



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

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

July 2012

Review of Procurement in Comissão Nacional de Eleições (CNE) 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 Electoral Commission (Comissão Nacional de Eleições (CNE)).

## 1.2 Scope and Objectives

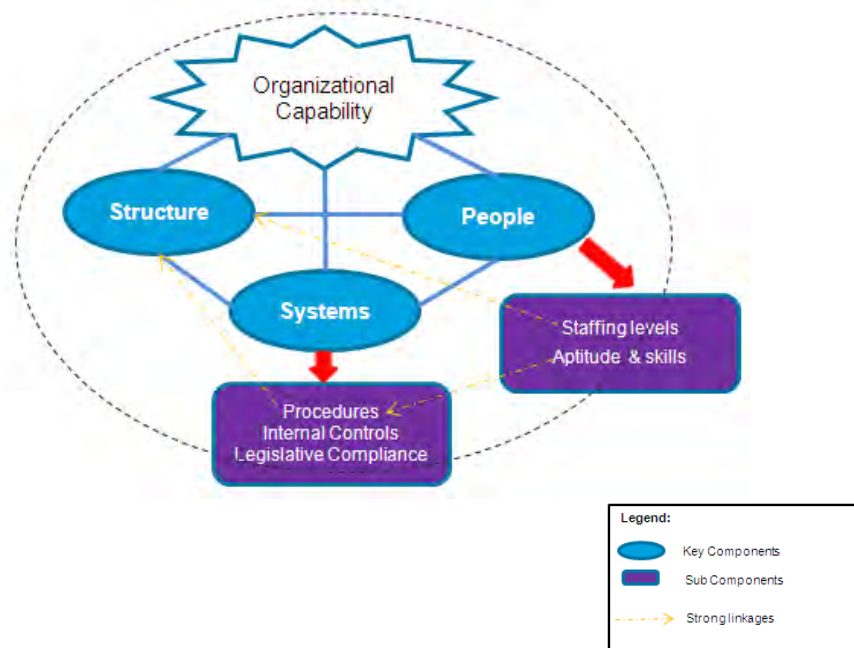
The Ministry of Finance requested that we:

- Examine procurement procedures and internal controls for the CNE
- Inspect CNE's compliance with Decree Law and Best Practice Guideline procedures through examination of procurement supporting documentation on a sample basis for the period ended 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 CNE 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 CNE. 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:

- Documentation for Financial Year 2009 that we requested was not available and attributed to poor document management during this period
- Invoices approved prior to purchase approval or contract award
- Three quotations not obtained for purchases between \$5,000 and \$100,000
- Contracts were directly awarded without sufficient justification
- 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 authorization.
- Payments for attending meeting and working groups may be open to abuse
- 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 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
- The controls in the operation for the fuel vouchers post their issue is considered weak and susceptible to misappropriation and abuse.

## Recommendation

It is recommended that the Procurement Department of CNE 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 in the Procurement Department of CNE.

### 1.4.1.2 Non Compliance with Decree Law

The Procurement Department of CNE 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
- There was no formal process for managing procurement performance
- Tenders were not published in the media in accordance with Decree Law

## Recommendation

There are a number of steps that can be taken by the Procurement Department of CNE 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 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.
- 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.

### 1.4.1.3 Other Compliance issues

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. However, it is recommended that each position have a position description created for it and these be appropriately designed to achieve the objectives of the department.

## 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 2.1.2.2 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, it was noted that no succession planning appears to be in place in the event of the departure of key procurement staff.

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

- Instituting more effective training tailored to the requirements of the Procurement Department. Procurement staff complain that insufficient training programs are delivered by the MoF.
- 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 that the Procurement Department of the CNE has made against these recommendations.

## 1.6 Acknowledgement

We would like to take this opportunity to thank the management and staff of CNE 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 Inadequate document management for FY 2009

At the time of the review, the Procurement Department of CNE was unable to furnish Deloitte with any documentation related to the Financial Year 2009. Deloitte was informed that the previous Chief of Procurement, Mr Gasper, had not followed the required filing procedures due to his limited knowledge of the procurement processes. A new procurement team took over from 4 November 2009.

The implication of poor record keeping is that there is scope for manipulation, obfuscation and fraud. Furthermore, sound fiscal management assists in the efficient management of the Ministry. Overall, the retention and management of procurement documentation is a key component of financial controls and this appears to have been compromised in this instance.

#### Recommendation

There is a need to implement the adequate processes to retain and manage procurement documentation.

##### 2.1.1.2 Invoices approved prior to purchase approval or contract award

During the examination of procurement documentation there were a number of instances where the invoices for purchases were dated prior to the approval to procure the goods or service. These were:

Related Year	Contract ID	Vendor Name	Award Date	Invoice Date	Amount
2010	10001854	Grafica Nacional	30/06/2010	1/02/2010	\$37,610.00
2010	10003185	ETO	9/08/2010	Jan 2010 – April 2010	\$24,629.96
2010	10001960	Naroman Jaya	10/08/2010	30/06/2010	\$50,925.00
2010	10002543	Dragon Service	13/07/2010	1/07/2010	\$84,900.00
2010	10003526	Vox da Vinci	6/10/2010	No date	\$59,000.00
2011	11001018	Aitula Fuel	10/05/2011	21/04/2011	\$22,500.00
2011	11001019	ETO	6/06/2011	26/05/2011	\$22,500.00
2011	11001271	Dragon Service	16/05/2011	20/04/2011	\$15,844.56

**Table 1.** Invoices dated prior to purchase approval or award of contract.

Without adequate supplier examination, evaluation and approval processes there is scope for unapproved purchases and uncompetitive outcomes to result. The system is designed to encourage a competitive and transparent procurement process that provides CNE with best value for money purchasing. Presently this is being curtailed through a failure to adhere to Decree Law and Best Practice Guides.

#### Recommendation

Evaluations and the correct approval of purchases should be carried out for all purchases in accordance with the Decree Law and Best Practice Guides. This ensures that the best value for money is attained and no impropriety can be contemplated.



### 2.1.1.3 No quotations 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 and Best Practice Guides. The following transactions were found to have no quotes provided during the examination:

Vendor	Amount (\$USD)	CPV #	Remarks
Naroman Jaya	\$50,925	10001960	For information technology
Dragon Servica	\$85,000	10002543	For Mitsubishi Triton

**Table 2.** No quotes obtained for purchases less than \$100K.

The issue that results from a lack of adherence to the requirement to obtain three quotes is that the National Electoral Commission fails to receive value for money in their procurement. This does not necessarily mean that they should 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 leads 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. Through discussions with the Procurement Department, they believe the \$50,000 still applies and this needs correction.

## Recommendation

Evaluations and the correct approval of suppliers should be carried out for all purchases in accordance with the Decree Law and Best Practice Guides. This ensures that the best value for money is attained and no impropriety can be contemplated.

### 2.1.1.4 Three quotations not obtained for purchases \$5,000 and \$100,000

This issue is an extension of the above whereby the appropriate approval process has not been followed. In this case there has been some supporting quotes but insufficient to satisfy the Decree Law requirements of three quotations for purchases between \$5,000 and \$100,000. The following are instances where three quotes have not been received for the purchase. These are:

Related Year	Contract ID	Vendor Name	Amount	Reason for payment
2010	10001854	Grafica Nacional	\$37,610	
2010	10002974	Esilva Rentlo	\$132,998	
2011	11001018	Venda de Combustivel	\$22,500	Relates to fuel
2011	11001019	Venda de Combustivel	\$22,500	Relates to fuel
2011	11001271	Officina	\$15,845	

**Table 3.** Three quotes not obtained for purchases

Per the preceding issue (where instances of no quotations were observed) the problem is a failure to follow Decree law and Best Practice Guides.

## Recommendation

Evaluations and the correct approval of suppliers should be carried out for all purchases in accordance with the Decree Law and Best Practice Guides. This ensures that the best value for money is attained and no impropriety can be contemplated.

### 2.1.1.5 Tenders not published in accordance with Decree Law

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. The following two tenders had no evidence that any media publication took place:

Vendor	Amount (\$USD)	Date	Year
Vox da Vinci	\$59,000	10003526	2010
Adam Construction	\$401,208	10002546	2010

**Table 4.** Tenders not published in the media

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.

## 2.1.2 Other purchasing issues

### 2.1.2.1 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. However, there were a number of cases where no supporting documentation was provided to support using this provision. These are as follows:

Related Year	Contract ID	Vendor Name	Amount	Reason for payment
2010	10001854	Grafica Nacional	\$37,610	
2010	10002974	Esilva Rentlo	\$132,998	
2011	11001018	Venda de Combustivel	\$22,500	Relates to fuel
2011	11001019	Venda de Combustivel	\$22,500	Relates to fuel
2011	11001271	Officina	\$15,845	

**Table 5.** Direct Award without sufficient justification

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 pretence 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) 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).

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 CNE. 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:

No Transactions Process	Grouping			Grand Total
	Goods & Services	Minor Capital	Capital & Development	
Commitment Only	46	0	0	46
Standard Procurement	11	4	3	18
Grand Total	57	4	3	64

**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 A2-2 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 (\$231,847 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 CNE’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 Payments for meetings and working sessions

The personnel in CNE are entitled to \$45 payment for attending a meeting or working group related to their work in CNE. This payment (referred to as a "Subsidy for Commissioner") was established as a condition of their employment through Decree Law 35-2008. A sample month (March 2010) was examined for particulars of this payment and it was found that the average payment for the 15 employees involved was \$1,959 for this subsidy payment. Furthermore, the average number of meetings attended in this month was 44 with one employee attending 77 meetings in March alone. For the month of March this additional payment amounted to \$29,385 paid to employees of CNE (details of this can be viewed at Appendix 6 to this document).

Further review of payments in FY 2011 indicates that the payments for this 'subsidy' have continued. There also appears to be an issue with tax rates applied to recipients of this payment. These include variable rates applied across the group of recipients and one person not being taxed at all (refer Appendix 6). Presumably the latter occurred because the amount was less than \$500 (less than the threshold for taxation in a given month) but this ignores the base salary that this person would also have received and is likely an incorrect treatment.

It appears that this condition of employment may be being exploited for personal advantage. Currently no conditions or restrictions are imposed on this payment to avoid its abuse and this lack of control has resulted in \$156,915 being paid in FY 2010 for "Subsidies for Commissioner" (Refer Appendix 2).

### **Recommendation**

It is recommended that, as a minimum, some conditions or restrictions be imposed on the use of payments for meetings and working groups allowed for under Decree Law 35-2008.

### 2.1.2.4 Reliance on expired central procurement contracts

There was one selection identified in the testing where CNE purchased fuel from Esperanca Timor Oan (\$24,629.96 in total). Per discussions with the Procurement Department, this purchase was 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 Procurement Department of CNE must establish contracts with suppliers in accordance with the decentralisation principles established in Decree Law 1/2010.
2. The requirements for competitive quotations and tendering are being circumvented by direct award under this approach. Presently only two suppliers for fuel are being used (Esperanca Timor Oan and Aitula Fuels) despite the existence of multiples suppliers. The result of this is the CNE 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.

#### 2.1.2.5 Contract Quality

There are notable issues with the contracts observed during the examination of procurement documentation for CNE. The issues identified in one contract for CNE 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.

#### **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.

#### 2.1.2.6 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.

#### 2.1.2.7 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 CNE should use the Procurement Conduct Checklist in the development of all tenders.

### 2.1.2.8 Fuel Voucher Controls

The fuel voucher system in operation for CNE is considered sufficiently robust up to the point purchasing the voucher coupons books. However, the controls surrounding the subsequent issue and use in purchasing of fuel using the coupons is considered weak. Some of the issues identified include:

- Coupon books being issued to Director Generals and above with no reconciliation process;
- There is no sign off by the vendor (fuel station) 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.

#### **Recommendation**

The controls surrounding the management of the purchasing of fuel using coupons requires improvement.

## 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 CNE 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 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 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**

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, the Procurement Department 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 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. 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.

## 2.3 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 should be 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 CNE 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**

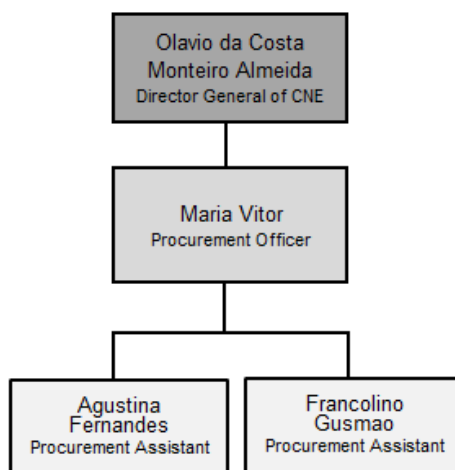
The Director General of State Finances is currently sponsoring a Management Information Strategy (MIS) Report that comments extensively on this issue. For the purposes of this report the comments above are for information only and more detailed commentary can be gained from the MIS Report.



## 2.4 Organizational Architecture

### 2.4.1 Organizational structure

The organizational structure for the Procurement Department of CNE is provided in the organizational chart that follows:



**Figure 2.** Organizational chart for the Procurement Department of CNE

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

There are no defined roles and responsibilities assigned in the Procurement Department of CNE. At the minimum the expectation would be that Position Descriptions exist for all positions in the Procurement Department 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 CNE's Procurement Department indicates that there were 18 payments made to suppliers following the procurement processes stipulated in the Decree Law and Best Practice Guides (this excludes 46 commitment only payments processed by the Finance Officer) for the period. The details of this can be viewed in Table 5 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.

There is potential for efficiency gains through the use of standardised documentation, the development of improved standard operating procedures and strict adherence to the Best Practice Guides.

### 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 CNE:

Name	Position	Qualifications	Experience
Maria Vitor	Procurement Officer	Degree in Economics	2 Years in procurement
Augustina Fernandes	Procurement Assistant	SMA *	2 Years in procurement
Francolino Gusmao	Procurement Assistant	SMA *	1 Year in procurement
Note:			
* SMA is Sekolah Menengah Atas (Senior Secondary School)			

**Table 7.** CNE 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.

There was no apparent succession planning in place.

## Recommendation

There are no immediate requirements to action any inadequacies in the existing capability. However, there is a need to have some succession planning in place including attention to training needs (addressed further below) and candidate selection.

Formal Position Descriptions should be created for each position in the procurement department of CNE.

### 2.5.2.2 Training

Discussions with the Procurement staff in CNE indicate that the procurement team was able to attend the Procurement Cycle 21 Day training at the Ministry of Finance and one certificate of attendance at this training was 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
Maria Vitor	Procurement Officer	14 Days training	No
Augustina Fernandes	Procurement Assistant	5 Days training	No
Francolino Gusmao	Procurement Assistant	5 Days training	No

**Table 8.** CNE staff training attendance.

The Procurement Team at CNE have not attended much of the training on offer. The staff have attended only 38% of the potential 63 training days available in the Procurement Cycle 21 Day training. This indicates that significant portions of training are being missed as both the Procurement Assistants only attended 5 of the 21 days on offer in this course alone. Beyond this they have attended no other training.

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	
<b>CNE</b>			
Salaries and Wages	548,000	366,848	181,152
Goods and Services	770,985	770,985	0
Minor Capital	176,015	176,015	0
Capital and Development	1,657,732	472,083	1,185,649
Transfers	1,000,000	1,000,000	0
<b>Total Expenditure</b>	<b>4,152,732</b>	<b>2,785,931</b>	<b>1,366,801</b>

**Table Graph A1-1.** CNE Budget & Actual Expenditure for FY 2010.

Note: There is an immaterial variance between the total Goods & Services, Minor Capital and Capital Development number derived from above and the sample we used. These should have agreed but the discrepancy was \$125.

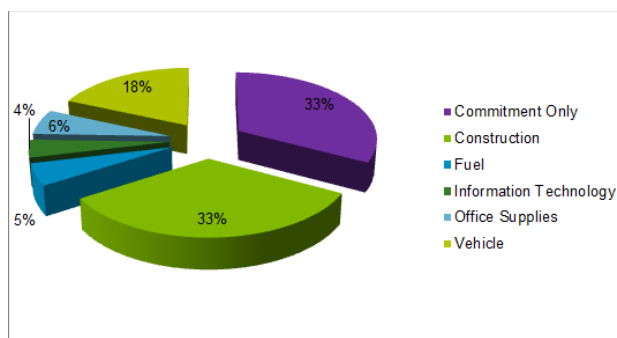
(Source: Democratic Republic of Timor Leste Annual Consolidated Financial Statement for the Fiscal Year 2010)

## Appendix 2: Major Supply Types

The following table reflects the largest supply types in US Dollar terms for the FY 2010:

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

Supply	YTD Actual
Commitment Only	464,691
Construction	472,208
Fuel	74,630
Information Technology	60,475
Office Supplies	85,946
Vehicle	261,258
<b>Grand Total</b>	<b>1,419,208</b>

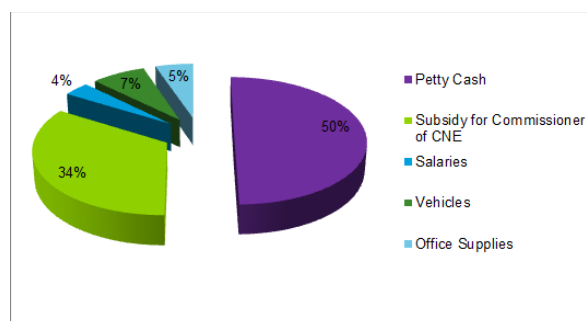


**Table & Graph A2-1.** List of suppliers to CNE in FY2010.

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

### “Commitment Only” Supplies:

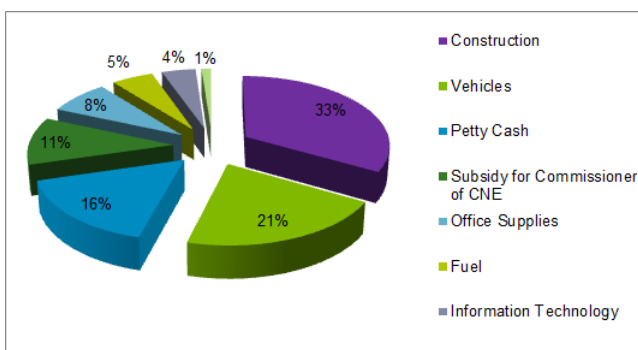
Category	Total	%
Petty Cash	231,847	50%
Subsidy for Commissioner of CNE	156,915	34%
Salaries	16,800	4%
Vehicles	34,742	7%
Office Supplies	24,387	5%
<b>Grand Total</b>	<b>464,691</b>	<b>100%</b>



**Table & Graph A2-2.** Commitment only suppliers for FY2010.

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

Category	Total
Construction	472,208
Vehicles	296,000
Petty Cash	231,847
Subsidy for Commissioner of CNE	156,915
Office Supplies	110,333
Fuel	74,630
Information Technology	60,475
Salaries	16,800
	<b>1,419,208</b>



**Table & Graph A2-3.** 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 - 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 <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 CNE CONTRACT No. 001/CNE/CD/VII/2010

With Vox da Vinci Consulting Engineering, LDA  
for Consulting Services

Clause number	Nature of Issue	Explanation of Issue
Clause 1 - Services	Missing information	<p>No Annexes providing the detail of the contract were attached. The missing Annexes were:</p> <ol style="list-style-type: none"> <li>1. Annex 1 - Terms of Reference &amp; Scope of Services</li> <li>2. Annex 4 – Consultant’s Reporting Obligations</li> <li>3. Annex 5 – Consultants personnel</li> </ol> <p>The remaining Annexes were not attached and their nature is unknown.</p>
Clause 9 - Insurance	Missing Information	<p>The clause states that “...[t]he Consultant will be responsible for taking out any appropriate insurance coverage.”</p> <p>This is inadequate and needs to state:</p> <ol style="list-style-type: none"> <li>1. The type of insurance</li> <li>2. The amount per occurrence and in aggregate</li> <li>3. The requirement to provide certified copies of the insurance</li> <li>4. A condition that the failure to provide appropriate insurance will be actioned by the client and set off against any payments made to the supplier.</li> </ol>



Other clauses	Missing and inadequate information	<p>The following clauses are assessed as inadequate in detail when compared to suitable and comparable contracts of this nature:</p> <ol style="list-style-type: none"> <li>1. Clause 6: Confidentiality – no detail and fails to address there are circumstances where the consultant may reveal confidential information such as when permission has been sought and granted by the client or a court of an appropriate jurisdiction orders it to occur.</li> <li>2. Clause 7: Ownership of Material: Little detail provided.</li> <li>3. Clause 12: Dispute Resolution – normally provides a stepped approach including mediation.</li> </ol>
		<p>It should be noted that this contract had very little detail resulting in few comments being made. This review does not provide details of what should have been included beyond stating that the contract lacked sufficient detail to be considered an effective contract.</p>

## Appendix 6: Subsidy Payments in CNE for the Month of March 2010

The following are the payments made to personnel in CNE for the month of March 2010. The amounts paid to the employees are net of tax (refer "Remittance" column. Each person is paid \$45 for attending a meeting or working group. The details are as follows:

Name	Payment Amounts			Meetings Attended				Nominal Tax Rate
	Total	Tax	Remittance	Ordinary	Extra	District Supervision	Grand Total	
Faustino Cardoso Gomes	\$2,385.00	\$188.50	\$2,196.50	6	20	27	53	8%
Joana Maria Dulce Vitor	\$3,465.00	\$296.50	\$3,168.50	5	29	43	77	9%
Marina Angelina Lopes S.	\$1,125.00	\$62.50	\$1,062.50	2	11	12	25	6%
Terezinha Maria Noronha C.	\$3,060.00	\$256.00	\$2,804.00	6	31	31	68	8%
Manuela Leong Pereira	\$405.00	\$0.00	\$405.00	2	0	7	9	0%
Lucas de Sousa	\$2,790.00	\$229.00	\$2,561.00	5	31	26	62	8%
Jose Agostino da Costa Belo	\$3,375.00	\$287.50	\$3,087.50	6	31	38	75	9%
Silvester Xavier Sufa	\$2,430.00	\$193.00	\$2,237.00	5	29	20	54	8%
Tome Xavier Jeronimo	\$1,125.00	\$62.50	\$1,062.50	5	15	5	25	6%
Deolinda dos Santos	\$765.00	\$26.50	\$738.50	3	0	14	17	3%
Vicente Fernandes e Brito	\$585.00	\$8.50	\$576.50	2	0	11	13	1%
Pe. Martinho Gomes D. Gusmao	\$1,980.00	\$148.00	\$1,832.00	4	23	17	44	7%
Sergio de Jesus Fernandes C.H.	\$1,710.00	\$121.00	\$1,589.00	5	14	19	38	7%
Arrif Abdullah Sagran	\$2,880.00	\$238.00	\$2,642.00	3	12	49	64	8%
Alcino de Araujo Baris	\$1,305.00	\$80.50	\$1,224.50	5	15	9	29	6%
	<b>\$29,385.00</b>	<b>\$2,198.00</b>	<b>\$27,187.00</b>	<b>64</b>	<b>261</b>	<b>328</b>	<b>653</b>	
Average	\$1,959.00							

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