$100,000 to be obtained.

Recommendation

Evaluations of potential suppliers should be carried out for all purchases in accordance with the Decree Law and Best Practise Guides to ensure that the best value for money is attained in terms of price, quality and timeliness in deliveries. In this instance (for purchases less than \$100,000) the recommendation is to obtain three quotes in accordance with the Decree Law.

2.1.1.2 Purchase orders created after the invoice date

There were a number of cases noted where the purchase order was dated after the invoice indicating the purchase order was created after invoicing had occurred. These purchase orders are noted below:

Year	Vendor	Description	Purchase Order Date	Invoice Date	Amount
2009	DOMINGOS SOARES	Receptions	28-Feb-09	30-Jan-09	\$47,120
2009	HARVEY WORLD TRAVEL	Air Tickets	05-May-09	17-Apr-09	\$80,754
2010	AITULA FUELS LTD	Vehicle Fuel	19-Jul-10	03-Jul-10	\$31,200
2011	EVERSON NETWORK SUPP	Information Technology	15-Apr-11	12-Apr-11	\$55,500
2011	EVERSON NETWORK SUPP	Information Technology	18-Apr-11	12-Apr-11	\$72,970

Table 2. Purchase orders created after the invoice

The purchase order process establishes the National Parliament's acceptance and authority to pay an invoice. Actions that circumvent this can result in payments that have not been approved by the National Parliament 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.

2.1.1.3 Purchase order created after the signing of the contract

During our testing we found that for one instance a supplier contract was awarded and signed before the purchase order were created. The details are as follows:

Vendor	CPV	Amount	Contract award date	Purchase Order date	Item Purchased
Zenith Corporation	10003246	\$191,500	27-April-2010	06-August-2010	Kobe House

Table 3. Purchase order created after contract signing

The purchase order process establishes the National Parliament's acceptance and authority to pay an invoice. Actions that circumvent this can result in payments that have not been approved by the National Parliament 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 Goods receipting

2.1.2.1 Incomplete Receiving & Inspection Report

We identified missing items on the Receiving & Inspection Reports for 2 transactions selected, which were paid for and reflected on the respective invoices and purchase orders:

Year	Contract ID	Vendor Name	Included in PO not on RIR	Value (\$)
2011	RDTL-1015	Everson Network	Cisco, ITIL, Microsoft Firewall	US\$8,750
2011	RDTL-1024	Everson Network	APC UPS 1000 VA x 20	US\$7,100

Table 4. Items missing on the Receiving & Inspection Report.

The significance of failing to inspect goods and ensure their receipt could result in the National Parliament paying for items that it never received. Furthermore, this process is required to ensure that the goods are inspected on receipt to ensure they are of a satisfactory standard.

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.

2.1.2.2 Proof of delivery for travel

During our review it was determined that there are no contracts or proof of service delivery available for any of the transactions selected regarding air travel. From the samples we tested, some payments for air travel expenses were classified as “Commitment Only” (possessing no purchase order and no vendor name in the Commitment-Obligation Report) while others were been paid but no vendor name recorded.

There are several issues with this finding:

1. The proper approval processes are not being followed in the case of “Commitment Only” purchases (refer to section 2.1.4.2 for further discussion).
2. The lack of vendor names on standard purchases results in a lack of transparency and an increased likelihood of abuse.
3. There is the potential for misappropriation and abuse of the system without the provision of some proof of delivery such as used tickets or an itinerary (although the latter is less substantial as it can be changed or cancelled prior to receiving the service).

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, or in this case the used tickets, 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.

2.1.3 Other purchasing issues

2.1.3.1 Missing supporting documentation

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

Year	CPV No.	Vendor	Amount
2009	913562	Commitment Only (Air Tickets)	\$160,606
2009	96188	AITULA FUELS LTD	\$31,700
2009	96189	ESPERANCA TIMOR OAN	\$31,700
2009	91165	STAT Group	\$53,395
2011	1112264	Commitment Only (Air Tickets)	\$56,120

Table 5. 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 the FY 2009 documentation.

Recommendation

There is a requirement to obtain or create and retain all the necessary procurement documentation.

2.1.3.2 Use of the Commitment Only purchasing mechanism

The use of the “Commitment Only” procurement approach is common in the procurement process for the National Parliament. 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	845	0	0	845
Standard Procurement	80	15	4	99
Grand Total	925	15	4	944

Table 6. 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 (\$253,509 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 Contingency Fund disbursements amount to 2% of the total “Commitment Only” payments (this amounted to \$79,000 in FY2010). The money is provided to either the Director of Administration in the National Parliament or the Chief of Staff in the President’s Office. The Director of Administration in the National Parliament will disburse the monies to either the Prime Minister or the President of Parliament. The Chief of Staff takes receipt of the funds for disbursement to the President of the Republic. There is no accounting for the use these funds.

6. The approach is a violation of the Decree Law due both to the direct award nature of the procurement and avoidance of the National Parliament'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.

Deloitte recommends controls are instituted for the disbursement of contingency funds to senior officers of the Republic.

2.1.3.3 Reliance on expired central procurement contracts

DIPFA continue to rely on the out dated fuel contracts with Aitula and Esperanca Timor Oan previously managed by Central Procurement. 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 National Parliament should establish contracts with suppliers in accordance with the decentralisation principles established in Decree Law 1/2010.
2. The National Parliament may be able, through a competitive tendering process, to obtain significant advantages through the provision of discounts, volume rebates and other preferred supplier arrangements.
3. These purchases are effectively being directly awarded and violating Decree Law.

Recommendation

DIPFA 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.

2.1.3.4 Contract Quality

There are notable issues with the contracts observed during the examination of procurement documentation for the National Parliament. The issues identified in one contract for the National Parliament 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 included 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. While the standard of contract in this instance was superior to some Ministries that have been observed in the review process, there remain significant shortcomings.

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.

2.1.3.5 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.

2.1.3.6 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

DIPFA in the National Parliament should use the Procurement Conduct Checklist in the development of all tenders.

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, DIPFA in the National Parliament 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 DIPFA in the National Parliament 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

DIPFA in the National Parliament should institute a Supplier Registry as soon as is practicable.

2.2.1.2 Accreditation Procedures Not Followed

Decree Law 24/2008 required that each Ministry, as part of the decentralisation process, undergo a process of accreditation. In this process each Ministry and their related entities were 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

The Ministry should request the level of accreditation appropriate for the respective needs from the MoF.

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, DIPFA in the National Parliament 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

DIPFA in the National Parliament should prepare a procurement plan in accordance with the planned expenditure ranges detailed in Best Practice Guide 1.

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

During the procurement review two instances were found where a contract was split into two separate contracts. This may have been done in order to avoid the requirements of the Best Practice guidelines and the Decree Law. Specifically, these two instances identified may have been split to avoid the obligation under Decree Law to issue an International Public Tender. Their details are as follows:

1. Contract No. RDTL-PN-0002-B-A, awarded to Everson Network Supplier, Unipessoal Lda for the supply of communication equipment worth US\$348,116 in total. This tender was split into two amounts (US\$172,207 – Lot A & US\$175,909 – Lot B) and issued as a National Public Tender. It should be noted that this selection appeared as a single transaction on the Commitment and Obligation Report of \$348,116. Decree Law and Best Practice Guides states that tender amounts greater than \$250,000 for goods require that the tender be issued as an International Public Tender (refer Appendix 4). The tender in question appears to have been split to avoid this obligation.
2. In the other finding there were two selections made that were found to be connected. Contract No. RDTL-96016 and RDTL-96017, were both awarded to Talimeta Unipessoal on 18/12/2009 (same date and company) for the supply of communication equipment worth US\$439,755 in total. Contract RDTL-96016 was for US\$189,925 and RDTL-96017 was for US\$249,830. Both contracts were sole sourced without sufficient justification (refer section 2.2.1.7) and appear to have been structured to avoid the obligation to issue International Public Tender.

According to the Decree Law and Best Practice guides, procurement for amount over USD\$250,000 for goods and services procurement requires an International Public Tender. This may be a significant breach of the Decree Law and Best Practice guide.

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 4.

2.2.1.5 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 is limits the effectiveness of the procurement process. Diagnostic systems measure and monitor Key Performance Indicators (KPI) on the procurement system. Based on discussions with the MoF, there is an intention to remedy this situation through the development of a report “Establishing Performance and Compliance Indicators in Public Procurement in Timor-Leste” under the auspices of a World Bank IDF grant. Furthermore, Deloitte understands that the World Bank will provide comments and the MoF will then roll out the performance system to line ministries. The development of this approach 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.

2.2.1.6 Direct Award without sufficient justification

There were three purchases observed in the examination that were undertaken using the Direct Award provisions of the Decree Law (excepting those covered by the “Commitment Only” approach). Decree Law 10/2010 Article 92 states that circumstances for using direct award (including Emergency Procurement) must be accompanied by mandatory documentation. However, there were a number of cases where no supporting documentation was provided to support using this provision.

Purchases 1 & 2:

The findings in this case relate to the issue identified at section 2.2.1.4 relating to the Contract No.RDTL-96016 and RDTL-96017 that were both awarded to Talimeta Unipessoal. The purchases involve the acquisition of sound systems for the National Parliament including the following items:

- Central control panel and monitoring
- Recording system with centralised control
- Individual microphones
- Headphones
- Software
- Other accessories

The range of products and the splitting of the contract identified as section 2.2.1.4 suggest that there may have been an intent to override the procurement system. It lends credence to the view that the rationale for using the Direct Award provisions may have been misused and this is further supported by the nature of the products purchased that were unlikely to have collectively required immediate replacement.

Purchase 3:

This purchase involved the purchase of a Kobe house (CPV No.10003245 for \$191,500) that was required for additional office space. This acquisition was performed under the Emergency Provisions contained in Decree Law 10/2010 due to the overwhelming need for additional office space. However, the first progress report occurred (on 20 Sep 2010) some five months after the contract was awarded (27 April 2010). It appears that this could have been undertaken using the standard procurement approach and that the urgency may have been overstated based on the time it took to construct the office.

When direct award cases are processed without the required documentation, or when the justifications do not 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. The rationale for direct award contracts is provided at Appendix 4 to this document.

Recommendation

All direct award (including emergency cases) should 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).

2.2.1.7 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 10/2005 Section 2 Article 38 (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	Contract ID	Vendor	Contract amount
2009	92388	WEDITO UNIPessoal	\$161,412
2009	92390	PEREIRA LIMITADA	\$208,951
2010	10003217	JM GENERAL SUPPLIER	\$122,898
2010	10004382	EVERSON NETWORK SUPPLIER	\$348,116

Table 7. Tenders published only in English

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.

2.3 Other compliance issues

2.3.1.1 Internet Accessibility

The internet and intranet services for the National Parliament 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 DIPFA in the National Parliament is provided in the organizational chart that follows:

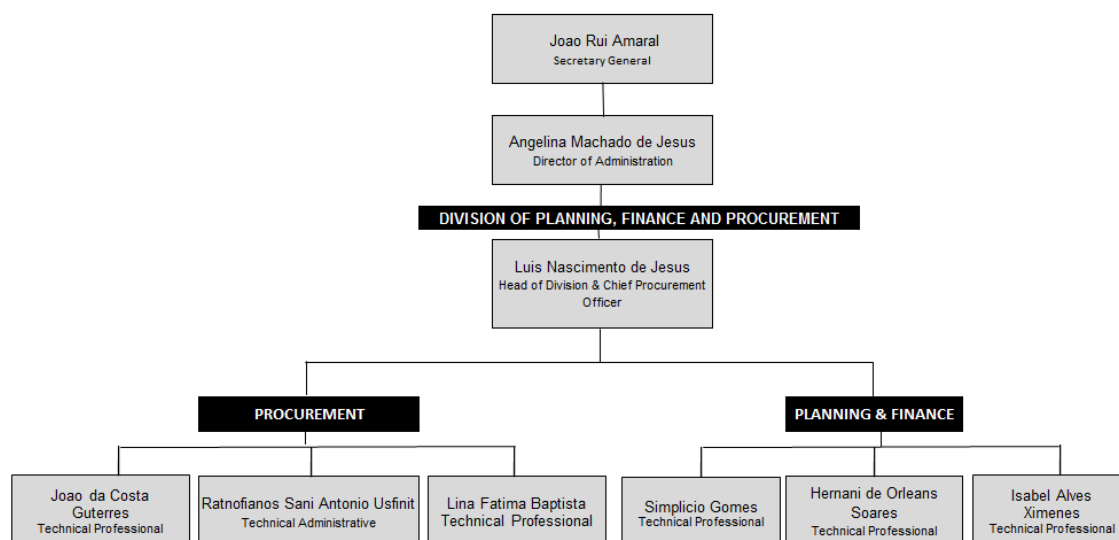


Figure 2. Organizational chart for DIPFA in the National Parliament

The organizational chart establishes limits of authority and responsibility. Discussions with DIPFA indicate that both Procurement and the Planning & Finance sections are involved in the procurement process. At the minimum there is an expectation that a structure exists that reports to a single point of responsibility and possesses a clear delineation of those responsibilities. While the issue of single point responsibility (and corresponding accountability) rests with one person, the demarcation of responsibility is less clear.

Recommendation

It is recommended that all matters pertaining to procurement be handled by the procurement department. This will ensure greater accountability and the roles and responsibilities of those involved can be structured to suit the discrete requirements of the Procurement Department.

2.4.2 Roles & responsibilities

There are no defined roles and responsibilities assigned in DIPFA in the National Parliament. At the minimum the expectation would be that position descriptions exist for all positions in DIPFA providing information including:

- Brief description of role
- Minimum competencies
- Responsible manager
- Qualifications required
- Pay level

This provides a minimum level of information to manage personnel from a human resources perspective. This assists in recruitment, succession planning and training of staff (note the connection between structure and human resources issues in this case).

This information also provides the basis for reconciling the roles and responsibilities of the department with the objectives they are attempting to achieve. Observation of the structure and titles indicates a degree of complexity in the procurement process that may not actually exist. Overall, what function specific people perform and what outcomes are required is unclear.

The outcome of establishing adequate roles and responsibilities may be that the organizational structure requires revising.

Recommendation

It is recommended that each position have a position description created for it. Furthermore, this needs to be reconciled across the scheme of complement to ensure that the objectives of the department are being met.

2.5 People Management

2.5.1 Staffing Levels

Examination of the documentation for the complete FY2010 in the National Parliament indicates that there were 99 payments made to suppliers following the procurement processes stipulated in the Decree Law and Best Practice Guides (this excludes 845 commitment only payments processed by the Finance Officer) for the period. The details of this can be viewed in Table 6 attached to paragraph 2.1.4.2.

Presently DIPFA has three staff with three additional staff providing support (per section 2.4.1 this may need to be revised). Based on the current tempo of activity, the number of personnel appears to be adequate for the level of activity experienced by DIPFA.

Recommendation

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

There is potential for efficiency gains through the use of 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 in National Parliament:

Name	Position	Qualifications	Experience
Luis Nascimento de Jesus	Head of Division & Chief Procurement Officer	Diploma in Finance; Degree in Management; Postgraduate degree in Management	8 Years in procurement
Joao da Costa Guterres	Technical Professional - Procurement	Bachelor Degree in Diplomacy	3 Years in procurement
Ratnofianos Sani Antonio Usfinit	Technical Administrative - Procurement	Bachelor Degree in Social Sciences and Humanity (almost complete)	6 Years in procurement
Lina Fatima Baptista	Technical Professional - Procurement	Bachelor degree in Accounting (almost complete)	4 Years in procurement

Table 8. National Parliament procurement staff particulars.

The qualifications and experience appear adequate for the tasks required in the Procurement Department. A more suitable assessment would have been to compare the existing requirements within each Position Description for each member of staff to the levels attained. However, no position descriptions exist and this could not be performed.

However, 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 National Parliament indicate that members of the procurement team were able to attend some of the Procurement Cycle 21 Day training at the Ministry of Finance and their certificates of attendance at this training were sighted where indicated. However, no staff had 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
Luis Nascimento de Jesus	Head of Division & Chief Procurement Officer	10 Days training *	No
Joao da Costa Guterres	Technical Professional - Procurement	18 Days training	No
Ratnofianos Sani Antonio Usfinit	Technical Administrative - Procurement	9 Days training	No
Lina Fatima Baptista	Technical Professional - Procurement	5 Days training *	No

* No certificate sighted

Table 9. National Parliament training attendance.

A notable feature of the training regime is the fact that no procurement staff attended the full training course provided by the Ministry of Finance in the Procurement Cycle 21 Day course. This is likely to detract from the training value as most of the participants miss elements of the 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	
National Parliament			
Salaries and Wages	3,795,000	3,339,319	455,681
Goods and Services	5,775,840	4,181,653	1,594,187
Minor Capital	749,079	732,076	17,003
Capital and Development	1,680,081	457,081	1,223,000
Transfers	-	-	-
	12,000,000	8,710,129	3,289,871
Directorates:			
National Parliament			
Salaries and Wages	2,864,000	2,815,351	48,649
Goods and Services	490,000	330,520	159,480
Minor Capital	37,879	31,087	6,792
Capital and Development	1,584,000	457,082	1,126,918
	4,975,879	3,634,040	1,341,839
Parliament President Cabinet			
Salaries and Wages	69,000	68,742	258
Goods and Services	584,000	299,877	284,123
	653,000	368,619	284,381
Parliamentary Benches			
Goods and Services	75,689	75,680	9
	75,689	75,680	9
Parliamentary Groups:			
Parliament Secretariat			
Salaries and Wages	862,000	455,225	406,775
Goods and Services	3,458,351	2,477,488	980,863
Minor Capital	686,000	676,814	9,186
Capital Development	96,081	-	96,081
	5,102,432	3,609,527	1,492,905
Commission A			
Goods and Services	83,000	75,583	7,417
	83,000	75,583	7,417
Commission B			
Goods and Services	75,000	46,591	28,409
	75,000	46,591	28,409
Commission C			
Goods and Services	108,000	103,000	5,000
	108,000	103,000	5,000
Commission D			
Goods and Services	89,000	89,000	-
	89,000	89,000	-
Commission E			
Goods and Services	100,000	81,783	18,217
	100,000	81,783	18,217
Commission F			
Goods and Services	105,000	103,563	1,437
	105,000	103,563	1,437
Commission G			
Goods and Services	87,000	61,583	25,417
	87,000	61,583	25,417
Commission H			
Goods and Services	51,000	44,836	6,164
	51,000	44,836	6,164
Commission I			
Goods and Services	11,000	-	11,000
	11,000	-	11,000
Petroleum Fund Advisory			
Goods and Services	358,800	298,818	59,982
Minor Capital	25,200	24,175	1,025
	384,000	322,993	61,007
Womens Parliamentary Group			
Goods and Services	100,000	93,330	6,670
	100,000	93,330	6,670
Total Expenditure	12,000,000	8,710,129	3,289,872

Table Graph A1-1. National Parliament 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 represents the suppliers in US Dollar terms for the FY 2010:

Vendor	Supply	YTD Actual	%
Commitment Only	Commitment Only	3,170,331	58.6%
EVERSON NETWORK SUPP	Office Supplies	348,116	6.4%
LEONG BROTHERS CONST	Construction	191,500	3.5%
ZENITH CORPORATION,U	Office Supplies	191,500	3.5%
ESPERANCA TIMOR OAN	Fuel	154,700	2.9%
AITULA FUELS LTD	Fuel	153,500	2.8%
JM GENERAL SUPPLIER	Office Supplies	122,898	2.3%
SAKURA STATIONERY	Office Supplies	113,138	2.1%
CYBER NETWORK INTERN	Office Supplies	109,720	2.0%
IREH TIMOR CONSTRUCT	Construction	101,053	1.9%
SUPER XEROX UNIPESAO	Office Supplies	100,075	1.9%
LEADER SUPERMARKET	Office Supplies	88,018	1.6%
VISIO DEI UNIPESAO	Catering	67,788	1.3%
TALIMETA UNIPESAOAL	Office Supplies	64,614	1.2%
DOMINGOS SOARES	Other	54,050	1.0%
AUTO DILI	Vehicles	43,000	0.8%
PEREIRA LIMITADA	Construction	42,751	0.8%
AUTO TIMOR LESTE	Vehicles	41,962	0.8%
SYLVIA DILI	Office Supplies	33,500	0.6%
WEDITO UNIPESAOAL	Construction	31,330	0.6%
LOROSAE COMPUTER SER	Office Supplies	25,950	0.5%
DAREDIRI UNIPESAOAL	Construction	25,699	0.5%
LACDIL LDA	Office Supplies	20,600	0.4%
LOJA LIDWI	Office Supplies	19,000	0.4%
NEW TOWN ENTERPRISE	Construction	16,596	0.3%
TL TECH,LDA	Office Supplies	13,570	0.3%
HERNANI DE O SOARES	Other	12,879	0.2%
TOYOTA AUTO TIMOR LE	Vehicles	10,503	0.2%
DIAMOND WORKSHOP	Vehicles	9,235	0.2%
TELEFIU EAST TIMOR U	Office Supplies	7,722	0.1%
ZEFI JUPA UNIPESAOAL	Office Supplies	6,787	0.1%
EDELWEISS,UNIPESAOAL	Catering	5,170	0.1%
FORTUNA LOROSAE	Other	5,000	0.1%
UD PALMA MTC	Vehicles	4,575	0.1%
Grand Total		5,406,831	100%

Table & Graph A2-1. List of suppliers to the National Parliament 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 Supplies (including uncategorised “Commitment Only”):

Supply	YTD Actual
Commitment Only	3,170,331
Office Supplies	1,265,208
Construction	408,929
Fuel	308,200
Vehicles	109,276
Catering	72,958
Other	71,929
Grand Total	5,406,831

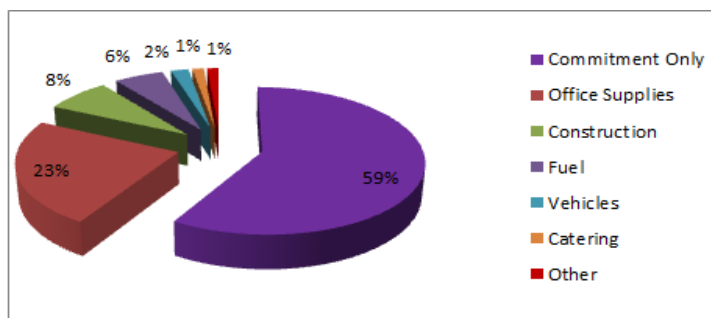


Table & Graph A2-2. List of suppliers to National Parliament in FY2010.

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

“Commitment Only” Supplies:

Supply	YTD Actual
Salaries	1,721,019
Office Supplies	982,395
Petty Cash	253,509
Vehicles	109,289
Contingency fund	79,000
Construction	21,125
Information Technology	3,994
Grand Total	3,170,331

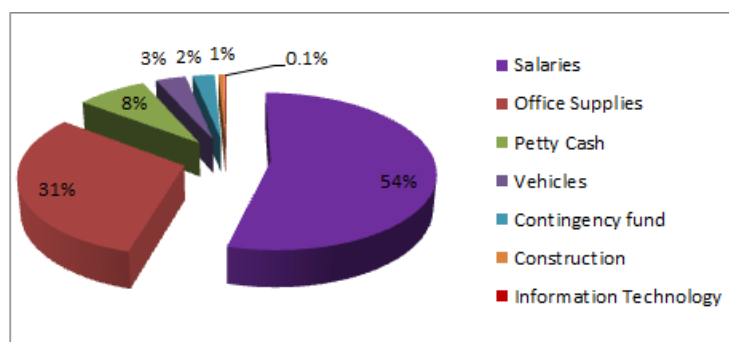


Table & Graph A2-3. Commitment only suppliers for FY2010.

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

Supply	YTD Actual
Office Supplies	2,247,603
Salaries	1,721,019
Construction	430,054
Fuel	308,200
Petty Cash	253,509
Vehicles	218,565
Contingency fund	79,000
Catering	72,958
Other	71,929
Information Technology	3,994
Grand Total	5,406,831

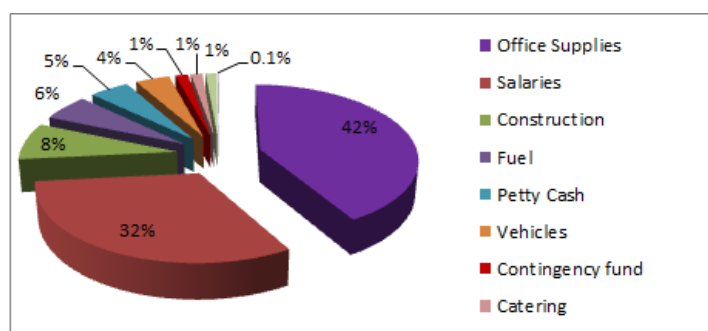


Table & Graph A2-4. Total payments to suppliers and others for FY2010.

This represents the actual purchases for FY10 including the categorised commitment only payments (petty cash has been included in Office Supplies).

Source: MoF FreeBalance Accountability System

Appendix 3: Expenditure thresholds under Decree Law & Best Practice

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

Competence to sign & approve Decree Law 1/2010 Article 15		
<\$1M USD	\$1M - \$3M USD	>\$3M USD
Holders of organs of sovereignty Ministers & Secretaries of State All other public bodies subject to Government Budget Discipline	The Prime Minister - can delegate	The Council of 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 cases of emergency following an unforeseen event that jeopardizes public health and security
2	Where no bids exist , or where those existing do not comply 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 no competition exists for technical reasons
4	Where the goods or services may only be supplied by a specific entity and no reasonable or substitutive alternatives exist in the market
5	In case of additional supply of goods and services , or of goods the purpose of which is to replace parts, to extend, or to proceed with services or goods for existing equipment , 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	Where the intention is to obtain a prototype for original service or good or for purposes of limited experimentation , or that is created for a specific contract for research, experiment, study or original creation
7	Where the intention is to protect patents, copyrights or other exclusive or intellectual property rights
8	Where the intention is to acquire commodities or to make purchases under advantageous conditions , including unsolicited innovative proposals
9	As a result of a drawing competition
10	For reasons of impracticability or inconvenience duly justified and documented .

Appendix 5: Contract Review

STATEMENT OF COMPLIANCE NATIONAL PARLIAMENT CONTRACT No. RDTL – 1024

With Everson Network Supplier LDA.
for the Supply of Information Technology

Clause number	Nature of Issue	Explanation of Issue
Agreement	Incorrect Information	The specific inclusions (the date, nature of supply) are in Portuguese while the “Special Conditions of Contract” state that the contract is in English.
Agreement	Incorrect Information	The numbering is incorrect.
Clause 6.2 – Delivery & Documents	Inadequate information	This clause, clause 13.3 and clause 14.1 (Liquidated Damages) refer to the application of Liquidated Damages – none have been included. This sub-clause should be removed.
Clause 17.2 – Resolution of Disputes	Incorrect information	This sub-clause refers to the supplier’s recourse to the law in the event of loss or injury as a result of the purchaser’s breach of an obligation under the contract. However, the clause cites that the supplier may seek review under the applicable public procurement law of the Democratic Republic of Timor Leste. It is believed that no remedies exist under this regime for a supplier – normally this would form part of the civil code and specifically fall under tort law. Moreover, the dispute process has few steps prior to proceeding to the courts for its resolution.
Special Conditions of Contract - 3	Inadequate Information	Reference is made to a Government Authorised Agency. There are two issues: 1. This is a defined term; and 2. The agency should be stated.
Special Conditions of Contract – 7.2	Missing Information	No warranty period was provided.
Special Conditions of Contract – 13.2 & 13.3	Incorrect Information	These two sections are exactly the same – one should be removed.

Appendix 6: Process followed to obtain the FY 2009 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. The outcome was DTT making the observation in this procurement report that documents for 2009 could not be provided by the ministry.

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