



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

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

July 2012

Review of Procurement in the Ministry of the Prosecutor General 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 Ministry of the Prosecutor General.

1.2 Scope and Objectives

The Ministry of Finance requested that we:

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

1.3 Approach to engagement

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

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

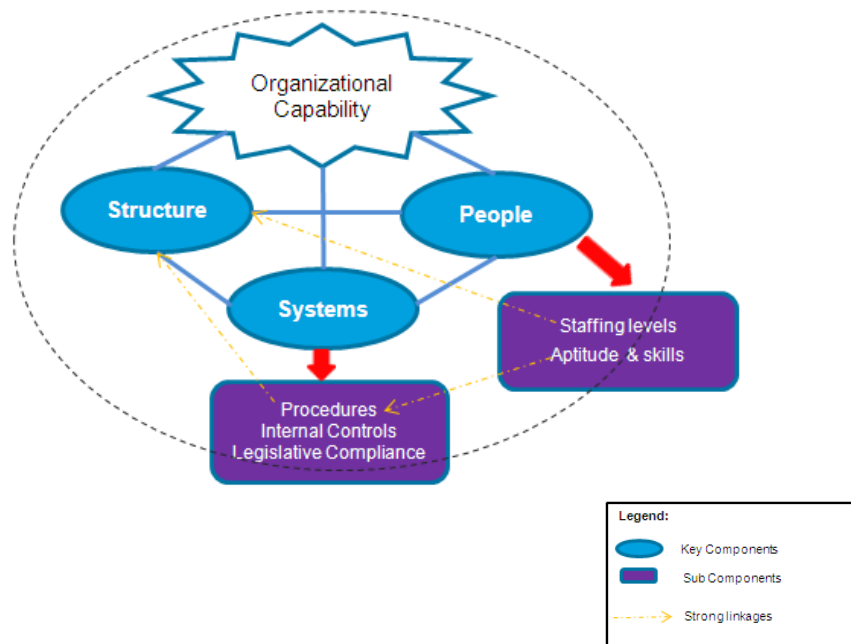


Figure 1. Organisational capability testing framework

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

1.4 Key Findings and Recommendations

There are a number of key issues affecting the performance of the Procurement Department in the Ministry of the Prosecutor General. 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
- Three quotations were not obtained for purchases between \$5,000 and \$100,000
- Tenders were not published in accordance with the Decree Law
- Purchase orders were created after the invoice date
- The remittance payment to the supplier did not match the invoice amount
- The widespread and inappropriate use of the “Commitment Only” process has resulted in the standard approvals process being avoided and large volumes of goods and services being directly awarded without sufficient justification.
- The use of expired central procurement contracts has resulted in the Ministry relying upon expired contracts with an incorrect counterparty. This has also contributed to the direct awarding of purchased goods and services
- The quality of contracts 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 issue are considered weak and susceptible to misappropriation and abuse.

Recommendation

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

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

1.4.1.2 Non Compliance with Decree Law

The Procurement Department of the Ministry of the Prosecutor General 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

Recommendation

There are a number of steps that can be taken by the Procurement Department of the Ministry of the Prosecutor General 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

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

- The organisational structure of the procurement department appears appropriate to the task.
- The existing contracts (containing the position descriptions) have expired and require updating. This should include the provision of the additional information identified in the examination as being lacking in the existing contracts.

1.4.3 People Management

1.4.3.1 Staffing levels

Deloitte's examination of the level of transactional activity and staffing levels indicate that there appears to be sufficient staff to meet the demands of the department. It should be noted the procurement activity appears low due to the high volume of "Commitment Only" transactions being undertaken outside of the Procurement Department (refer to paragraph 2.1.4.1 for further discussions on this issue).

1.4.3.2 Aptitude & training

The level of experience of the Procurement staff meets the required levels of experience stated in the Positions Descriptions for all procurement staff. The levels in the Position Descriptions appear adequate for the roles being undertaken.

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

Furthermore, 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.
- It was noted that all staff attended the 21 Day Procurement Cycle Course. However, no procurement staff attended for the complete 21 days of the course. It is recommended that staff attend the courses on offer in full to ensure that consistent information is made available to members and team members can have greater access to learning the skills necessary for their roles.
- Improving the training development apparatus for staff to ensure that individual staff members are monitored and the training required is delivered.
- The commissioning of a better accreditation system to complement the above and provide a formal basis for continuing professional development of staff.

- Adopting a people management strategy that focuses on productivity and embraces, amongst other elements, selection based on current skills and knowledge.

1.5 Follow up on recommendations

Due to the critical importance of procurement to both the delivery of government services and the development of Timor-Leste, a process should be implemented to monitor the progress of the Procurement Department of the Ministry of the Prosecutor General in actioning these recommendations.

1.6 Acknowledgement

We would like to take this opportunity to thank the management and staff of the Ministry of the Prosecutor General 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 Document Management

2.1.1.1 Inadequate document management for FY 2009

For the Financial Year 2009 there was missing documentation and an inability to reconcile tender/quotation with the payment remittance. This appears to have been caused by the documents relating to remittance being filed separately to the purchase orders and tender documentation without the ability to cross reference this material.

The implications for incorrect filing and document management are threefold:

1. The audit trail is difficult to follow and time consuming in document retrieval
2. The existence of the audit trail is a control and records the steps that have been undertaken in the purchase to payment cycle (procurement process). The correct document management reflects that the processes have been undertaken and the discrete activities in the procurement value chain have been performed correctly.
3. Poor record keeping lends itself to fraud and error

Refer to Appendix 6 for the process followed in order to try and obtain documentation for FY 2009.

Recommendation

Purchasing documentation needs to be filed and managed correctly. This is normally undertaken using a system that relies upon a unique key identifier (a common numerical identifier that exists throughout the process). In this case the CPV number is the most appropriate.

Deloitte notes that the process has been improved in the years subsequent to the FY 2009.

2.1.2 Purchase Order Preparation

2.1.2.1 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 transaction was found to have not met this criterion during examination:

Vendor	Amount (\$USD)	CPV #	Remarks
Bravo International	\$18,165	90948	For communications

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

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

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

Recommendation

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

2.1.2.2 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 24/2010 requires that tenders, both local and international (per limits provided at Appendix 1), require publication in the media. Moreover, the Decree Law 10/2005 Article 61 requires that an announcement should be published in at least one nation-wide distribution newspaper in either Portuguese or Tetum. However, it was found that in the following cases where a National Public Tender process was followed, publications were made only in English:

Vendor	Amount (\$USD)	CPV #	Remarks
Fitun Sanane Unip.L.	\$75,000	94658	Office Buildings
Estrela Cadente II U	\$118,000	94661	Office Buildings

Table 2. Tenders not published in the required languages

The failure to publish these tenders in accordance with the Decree Law 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.

2.1.2.3 Purchase orders created after the invoice date

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

Vendor	Amount (\$USD)	CPV #	PO Date	Invoice date	Remarks
DILI AUTO SUPPLY,UNI	\$98,500	90950	8/03/2009	25/02/2009	Stamford Perkings
ROZI UNIPESSOAL LDA	\$75,000	94653	15/12/2009	10/12/2009	Office Buildings
FITUN SANANE UNIP. L	\$75,000	94658	11/12/2009	9/12/2009	Office Buildings
ESTRELA CADENTE II U	\$118,000	94661	15/12/2009	13/12/2009	Office Buildings
BRAVO INTERNATIONAL	\$18,165	90948	8/04/2009	23/02/2009	Communication
BOA VENTURA	\$54,470	10005726	14/12/2010	13/12/2010	Purchase of toner for printer
FITUN SANANE UNIP. L	\$57,400	10001806	7/05/2010	20/03/2010	Payment for construction
ROZI UNIPESSOAL LDA	\$14,395	10001952	21/05/2010	20/04/2010	Payment for construction
ROZI UNIPESSOAL LDA	\$43,005	10003496	23/08/2010	13/07/2010	Construction for residences in Baucau
AUTO VISION, UNIPESS	\$12,728	11002057	14/06/2011	17/02/2011	Repairs & maintenance of vehicles
MANE MESAK LDA	\$9,360	11002056	14/06/2011	18/03/2011	Installation & maintenance of CCTV camera

Table 3. Purchase orders created after the invoice

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

Recommendation

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

2.1.3 Payment remittance process

2.1.3.1 Amount paid different to the amount on the invoice

Deloitte noted that during testing an amount paid of \$105,000 paid to Estrela Cadente for the construction of a house in the Suai district was different to the amount on the invoice of \$114,311. There was no supporting documentation detailing why the short payment occurred.

It may be that the short payment occurred due to inadequacies in the deliverables. However, this needs to be recorded for several reasons:

1. It is an key control in the purchase to payment process. This stage establishes the correct value is paid for the approved goods or services by reconciling the value of the invoice against the approved expenditure in the purchase requisition or order. Any differences require explanation to both manage the procurement process and ensure that that no circumventing of the process takes place.
2. Documentation concerning the performance of the supplier is necessary to monitor their performance in meeting contractual obligations. Failure to deliver services may place the supplier in breach of contract.

Recommendation

It is recommended that invoice amounts are agreed to purchase order amounts. In normal circumstances these should be no purchase variances in either quantity or value. However, in some cases this does occur and the variation needs to be understood and adequately documented.

2.1.4 Other purchasing issues

2.1.4.1 Use of the Commitment Only purchasing mechanism

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

Process	Grouping			Grand Total
	Goods & Services	Minor Capital	Capital & Development	
Commitment Only	250			250
Standard Procurement	17	14	4	35
Grand Total	267	14	4	285

Table 4. 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 (\$67,033 in total for FY2010 for both petty cash and cash advances – 8% of the total “Commitment Only” payments) 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 Prosecutor General’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.

2.1.4.2 Reliance on expired central procurement contracts

There were two selections identified in the testing where the Ministry purchased fuel from Aitula Fuels (\$17,885 in total) and Esperanca Timor Oan (\$17,885 in total). Per discussions with the Procurement Department, these purchases were undertaken under the authority of the contracts maintained by Central Procurement for the supply of fuel to all government ministries and agencies. However, these contracts have expired and should no longer be relied upon.

There implication of these issues is twofold:

1. The current situation is that the contracts in use are both expired and made between the Government of Timor-Leste (whole government) and not the line ministry as the counter party. As a result no existing legal and operative (extant) contract is in place. The Prosecutor General should establish contracts with suppliers in accordance with the decentralisation principles established in Decree Law 1/2010.
2. The Prosecutor General may be able, through a competitive tendering process, to obtain 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.

2.1.4.3 Contract Quality

There are notable issues with the contracts observed during the examination of procurement documentation for the Prosecutor General. The issues identified in one contract for the Ministry has been provided at Appendix 5 to this document. These issues (in the Appendix 5) are restricted only to clauses in the contract rather than elements that were not in the contract but could potentially have been included in the contact. 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.

2.1.4.4 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.

2.1.4.5 Procurement Conduct Checklists

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

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

Recommendation

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

2.1.4.6 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 the Ministry of the Prosecutor General has not adopted any form of supplier registry.

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

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

Recommendation

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

Recommendation

The Procurement Department of the Ministry of the Prosecutor General 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 the Ministry of the Prosecutor General are slow and unreliable. As a consequence most of the staff does not have access to the Government server during these periods of poor service performance. This issue will affect access to the e-Portal system.

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

Recommendation

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

2.4 Organizational Architecture

2.4.1 Organizational structure

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

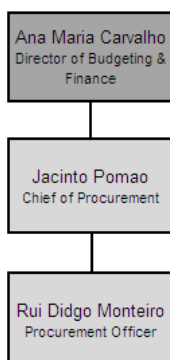


Figure 2. Organizational chart for the Procurement Department of the Ministry of the Prosecutor General

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

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

2.4.2 Roles & responsibilities

The Ministry provided Position Descriptions, with the employment contracts for each member of the Procurement Staff that defined the roles and responsibilities for all employees in the Procurement Department of the Ministry of Prosecutor General. The Position Descriptions provided the following significant information:

- Title
- “Nature of Service” - duties
- “Professional Domicile” – location of work
- “Duration of contract” – note 12 months expiring 31 December 2011
- “Remuneration”
- “Rights and obligations of contract”
- “Right to Vacation”
- “Term of Contract” – period to accept the contract on offer
- “Declaration”

Overall the information provided was sound but lacked some important information. This includes:

- Responsible Manager
- Academic qualifications required for the position
- Experience required for the position

Furthermore, it was noted that the contracts provided had expired on 31 December 2011. However, in discussions with the Director Finance, Logistics and Procurement it was stated that new contracts are being framed and will be provided in the near future.

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

Apart from understanding roles and responsibilities of there is also a need to provide adequate contract development and management capabilities. At present these are absent as reflected in sections 2.1.4.3 – Contract Quality and 2.1.4.4 – Contract Management.

Recommendation

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

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

2.5 People Management

2.5.1 Staffing Levels

Examination of the documentation for the complete FY2010 in the Prosecutor General's Office indicates that there were 35 payments made to suppliers following the procurement processes stipulated in the Decree Law and Best Practice Guides (this excludes 250 commitment only payments processed by the Finance Officer) for the period. The details of this can be viewed in Table 3 attached to paragraph 2.1.4.1.

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

Recommendation

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

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

2.5.2 Aptitude & Skills

2.5.2.1 Existing Capability

The following are the qualifications and experience of the personnel in the Procurement Department of the Office of the Prosecutor General:

Name	Position	Qualifications	Experience	Pay Level
Ana Maria Pereira Carvalho	Director of Budgeting & Finance	Degree in Economic Development	2 Years in procurement	6
Jacinto Pomaio	Chief of Procurement	Degree in Economic Management	2 Years in procurement	5
Rui Didgo Montiero	Procurement Officer	SMA *	1 Year in procurement	2
Note:				
* SMA is Sekolah Menengah Atas (Senior Secondary School)				

Table 5.Ministry of the Prosecutor General procurement staff particulars.

The qualifications and experience appear adequate for the tasks required in the Procurement Department.

However, there was no apparent succession planning in place.

Recommendation

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

2.5.2.2 Training

Discussions with the Procurement staff in the Ministry of the Prosecutor General indicate that no members of the procurement team were able to attend any training provided by the Ministry of Finance. They have not undertaken any other training beyond this.

The Procurement Teams at the Office of the Prosecutor General require 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.

Recommendation

There is a need to provide more comprehensive training that supports the achievement of clear objectives. 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	
Prosecutor -General			
Salaries and Wages	991,000	705,278	285,722
Goods and Services	1,228,090	1,113,618	114,472
Minor Capital	290,612	287,538	3,074
Capital and Development	1,514,800	114,800	1,400,000
	4,024,502	2,221,234	1,803,268

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

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

Note: There is a minor variance of \$984 between the Democratic Republic of Timor Leste Annual Consolidated Financial Statement for the Fiscal Year 2010 (Goods & Services: \$1,113,618) and the FreeBalance (Goods & Services: \$1,114,602) populations sourced for testing in the Goods & Services balance. This is not considered material and no further work has been performed on this discrepancy.

Appendix 2: Major Suppliers

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

Vendor	Category	YTD Actual	%
Commitment Only	Commitment Only	882,963	58%
VISIMITRA UNIPessoal	Information Technology	106,720	7%
BOA VENTURA	Office Supplies	105,062	7%
DRAGON SERVICES	Vehicles	97,500	6%
FITUN SANANE UNIP. L	Construction	57,400	4%
ROZI UNIPessoal LDA	Construction	57,400	4%
AITULA FUELS LTD	Fuel	48,506	3%
MASTERLINK MOTOR,UNI	Vehicles	41,760	3%
ESPERANCA UNIPessoal	Fuel	30,621	2%
LEADER SUPERMARKET	Office Supplies	24,743	2%
JACINTO UNIPessoal L	Office Supplies	18,640	1%
ESPERANCA TIMOR OAN	Fuel	17,885	1%
TL TECH,LDA	Information Technology	15,563	1%
MATATA II COMPANY	Construction	7,338	0.5%
ISI BINSOK UNIPessoal	Construction	2,100	0.1%
SOLDA MORIS FOUN COM	Office Supplies	1,510	0.1%
BRAVO INTERNATIONAL	Construction	1,230	0.1%
Grand Total		1,516,939	100%

Table & Graph A2-1. List of suppliers to the Prosecutor General 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”):

Vendor	YTD Actual
Commitment Only	882,963
VISIMITRA UNIPessoal	106,720
BOA VENTURA	105,062
DRAGON SERVICES	97,500
FITUN SANANE UNIP. L	57,400
ROZI UNIPessoal LDA	57,400
AITULA FUELS LTD	48,506
MASTERLINK MOTOR,UNI	41,760
ESPERANCA UNIPessoal	30,621
LEADER SUPERMARKET	24,743
JACINTO UNIPessoal L	18,640
ESPERANCA TIMOR OAN	17,885
TL TECH,LDA	15,563
MATATA II COMPANY	7,338
ISI BINSOK UNIPessoal	2,100
SOLDA MORIS FOUN COM	1,510
BRAVO INTERNATIONAL	1,230
Grand Total	1,516,939

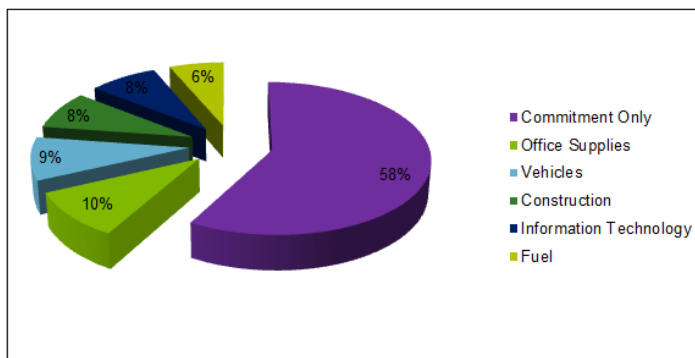


Table & Graph A2-2. List of suppliers to the Prosecutor General in FY2010.

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

“Commitment Only” Supplies:

Category	Total
Salaries	567,357
Office Supplies	175,814
Petty Cash	67,033
Vehicles	56,696
Construction	10,907
Information Technology	5,155
Grand Total	882,963

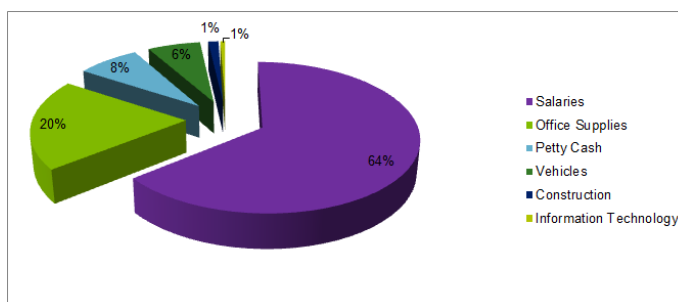


Table & Graph A2-3. Commitment only suppliers for FY2010.

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

Supply	Total	%
Salaries	567,357	37%
Office Supplies	392,802	26%
Vehicles	195,956	13%
Construction	136,374	9%
Information Technology	127,438	8%
Fuel	97,012	6%
Grand Total	1,516,939	100%

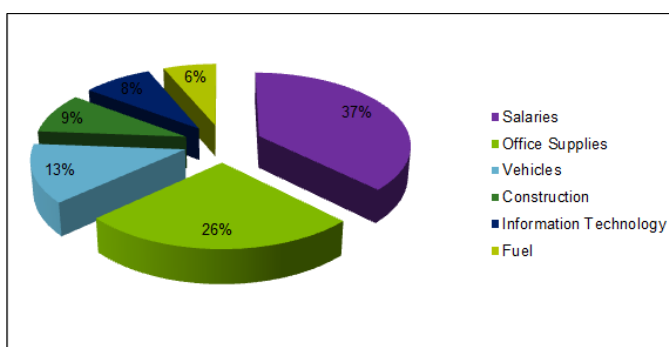


Table & Graph A2-4. Total payments to suppliers and others for FY2010.

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

Source: MoF FreeBalance Accountability System

Appendix 3: Expenditure thresholds under Decree Law & Best Practice

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

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

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
PROSECUTOR GENERAL CONTRACT No. 11.001
With Ensul S.A.**

for Construction of Public Prosecution Office of the Dili District,
Building Matadoru

Clause number	Nature of Issue	Explanation of Issue
Agreement	Change to contract	<p>There is an alteration to the Agreement (provided at the front of the “Conditions of Contract”) that changes the price paid for the construction work from \$USD1,391,600 to \$USD1,267,388.76.</p> <p>The change was manually made and signed off in the original contract.</p> <p>The issues are:</p> <ol style="list-style-type: none"> 1. The change was made by a person who was not a signatory to the contract; 2. The amount in the Financial Proposal to the bid (including a brief price schedule) was \$USD1,391,600 (the original price); 3. The Bill of Quantity (that forms Annex 7 to the contract) has no prices in it at all (despite having a column for their inclusion); and 4. The Letter of Acceptance states the price as \$1,391,600 (the original price).
Index	Missing Information	The index provides page numbers but these have not been included in the contract.
Clause 1 - Definitions	Incorrect reference	“Compensation Events” references “clause 43”. This should be “clause 44”.
Clause 1 - Definitions	Incorrect reference	“Compensation Events” references clause “2.3”. This should read “clause 2”.
Clause 1 - Definitions	Problematic clause	The definition for the “Contract Price” indicates a fixed cost in accordance with the Letter of Acceptance. However, the definitions contain “Day works” with payments “..subject to payment on a time basis”. These two approaches do not reconcile.

Clause number	Nature of Issue	Explanation of Issue
		The contract is a fixed price contract subject to changes associated with variations, liquidated damages, etc. The “Day works” needs to be removed to remove ambiguity.
Clause 9 - Personnel	Missing Information	The Schedule of Key Personnel cited in this reference has not been included in Annex 3 – Contract Data. There is no other information that provides a list of key personnel.
Clause 9 - Personnel	Problematic clause	The Engineer (who is responsible for the supervising the execution of the Works) has the ability to remove a person from the site but the contractor has seven (7) days to comply. The removal of personnel from a site should normally apply immediately.
Clause 13 - Insurance	Missing Information	The amounts and deductibles required for insurance cited in this clause have not been listed in Annex 3 – Contract Data. Therefore, there is no detail as to what insurance is required to cover the Works undertaken in this contract. In normal circumstances insurance coverage is stated both by occurrence and in aggregate.
Clause 21 – Possession of Site	Problematic clause	The Ministry provides possession of the site to the contractor for the duration of the Works. This poses a problem when considering Clause 11 – Employer’s Risks that has the Ministry retaining risks for the site (under certain circumstances) with the notable exclusions for Works, Plant, Materials and Equipment. The risk is that the safety of the site (per Clause 19) and the possession of the site (per clause 21) have been passed to the contractor. The contract should reflect that not ‘Employer’s Risks’ should continue beyond this point until conclusion of the Defects Correction Certificate is issued.
Clause 24 – Disputes	Missing Information	The Employer’s (Ministry’s) Authorised Representative has not been included in Annex 3 – Contract Data.
Clause 37- Bill of Quantities	Missing Information	The Bill of Quantities exists and contains some separate contract activities. <u>However, it contains no</u>

Clause number	Nature of Issue	Explanation of Issue
		<p><u>pricing.</u></p> <p>This clause specifically states that this Bill of Quantities will be used to calculate the Contract Price.</p>
Clause 38 – Changes in Quantities	Missing Information	<p>This clause allows for adjustments to the Contract Price based on any significant adjustments to the Bill of Quantities. However, it contains no quantitative data.</p>
Clause 43 - Payments	Problematic clause	<p>This clause states that late payments will accrue penalty interest at the “...prevailing rate of interest for commercial borrowing..”. There are numerous commercial borrowing rates.</p> <p>This clause needs to site a specific banks borrowing rate for a specific activity eg. ANZ Timor Leste Bank Overdraft Rate.</p>
Clause 50 - Bonus	Missing Information	<p>The bonus for early completion has not been included in Annex 3 – Contract Data.</p>

Appendix 6: Process followed in order to obtain FY 2009 documentation.

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

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

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