



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

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

JULY 2012

Review of Procurement in Tribunals 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 Tribunals.

1.2 Scope and Objectives

The Ministry of Finance requested that we:

- Examine procurement procedures and internal controls for Tribunals
- Inspect Tribunals' 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 Tribunals, 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:

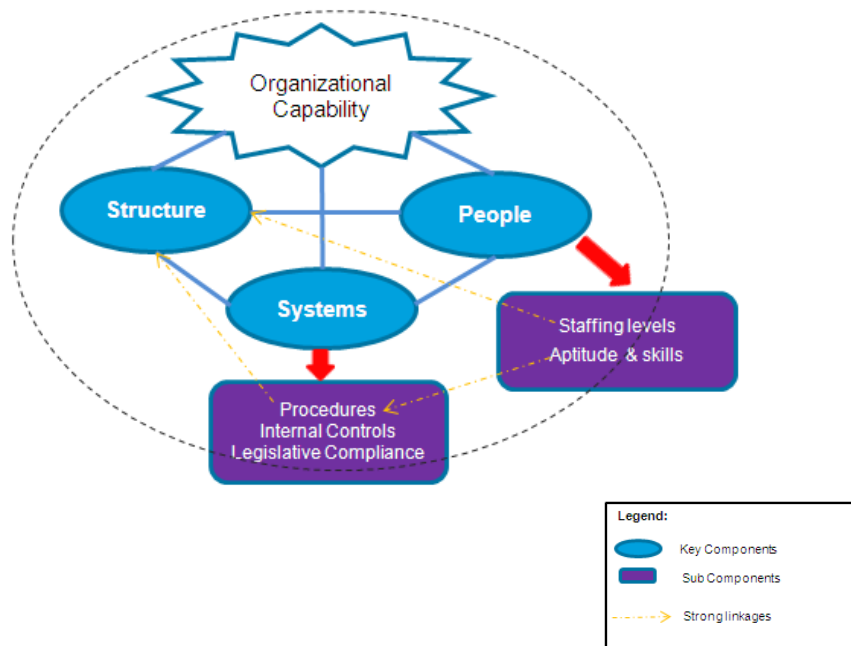


Figure 1. Organisational capability testing framework

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 Tribunals. 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 were not obtained for purchases between \$5,000 and \$100,000
- There was missing supporting documentation
- Two contracts were created for the same purchase reflecting both a failure in controls and deficiencies in the knowledge surrounding the purchasing system
- 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 quality of contracts observed 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 of the fuel voucher system post issue of the voucher coupons are considered weak and susceptible to misappropriation.

Recommendation

It is recommended that the Procurement Department of Tribunals implement standard operating procedures that regulate procurement processes at the functional level. While some direction is provided by the Decree Law and the Best Practice Guides in providing a

strategic overview, specific directives on the procedures to be followed are to be created and made available in the Procurement Department of Tribunals.

1.4.1.2 Non Compliance with Decree Law

The Procurement Department of Tribunals did not comply with the Decree Law including:

- There was no Supplier Registry prepared in accordance with Decree Law
- There is no notification available to confirm that the accreditation process for the Ministry required in the Decree Law and the complementary Best Practice 10: Decentralisation and Accreditation has been followed
- The Procurement Department should provide the Procurement Plan to the Ministry of Finance as mandated by Decree Law 10/2005
- There was no formal process for managing procurement performance

Recommendation

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

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

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

However, Deloitte notes that the MoF has developed the report “Establishing Performance and Compliance Indicators in Public Procurement in Timor-Leste” under the auspices of a World Bank IDF grant. Deloitte understands further that the World Bank is providing comments, following which the MoF will roll out the performance system to line ministries.

1.4.1.3 Other Compliance issues

Other compliance issues include:

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

Recommendation

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

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

1.4.2 Organizational Structure

1.4.2.1 Roles & responsibilities

The organisational structure of the procurement department appears appropriate to the tasks assigned.

1.4.3 People Management

1.4.3.1 Staffing levels

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

1.4.3.2 Aptitude & training

The level of experience of the Procurement staff 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 of the Procurement Department of Tribunals have made against these recommendations.

1.6 Acknowledgement

We would like to take this opportunity to thank the management and staff of Tribunals 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 and the Simplified Procedures. From the sample, the following transactions were found to have not met this criterion during examination:

Vendor	Amount (\$USD)	CPV #	Remarks
Naroman Engineering Lda	\$33,717	10005137	Electrical installations in Baucau District Court

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 Tribunals may fail 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 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 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.

2.1.2 Other purchasing issues

2.1.2.1 Missing supporting documentation

There was one selection from the sample where the supporting documentation could not be provided to us by the Procurement Department. The selection is as follows:

Vendor	Amount (\$USD)	CPV #	Remarks
Auto Timor Leste	\$149,492	10000643	5 x Toyota Kijang Inova

Table 2. Samples with missing supporting documentation

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

Recommendation

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

2.1.2.2 Two contracts created for the same purchase

During our testing we identified contract RDTL-10004962 for USD\$73,608 awarded to Visi Mitra Unipessoal on 18 November 2010 for multiple IT equipment items. However, only USD\$5,252 worth of items were invoiced, delivered and paid before year end leaving \$68,356 of goods outstanding. There was no indication that the original contract was cancelled. The Procurement Department then created a new contract (RDTL-11002076) to cover the items that remained undelivered at year end to the value of \$68,356. A new CPV, Purchase Requisition and Purchase Order was also subsequently created to for this newly established contract despite the existence of the old contract and its associated CPV, Purchase Requisition and Purchase Order. This indicates the following:

1. There is a contract and associated purchasing documentation that remains outstanding with the expectation that goods will be delivered for this contract. This leaves the potential for goods to be delivered for both the old contract and the newly created contract.
2. It demonstrates a lack of awareness on the part of the procurement staff as to how the procurement system operates. The fact that items remained outstanding on a contract and associated purchase order is a common event in procurement. The purchase order remains open until the items are delivered and the invoices are matched to the deliveries. Provided that the invoiced amounts do not differ (some immaterial differences are seen) from the quantity or price expected in the purchase order at completion of the transaction, the contract and purchase order remain open until fulfilment.
3. The original contract was not cancelled which could result in delivery of items that were not received under this contract. This could result in items being delivered twice under the original contract and the new contract.

Recommendation

Only one contract, purchase order and CPV required for the purchase of discrete goods and services. Correspondingly, the procurement staff should be aware of how the procurement system should work when undertaking these activities.

In the event that a contract is replaced with a new contract, the original contract should be cancelled.

2.1.2.3 Use of the Commitment Only purchasing mechanism

The use of the “Commitment Only” procurement approach is common in the procurement process for Tribunals. 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	
Commitment Only	305	0	305
Standard Procurement	9	9	18
Grand Total	314	9	323

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

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

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

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

1. There is no purchase order created for the purchase of goods and services. This means that the approval process for these acquisitions has been avoided.
2. These items are being direct awarded. For purchases in excess of \$5,000 there is a need to adopt a competitive process by the mechanisms provided for in the Decree Law and included at Appendix 4 to this review.
3. The comparatively large volumes of cash payments (\$44,829 in total for FY2010 for both petty cash and cash advances) indicate that this approach is being overused. There does not appear to be an effective acquittal process for these payments as the Commitment and Obligation Report records these payments simply as cash payments. As a result no vendors are recorded and the process for vendor selection cannot be readily understood. As a result there is a high potential for misappropriation given the extent to which cash is being handled.
4. There are substantial payments made using manual payments through the “Commitment Only” process. This approach is substantially less controlled payment option than the system that pays directly into a bank account. The manual system should only be used where access to banks is limited such as the districts. The manual approach has the potential for misappropriation given the difficulties associated with administering such a system.
5. The approach is a violation of the Decree Law due both to the direct award nature of the procurement and avoidance of the Ministry’s obligations to undertake procurement in accordance with the Decree Law.

Recommendation

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

2.1.2.4 Contract Quality

There are notable issues with the contracts observed during the examination of procurement documentation for Tribunals. The issues identified in one contract for the Ministry has been provided at Appendix 5 to this document. These issues (in the Appendix 5) are restricted only to clauses in the contract rather than elements 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.

2.1.2.5 Contract Management

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

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

Recommendation

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

2.1.2.6 Procurement Conduct Checklists

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

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

Recommendation

The Procurement Department of Tribunals should use the Procurement Conduct Checklist in the development of all tenders.

2.1.2.7 Fuel Voucher Controls

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

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

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

Recommendation

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

2.2 Compliance with Decree Law & Best Practice Guide Procedures

2.2.1 Non-compliance with Decree Law

2.2.1.1 Suppliers Registry

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

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

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

Recommendation

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

Recommendation

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

2.2.1.4 Procurement performance management system

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

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

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

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

Recommendation

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

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

2.3 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 Tribunals 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 Tribunals is provided in the organizational chart that follows:

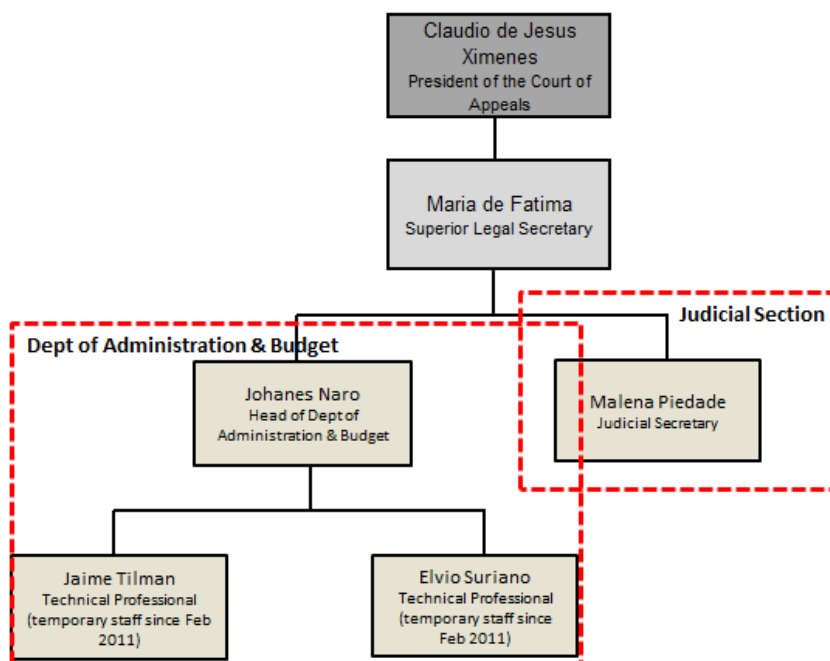


Figure 2. Organizational chart for the Procurement Department of Tribunals

The organizational chart establishes limits of authority and responsibility. The current approach to procurement in Tribunals is for several personnel from outside the Procurement Department to assist in procurement until permanent staff are engaged. The personnel who provide assistance are; (1) the Superior Legal Secretary and (2) the Judicial Secretary.

The structure appears to have three significant issues that may affect the operations of the Procurement. These are:

1. The lines of authority and responsibility have become confused when personnel are utilized outside the Procurement Department. This increases further when those personnel are outside the Department of Administration and Budget (which evident in the organizational chart above). The part-time nature of these roles further complicates the management of procurement activities.
2. There has been extended period in which temporary personnel have been engaged. They should be engaged permanently or replaced with permanent personnel. These personnel can then be given the requisite training and develop on-the-job familiarity with Tribunals.
3. The use of appropriately qualified and trained staff is considered essential for the proper functioning of the procurement system.

Recommendation

It is recommended that the Technical Professional positions be filled by appropriately qualified and trained personnel on a permanent basis. These personnel should then provide the dedicated procurement capability required by this Ministry and eliminate the need to use non-specialists on a part-time basis.

2.4.2 Roles & responsibilities

There are no defined roles and responsibilities assigned in the Procurement Department of Tribunals. 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. This is particularly required given the existing procurement paradigm in operation that utilizes personnel outside the Procurement Department.

2.5 People Management

2.5.1 Staffing Levels

Examination of the documentation for the complete FY2010 in Tribunals' 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 305 commitment only payments processed by the Finance Officer) for the period. The details of this can be viewed in Table 4 attached to paragraph 2.1.2.3.

Presently the Procurement Department has two full-time (but temporary) and two part-time staff. Based on the current tempo of activity, the number of personnel appears to be adequate for the level of activity experienced by the Procurement Department.

Recommendation

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

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

2.5.2 Aptitude & Skills

2.5.2.1 Existing Capability

The following are the qualifications and experience of the personnel in the Procurement Department of Tribunals:

Name	Position	Qualifications	Experience	Pay Level
Johanes Naro	Head of Department	Certificate of Achievement-The Financial Management Training & Support Program (2 Year program)	2 Years in procurement	7 *
Maria de Fatima	Superior Judicial Secretary	Certificate of Achievement-The Financial Management Training & Support Program (2 Year program)	2 Years in procurement **	7 *
Malena Piedade	Judicial Secretary	Certificate of Achievement-The Financial Management Training & Support Program (2 Year program) Bachleor Degree in Law	2 Years in procurement **	7 *
Elvio Suriano	Technical Professional Grade C	Diploma in Public Administration	In procurement since Feb 2011	3
Jaime Tilman	Technical Professional Grade E	Bachelor Degree in International Relations	In procurement since Feb 2011	5
Note: * No public service pay level - nearest equivalent applied ** Part time				

Table 4. Tribunals procurement staff particulars.

The qualifications appear adequate for the tasks required in the Procurement Department. The experience of the staff provided has been internally critiqued but Deloitte assesses that a year in the role for the Technical Professionals is adequate for the role. Provided the temporary incumbents have the ability to fulfil the function, these personnel should be engaged on a full time basis.

It should be noted that no Position Descriptions (refer paragraph 2.4.2.) exist for the roles. Therefore, there is no basis for comparison in terms of qualifications and experience.

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 Tribunals indicate that some of those involved in procurement were able to attend the Procurement Cycle 21 Day training at the Ministry of Finance. In the majority of cases a certificate of attendance at this training was not sighted. However, all the staff attended the E-procurement training being provided prior to the adoption of this system. The detail of attendance at training is as follows:

Name	Position	Training	
		MoF Financial Process	E- Procurement
Johanes Naro	Head of Department	18 Days training	Yes
Maria de Fatima	Superior Judicial Secretary	5 Days training	Yes
Malena Piedade	Judicial Secretary	5 Days training	Yes
Elvio Suriano	Technical Professional Grade C	No	Yes
Jaime Tilman	Technical Professional Grade E	No	Yes

Table 5. Tribunals training attendance.

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. This requires that all staff involved in procurement attend the training made available by the MoF.

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	
Tribunals			
Salaries and Wages	590,000	457,955	132,045
Goods and Services	1,690,000	1,214,103	475,897
Minor Capital	297,000	223,206	73,794
Capital and Development	-	-	-
Transfers	-	-	-
	2,577,000	1,895,264	681,736
Directorates:			
Higher Council of Magistrate			
Salaries and Wages	4,000	-	4,000
Goods and Services	19,000	3,687	15,313
	23,000	3,687	19,313
Court of Appeal			
Salaries and Wages	379,000	262,539	116,461
Goods and Services	488,000	471,731	16,269
Minor Capital	1,000	900	100
	868,000	735,170	132,830
District Courts			
Salaries and Wages	207,000	195,416	11,584
Goods and Services	1,183,000	738,685	444,315
Minor Capital	296,000	222,306	73,694
	1,686,000	1,156,407	529,593
Total Expenditure	2,577,000	1,895,264	681,736

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

There is a variance between the actual expenditure above (\$1,437,309) and the expenditure per the MoF Commitment & Obligation Report from MoF Accountability System (\$1,438,331). The latter is the source of the sample for which the testing was conducted and the following Appendix sources its information.

The discrepancy is \$1,022. This difference is immaterial.

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

Appendix 2: Major Suppliers

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

Vendor	Supply	YTD Actual	%
Commitment Only	Commitment Only	1,112,272	77.3%
AUTO TIMOR LESTE	Vehicles	149,492	10.4%
NAROMAN ENGINEER	Construction	63,592	4.4%
ENCOSTA LOROSAE	Construction	40,657	2.8%
LISUN IMPORTACAO	Office Equipment	12,787	0.9%
CENTRO DE FORMAC	Office Equipment	9,300	0.6%
CAMANASA CONSTRU	Construction	8,945	0.6%
UD PALMA MTC	Vehicles	8,900	0.6%
ESPERANCA TIMOR	Fuel	8,150	0.6%
AITULA FUELS LTD	Fuel	6,150	0.4%
VISIMITRA UNIPES	Information Technology	5,255	0.4%
LYENDA LELE CO.	Office Equipment	5,231	0.4%
BICANTIDI, UNIP.	Office Equipment	4,000	0.3%
MILORA TRADING U	Information Technology	2,700	0.2%
MARMORI UNIPES	Office Equipment	900	0.1%
Grand Total		1,438,331	100%

Table & Graph A2-1. List of suppliers to Tribunals 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”):

Category	Total
Commitment Only	1,112,272
Vehicles	158,392
Construction	113,194
Office Equipment	32,218
Fuel	14,300
Information Technology	7,955
Grand Total	1,438,331

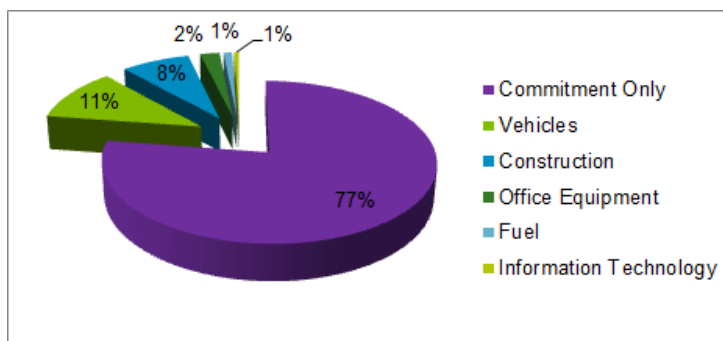


Table & Graph A2-2. List of suppliers to CNE in FY2010.

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

“Commitment Only” Supplies:

Supply	YTD Actual
Salaries	874,280
Office Supplies	122,365
Petty Cash	44,829
Vehicles	33,010
Airline Tickets	26,686
Construction	10,817
Information Technology	285
Grand Total	1,112,272

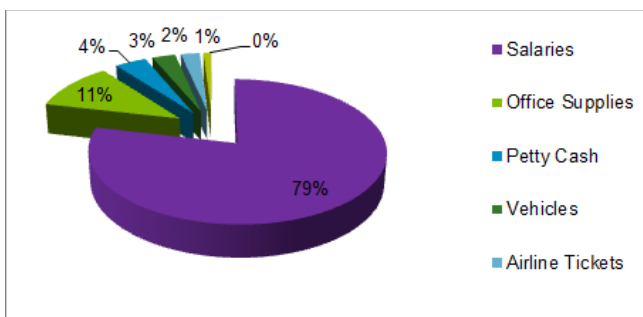


Table & Graph A2-3. Commitment only suppliers for FY2010.

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

Supply	YTD Actual
Salaries	874,280
Vehicles	191,402
Construction	124,012
Office Supplies	122,365
Petty Cash	44,829
Office Equipment	32,218
Airline Tickets	26,686
Fuel	14,300
Information Technology	8,240
Grand Total	1,438,331

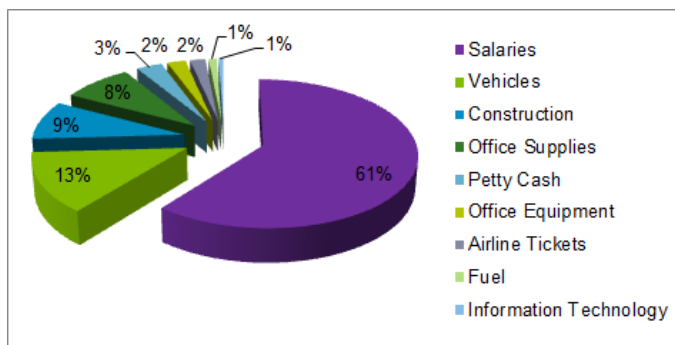


Table & Graph A2-4. Total payments to suppliers and others for FY2010.

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

Source: MoF FreeBalance Accountability System

Appendix 3: Expenditure thresholds under Decree Law & Best Practice

	Decree Law	Best Practice Guide
0 - \$5K	Simplified Procedures - 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 TRIBUNALS CONTRACT No. RDTL – 11002076

With Visi Mitra Unipessoal, LDA
for the Supply of EDP Equipment

Clause number	Nature of Issue	Explanation of Issue
Agreement	Missing & incorrect information	<p>The following issues were noted in the opening page of the Agreement. These were:</p> <ol style="list-style-type: none"> 1. "June" was spelt "Jun" 2. One of the counterparties in the Agreement was cited as the "Court of Appeal" but was cited as "Servicos de Aprovisionamento Descentralizado" in the "Special Conditions of Contract". <p>It should be noted that this purchase was for \$68,356 – under Decree law this required only three quotes. However, contracting for this supply (provided that the three quotes are sought) is acceptable. If this approach is undertaken then the contracting should be performed to an acceptable standard.</p>
Clause 1 - Interpretation		<p>The existing interpretation clause requires amendment. A more suitable clause would be the one below for example:</p> <p>INTERPRETATION</p> <ol style="list-style-type: none"> (1) In this Agreement terms used with initial capital letters have the meanings designated to them in the Dictionary (Note: when provided). (2) Unless the context otherwise requires: <ol style="list-style-type: none"> (a) Singular words include the plural and vice versa; (b) Words or phrases which are defined in government legislation have those defined meanings; (c) Subject to Clause xx, where any party to this Agreement consists of 2 or more persons or legal entities, they are bound both jointly and severally; (d) A reference to any party includes that party's servants, agents, successors

Clause number	Nature of Issue	Explanation of Issue
		<p>and permitted assigns;</p> <p>(e) Headings are used for reference purposes only and are not to be used to interpret any of the terms of this Agreement;</p> <p>(f) “US \$”, “USD”, “\$” or “dollars” is a reference to the lawful currency of the United States; and</p> <p>(3) There are no other documents, agreements, arrangements, representations or undertakings, express or implied, which are intended to form part of this Agreement.</p>
Clause 2 – Documents	Missing Documentation	Annex 1 and 3 are not attached.
Clause 2 – Special Conditions	Incorrect information	Clause reads “Special Conditions of Pavillion G3333L”. This should read “Special Conditions of Contract”.
Clause 3 – Supplier Warranty	Inadequate Information	There are no quality requirements stipulated in the contract – this clause may be unenforceable.
Clause 4 – Purchaser Warranty	Inadequate Information	The contract needs to detail under what circumstances “..such other sum..” may be payable by the purchaser or amend this clause accordingly.
Special Conditions of Contract - 1	Incorrect Information	The supply of goods is incorrect – it is not for the supply of a “projector”.
Special Conditions of Contract - 6.1 (Delivery Period)	Incorrect Information	<ol style="list-style-type: none"> 1. The delivery period should read “ One Month” not “One moth”. 2. Delivery & Completion Date – incorrect completion date.
Special Conditions of Contract - 13.2 (Delays in Supplier’s Performance)	Missing Information	General Conditions missing
Special Conditions of Contract - 17 (Resolution of Disputes)	Missing Information	General Conditions missing
Special Conditions of Contract - 22.1 (Performance Security)	Incorrect Information	Lists both “10% of Contract Price” and “NR”. The “NR” is assumed to be “Not Required” – if so then one requires adoption for the condition to make sense.

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