

Report No. 28552-TP

# Timor-Leste Country Procurement Assessment Report

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Central Operations Services Unit  
East Asia and Pacific Region



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## CURRENCY EQUIVALENTS

Currency Unit = US Dollar

**WEIGHTS AND MEASURES:** Metric System

**FISCAL YEAR:** July 1 – June 30

## ABBREVIATIONS AND ACRONYMS

ADB	Asian Development Bank
ASCBP	Administrative Services Capacity Building Project
CAC	Contracts Assessment Committee
CAS	Central Administrative Services
CFET	Consolidated Fund for East Timor
CPAR	Country Procurement Assessment Report
CBGPSM	Capacity Building for Governance and Public Sector Management
EICB	Economic Institutions Capacity Building Project
ETPA	East Timor Public Administration
ETTA	East Timor Transitional Administration
ICM	Initiating Concept Memorandum
IDA	International Development Agency
OGPSIM	Office of Government Procurement Supply and Inventory Management
PER	Public Expenditure Review
PMU	Project Management Unit
RDTL	The Republica Democrática de Timor Leste
RPA	Regional Procurement Authority
SRSG	Special Representative of the Secretary General
TCC	Transitional Contracts Committee
TFET	Trust Fund for East Timor
TSP	Transitional Support Program
TTL	Task Team Leader
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNMISSET	United Nations Mission of Support in East Timor
UNOPS	The United Nation Office of Project Services
UNTAET	The United Nations Transitional Administration in East Timor

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## **1. EXECUTIVE SUMMARY**

### **Introduction**

1.1 The Timor-Leste Country Procurement Assessment Report (CPAR) is based on a review carried out jointly by the World Bank, Asian Development Bank (ADB) and the Government, which was represented by its Procurement Division. The general aims of this first CPAR in Timor-Leste are to begin a dialogue with the Government on the need for an efficient procurement system and to help establish a framework to guide the country in formulating its procurement policies. To this end, the scope of the CPAR focuses on four specific areas:

- (a) the legal and regulatory framework within which public procurement currently operates, and recommendations for necessary modifications;
- (b) the current procurement policies, procedures and institutions responsible for procurement, and identification of short-term and medium-term changes needed to ensure that procurement is carried out in a transparent manner, with due regard to economy and efficiency;
- (c) the capacity of government officials to undertake procurement efficiently, and recommendations for appropriate staffing and capacity-building plans; and
- (d) lessons learnt in a post conflict situation.

1.2 In the absence of a Country Assistance Strategy, the Bank's Transitional Support Strategy, presented to the Board in November 2000, provides the framework for assistance in the immediate post-independence period. The key elements of the Strategy are: basic poverty alleviation and reconstruction over the short term; and analytical and advisory assistance on post-independence policy and governance issues. This CPAR is consistent with the analytical and advisory assistance objectives of the Strategy. Further, an enabling environment for harmonization of procurement policies and procedures has been created during the preparation of the CPAR, with the joint participation by ADB and the Bank, extensive consultation with other development partners, and the Government's willingness to introduce harmonized policies, procedures, and documents.

1.3 The Bank's Poverty Assessment<sup>1</sup> highlights the daunting economic and human development challenges that face Timor-Leste. Sixty percent of adults are illiterate; two in five people are poor and are unable to attain a minimum standard of living; three in four persons live without electricity; three in five persons have no safe sanitation; and every other person has no safe drinking water. Therefore, the challenges facing the country are immense. To meet the challenges of nation building, a National Development Plan, with its vision to the year 2020, was prepared by the Government

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<sup>1</sup> Timor-Leste Poverty Assessment – A New Nation Emerging from Deprivation, April 2003

through a broad consultative process. This Plan's strategy for the five-year period (2002-2007) has two overriding objectives: (a) to reduce poverty in all sectors and regions of the nation, and (b) to promote economic growth that is equitable and sustainable. The Government is estimating an aggregate expenditure of US\$74 million for FY03, and this is progressively projected to increase to US\$111 million in FY10. To meet the projected expenditure, as noted in the table below, the Government would have to depend on external budgetary support until FY09, after taking into consideration domestic revenue and revue generated from the Timor Sea.<sup>1</sup>

Component	Mid-Year Budget Update				Projections			
	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10
<b>CFET Revenue</b>	<b>42</b>	<b>66</b>	<b>78</b>	<b>83</b>	<b>86</b>	<b>94</b>	<b>123</b>	<b>218</b>
Timor Sea Revenue	25	48	60	63	65	72	100	194
Domestic Revenue	18	18	19	20	21	22	23	24
<b>Expenditure</b>	<b>74</b>	<b>80</b>	<b>93</b>	<b>102</b>	<b>105</b>	<b>107</b>	<b>109</b>	<b>111</b>
Recurrent	67	70	73	77	80	82	84	86
Capital and Development	7	10	20	25	25	25	25	25
<b>Timor Sea Savings</b>	<b>1</b>	<b>12</b>	<b>24</b>	<b>26</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>
<b>Financing Requirement</b>	<b>(33)</b>	<b>(26)</b>	<b>(39)</b>	<b>(45)</b>	<b>(45)</b>	<b>(40)</b>	<b>(14)</b>	<b>78</b>
Committed Financing	26	18	17					
Programmed Financing	5	9	9					
<b>Financing Gap</b>	<b>(2)</b>	<b>1</b>	<b>(13)</b>	<b>(45)</b>	<b>(45)</b>	<b>(40)</b>	<b>(14)</b>	<b>78</b>

*Note: MYBU estimates to FY2006. Timor Sea Revenues discounted by 10%; Domestic Revenues increasing by 5% year from FY2006; Recurrent expenditures increasing by 2.5% year from FY2006; Capital and Development expenditures at FY2006 level.*

### Summary of Critical Findings

#### **Legal and Regulatory Framework**

1.4 The primary instrument governing procurement in Timor-Leste is *Regulation 2000/10 on Public Procurement for Civil Administration in East Timor*, issued by the United Nations Transitional Administrator. Following independence, this Regulation has been adopted by Timor-Leste and still forms the basic regulatory framework for public procurement. Regulation 2000/10 is based to a large extent on a draft prepared with technical assistance funded by the World Bank and reflects in a compact manner many basic principles and procedures set forth in the UNCITRAL Model Law on Procurement. It represents an important basic step in the construction of a legal and regulatory framework for public procurement.

1.5 However, there is a need to review and revise the Regulation to take into consideration the environment of an independent country and to make it more compatible with UNICITRAL Model Law on Procurement, and the procurement guidelines of the World Bank, Asian Development Bank (ADB), and other development partners. The CPAR Team recommends that consultants be recruited to assist the Government in revising the Regulation.

<sup>1</sup> Concept Note Timor-Leste: Transition Support Program II

***Procurement Organization, Procedures and Practices***

1.6 A centralized system of procurement, carried out by the Procurement Division of the Office of Government Procurement Supply and Inventory Management (OGPSIM), is in place. The Procurement Division is responsible for all procurement, except those financed under World Bank and Asian Development Bank assisted projects. Project Management Units (PMUs), specifically established for implementing those projects, and are responsible for processing of procurement. Oversight of procurement decisions is through the Contracts Assessment Commission (CAC), which has responsibility for review of all contracts above US\$100,000.

1.7 Whilst a centralized procurement function was an effective means of achieving short-term control of both capital and recurrent expenditures to meet the immediate post conflict requirements, its long-term effectiveness is questionable. The CPAR Team recommends that the Procurement Division continue to be responsible for recurrent procurement where value for money can be achieved through economy of scale, as well as for ministries/agencies where the volume of procurement is such that development of procurement capacity would not be justified. However, operating ministries with a large volume of procurement should be responsible for their own procurement, except for consumable items.

1.8 Manuals (Public Procurement Manual, Contract Administration Manual, and Property Disposal Manual) have been drafted and form the basis for procurement administration. Along with revision of Regulation 2000/10, there is a need to review and revise the Procurement Manual to address issues identified in the CPAR, as well as to establish a harmonized system of procurement based on international best practices and consistent with the procurement policies and procedures of the World Bank, ADB, and other development partners. The CPAR Team recommends that consultants be recruited to assist the Government in revising the Manuals, including preparation of harmonized standard procurement documents.

***Procurement Capacity***

1.9 Lack of procurement capacity is the greatest challenge confronting Timor-Leste. During the transitional administration of the United Nations, international staff/advisors assisted the Procurement Division in conducting procurement and still continue to do so, though at a much lower level of inputs. International advisors are also involved in procurement by the PMUs. However, since those advisors were involved in meeting the emergency needs of the country, they could not provide attention to developing adequate national procurement capacity. This lack of capacity is the single most important constraint facing the country, and Timor-Leste will have to rely on international procurement advisors for the foreseeable future. The CPAR Team recommends that steps be taken for developing the capacity of Timorese staff in procurement.

***Lessons Learnt in Post-Conflict Situation***

1.10 The main lessons learnt in Timor-Leste are:

- Procurement capacity assessment should be carried out as soon as possible to identify additional capacity requirements for project implementation.

- The host government should be willing to recruit international advisors or specialists to complement its own capacity. However, care should be taken in the recruitment of qualified advisors and specialists, and their terms of reference should include transfer of skills to the nationals.
- Clear procurement policies, rules, procedures, and manuals, including appropriate controls, should be established as soon as possible, so that staff handling procurement can follow those set rules.
- In an emergency situation, projects are better implemented through PMUs. However, plans should be in place for their full integration within the governmental infrastructure.
- High thresholds for Shopping are justified for emergency projects to ensure timely implementation, so long as adequate control mechanisms are put in place.
- For countries with low to non-existent capacity, more time and effort should be spent on training of procurement staff, as well as local contractors, suppliers and consultants.
- In view of the emergency nature of projects in post-conflict situation, for the design of projects, the development partners should assign experienced procurement staff. Such experienced staff would be able to bring in international best practices appropriate for implementation of emergency projects and provide guidance to government officials regarding procurement and project implementation issues. This expertise should be readily available at least during the initial period of project implementation.

### ***Risk Assessment***

1.11 The general assessment of the CPAR is that procurement risks are “high”. This conclusion is based on the extremely weak procurement capacity. Limited experience to date does not indicate significant corruption. In order to mitigate the risk, the training program identified in the CPAR should be implemented. Funds for such training are already available under existing grants provided by the World Bank and ADB.

### **Recommended Action Plan**

1.12 In order to implement the recommendations of the CPAR, an Action Plan has been agreed with the Government. This action plan has been compiled from views expressed by government officials, the private sector and non-government organizations during constructive meetings and interviews. The key actions agreed, implementation of most of which has already started, are summarized below. Details are available in the main text of this report and in Annex 7.

### **Legal and Regulatory Framework**

- The legal framework for public procurement shall be further developed on the basis of UNICITRAL Model Law on Public Procurement and the procurement guidelines of the World Bank, ADB and other major development partners.  
***Priority High. The consultant has submitted a draft Regulation.***



### **Procurement Organisation and Resources**

- At least four international advisors need to be retained until at least December 2004 in the Procurement Division to assist in carrying out its day-to-day role, as well as to provide mentoring to the national staff in the Division. **Priority High. Advisors are in place.**
- The Government should decide on how far decentralization of procurement functions should take place, the need for training and levels of technical assistance. A decentralized procurement function is recommended for operating Ministries (such as Transport and Communications, Public Works, Health, Education, Agriculture and Defense) that have ongoing, specialist needs for large scale capital expenditure. Once adequate training, resources and oversight are in place these Ministries should conduct their own internal capital procurement. The Procurement Division should remain the central procurement agency and should be responsible for the capital procurement needs for the remaining Ministries, and procurement of supplies and materials in which higher levels of efficiency and economy of scale are possible. **Priority High. Decision on decentralization would be reflected in the preparation of the Manuals.**

### **Procurement Procedures and Practices**

- To review and revise the procurement and implementation manuals and harmonize procedures and documents consistent with international best practices and the policies and procedures of development partners. The review of procedures should also specifically address procurement thresholds, integration of procurement planning with the budgetary system, expansion of a procurement information system to all Ministries and bid protest procedures. Classification of contractors should be discontinued as this can be abused. **Priority High. Consultants would be appointed after the government has accepted the new Regulations.**

### **Audit and Procurement Oversight**

- The review of public procurement be strengthened through the use of independent private auditors. An Independent Audit Department, reporting directly to the Parliament, should be established. Legislation should be enacted for the establishment and functioning of the Office of the Inspector General. Also, the Procurement Division should maintain a database of debarred firms and individuals and such information should be available to all Ministries and the general public. **Priority Medium.**

### **Capacity Building and Training**

- Training shall be provided to procurement staff, key government officials and specialists. The Civil Service Training Centre, through partnership with international institutions, may be a potential facilitator for such training. A system of procurement professional accreditation may also be considered. In addition, on-the-job training shall take place with support from available international advisors/specialists with the Procurement Division and the PMUs. Technical training should be provided for procurement specialists. **Priority High.**

*While some training should take place now, further training would be required once the Manuals have been drafted.*

**Assessment of Domestic Suppliers, Contractors and Consultants**

- The Procurement Division shall organize very basic procurement training for national contractors, suppliers and consultants. Until capacity is developed to take on large contracts, local contractors and consultants should be encouraged to work as sub-contractors or sub-consultants to international firms. **Priority Medium.**

**Monitoring and Evaluation**

1.13 The Procurement Division shall be responsible for the overall implementation of the recommendations of the CPAR and provide progress reports to the Bank and ADB on a quarterly basis. The Government, ADB and the Bank would jointly evaluate progress on an annual basis. The missions by ADB and the Bank would be mounted in conjunction with the supervision of ongoing projects.

## **2. COUNTRY PROCUREMENT ASSESSMENT**

### **PREFACE**

2.1 The Timor-Leste - Country Procurement Assessment Report (CPAR) is based on review carried out between February and August 2002 by a joint team (CPAR Team) of staff from the World Bank, the Asian Development Bank (ADB) and the East Timor Public Administration (ETPA). The World Bank fielded a mission to Timor-Leste (formerly known as East Timor) in February 2002. During the mission, the Bank team assisted ETPA to develop an Interim Strategy Paper on Public Procurement. The Government's Interim Strategy Paper is attached as Attachment 1. This Paper laid the groundwork for the Initiating Concept Memorandum (ICM), which was jointly reviewed by The World Bank, ADB and ETPA on March 27, 2002. During this review meeting agreement was reached on the objectives and scope of the main review mission, which was fielded in April 2002. The ICM and the minutes of the review meeting are provided in Attachment 2. A follow-up mission took place in September 2002 to review with the Government the draft CPAR, taking into consideration developments that have taken place since independence.

2.2 Mr. Nurul Alam (Task Team Leader – Senior Procurement Specialist) of the World Bank Sydney Office led the CPAR Team. In addition, the CPAR Team comprised of the following members: *World Bank* – Messrs. Maurice Le Blanc (Consultant – Procurement Advisor), Christopher Smith (Consultant – Implementation Specialist) and Simeon Sahaydachny (Consultant-Legal Counsel); *ADB*-Mr. Robert Rothery (Principal Procurement Specialist); *ETPA* - Messrs. Clare Copleman (Director, Central Administrative Services (CAS), Gregorio da Silva (Chief Procurement Officer) and James de Luca (Acting Advisor to Chief Procurement Officer).

2.3 The CPAR Team had meetings and extensive discussions with senior government officials, private sector representatives, non-governmental organizations, major donors and consultants operating in Timor-Leste. The list of persons met is attached as Attachment 3. Mr. Denis Robitaille (Regional Procurement Advisor), Mr. Naseer Ahmed Rana (Peer Reviewer and Lead Procurement Specialist) and Mr. Ronald Isaacson (Deputy Chief of Mission, Dili Office) of the World Bank, and Mr. Amarnath Hinduja (Peer Reviewer and Head, Project Administration Unit) of ADB, reviewed the draft report and provided valuable and constructive suggestions. Ms. Donna Quartley-Parker (Team Assistant) provided valuable support in the final compilation of the document.

2.4 The CPAR Team also benefited from the reviews carried out by the ADB and published in its Mid-term Progress Report on Timor-Leste (December 2001), and by the World Bank in its Policy Challenges for a New Nation (Country Economic Memorandum) and Public Expenditure Management and Accountability Note. A list of documents consulted is attached as Attachment 4. A consolidated summary of interviews carried out with various stakeholders is provided as Attachment 5.

## **BACKGROUND**

### **Country Information**

2.5 Timor-Leste was a Portuguese colony for four and a half centuries and then occupied by Indonesia in 1975 and annexed in 1976. Throughout this history scant attention was paid to developing local managerial and leadership capacity. The two and a half decades following annexation by Indonesia saw a continual struggle for independence. The political and social environment during this time was not conducive to establishing a strong domestic business sector. Generally, Indonesian civil servants and military personnel held decision-making positions in the Government and dominated the private sector; there was little transparency, and less opportunity, for Timorese to be involved in public procurement, or to develop capacity and procedures for public administration, including financial and expenditure management. The struggle for independence led in August 1999 to a vote by the Timorese people to reject an offer of regional autonomy within the Indonesian state and to move for independence, initially through a transitional government. The announcement of the results of this United Nation-supervised consultation was followed by a campaign of orchestrated violence, which displaced over half the population and destroyed 70% of all infrastructure. Many Government records, including land records, and banking records were destroyed. This added to the problems of re-establishing local industry - a task that has been further complicated by land disputes, the lack of documentation to support business and lending activity, and the general absence of any Timorese business community with requisite capacity and widespread lack of understanding of internationally accepted procurement process.

2.6 While Timor-Leste is a small country with a population of about 800,000, substantial public procurement in comparison to its size will be needed in the medium term to rebuild infrastructure and Government and administrative systems. However, because of previous history, Timor-Leste is not well positioned to meet those procurement challenges.

2.7 The United Nations Transitional Administration in East Timor (UNTAET), largely made up of international advisors, was established in late 1999 to oversee the transition to free elections and self-government. A process of “Timorisation” of the transitional government structure was launched in August 2000, with the formation of the East Timor Transitional Administration (ETTA). The *República Democrática De Timor-Leste* (RDTL) or Democratic Republic of Timor-Leste became fully independent on May 20, 2002. However, at the request of the Government, support from the UN continues through the United Nations Mission of Support in East Timor (UNMISSET). The World Bank and ADB, together with UNDP and other donors continue to be actively engaged in building the administrative structure for an independent state. Since mid-2000, public procurement of capital expenditure has largely been funded from the Trust Fund for East Timor (TFET), while the Consolidated Fund for East Timor (CFET) had a focus on recurrent expenditures. The World Bank is the Trustee of TFET on behalf of a group of Donor countries.

### Objectives and Scope of the CPAR

2.8 As stated above, Timor-Leste has passed through a transition stage that has seen it emerge as a sovereign nation. During this period, it began to experience the pitfalls of a less than optimum situation with regard to procurement. Due to the emergency nature of the situation in the country, projects financed under TFET were often rushed to implementation and exceptions to normal procurement procedures were granted. All this transpired at a time when the country was also attempting to put in place a rational framework to assist in the implementation of projects. Sound procurement procedures were often overlooked in favor of getting things done in order to address the prevailing emergency conditions.

2.9 The general aims of this first CPAR in Timor-Leste are to begin a dialogue with the Government on the need for an efficient procurement system and to help establish a framework to guide the country in formulating its procurement policies. To this end, the specific objectives of the CPAR are to:

- (a) provide an analysis of the current public sector procurement system, focusing on the appropriateness of existing regulations as a basis for developing a legal framework for public procurement;
- (b) undertake a general assessment of the institutional, organizational and other risks associated with the procurement process, and provide guidance to the Government on appropriate organizational structures, oversight responsibilities and control mechanisms for public procurement in Timor-Leste;
- (c) identify specific skill and experience gaps, and recommend appropriate training programs; and
- (d) agree with Government on an action plan detailing priority issues, and strategies and resources needed to address those issues.

2.10 Within the objectives set above, the scope of the CPAR focuses on four specific areas:

- (a) the legal and regulatory framework within which public procurement currently operates, and recommendations for necessary modifications;
- (b) the current procurement policies, procedures and institutions responsible for procurement. Based on this assessment, the CPAR identified short-term and medium-term changes needed to ensure that procurement is carried out in a transparent manner, with due regard to economy and efficiency;
- (c) the capacity of government officials to undertake procurement efficiently and recommendations for appropriate staffing and capacity-building plans; and
- (d) lessons learnt in a post conflict situation.

### Transitional Assistance Strategy

2.11 In the absence of a Country Assistance Strategy, the Bank's Transitional Support Strategy, presented to the Board in November 2000, provides the framework for assistance in the immediate post-independence period. The key elements of the strategy are: basic poverty

alleviation and reconstruction over the short term; and analytical and advisory assistance on post-independence policy and governance issues.

2.12 Since early 2000 the primary vehicle for Bank support to poverty alleviation and reconstruction has been the multi-donor Trust Fund for East Timor (TFET). TFET has financed projects totaling \$170 million, in agriculture, education, health, infrastructure, private sector development, micro-finance and community empowerment. The respective Government departments implement TFET projects through Project Management Units (PMUs) specifically set up for that purpose. Besides financing a substantial reconstruction and service delivery program, TFET has contributed to the formulation of sectoral policies and development of institutional capacity.

2.13 Analytical and advisory services have included a Country Economic Memorandum, covering economic policy and governance issues, which has been submitted to the Timorese authorities for review. A Poverty Assessment, based on a household survey, was completed in February 2002 (final report distributed April 2003) and the results used to support the Government's preparation of the National Development Plan, through a broad consultative process. The Bank has also supported a capacity building program for the political and administrative leadership and, with co-financing from the United Kingdom, technical support for preparation of the National Development Plan.

2.14 Attention has now turned to the development of a comprehensive, government-led and government-implemented development strategy based on the National Development Plan and the Poverty Reduction Strategy Paper. In this context, the mechanisms by which external financing is delivered are important. The Government faces a substantial fiscal deficit, formerly financed from voluntary contributions to the UNTAET Trust Fund, which will now have to be financed as direct balance of payments and budgetary support. The move from project-based assistance to balance of payments support also has a development purpose, since this will help develop local capacity to manage the increased flows of resources that will become available when substantial Timor Sea revenues come on stream from FY2006. However, this shift from project-based lending to budget support means that there would be less prior and post review of procurement by the donors, resulting in less oversight and increased risks of procurement not being carried out in an economic and efficient manner. Therefore, the need to establish appropriate procurement regulations and policies, and a well functioning procurement system is even greater to provide comfort to donors that their funds are utilized for the intended purposes, with due regard to economy and efficiency.

#### World Bank/ADB Portfolio

2.15 With funds available from TFET and other donors, IDA and ADB have financed 37 projects/program executed by Timor-Leste, with a total commitment of US\$188.6 million. Except for one project, all of them have been rated satisfactory both for meeting overall project objectives as well as for procurement performance. This has been due largely to extensive technical assistance provided under each project, donors' agreement to allow exceptions to normal competitive procurement process (para 2.8), as well as intensive supervision efforts on the part of both IDA and ADB. Further, both IDA and ADB have executed other technical assistance projects to support the development efforts of Timor-Leste as well as to help the country to move towards independence. Of particular importance

is ADB's technical assistance – Capacity Building for Governance and Public Sector Management (CBGPSM). Funds from this technical assistance as well as World Bank financed Administrative Services Capacity Building Project (ASCBP) can be utilized for procurement capacity building. Funds from ASCBP can also be utilized for preparation of the revised Procurement Regulations, as well as the Procurement Manuals.

2.16 Timor-Leste became a member of the World Bank and ADB on July 23, 2002. On the same day, the World Bank signed a grant agreement for US\$5.0 million with Timor-Leste for a Transition Support Program (TSP). The TSP is financing an annual program comprising four components: continued poverty reduction planning and improvement in service delivery; governance and private sector development; public expenditure policy and management; and power sector management. These components and the supporting actions reflect priorities identified in the Government's National Development Plan. The TSP complements and supports the recommendations of the CPAR. In addition, IDA has plans to utilize the remaining funds available under TFET to finance two projects in Education and Agriculture, as continuation of ongoing projects, as well as a second Transition Support Program. IDA has also approved an IDF grant for supporting the creation and operation of *Provedor de Direitos Humanos e Justiça* (Ombudsman). Further, a Public Expenditure Review (PER), planned by the World Bank in FY03, will complement the CPAR. The PER will look at expenditure management and governance issues. The intention is to move to an annual PER cycle, and the policy issues identified in the CPAR and PERs will be followed up in annual policy matrixes supported by subsequent TSPs, the multi-donor vehicle for budgetary and balance of payment support to Timor-Leste.

## **DISCUSSION AND ANALYSIS OF FINDINGS**

### **Legal and Regulatory Framework**

#### **OVERVIEW**

2.17 The building of a legal and regulatory framework for public procurement in Timor-Leste is taking place in a legal and administrative environment that was defined by the transitional period under UNTAET. During that transitional period, authority over the civic affairs of Timor-Leste, including legislative authority, was vested upon the Special Representative of the Secretary General (SRSG), who acted as the Transitional Administrator. Pursuant to that authority, a variety of regulations, directives, instructions and notifications had been issued, establishing the rudimentary components of public administration and financial management. These included instruments dealing with procurement and other subjects, many of which are pertinent to the procurement process. In accordance with the Constitution (Section 165), laws and regulations in force in Timor-Leste will continue to apply following independence, provided they are not inconsistent with the Constitution. This has ensured substantial continuity in the legal regime applicable to public procurement after independence. However, because of the unique history of Timor-Leste, there is a degree of uncertainty as to the applicable law (see para 2.28) and a need for institutional development for implementation of various aspects of the existing and emerging legal framework.

2.18 Similar to many developing countries, Timor-Leste feels the effects of low capacity in public procurement that hinders proper processing of procurement and procurement reforms. With its long history of inexperience in self-administration, that problem of capacity is particularly acute in Timor-Leste and underscores the need for a comprehensive and clear legal and regulatory framework for public procurement. Some elements of such a framework have been put into place or are being developed, but considerable additional measures are required to develop the framework further.

#### **SALIENT FEATURES**

##### **A. *Regulation 2000/10***

2.19 The primary instrument governing procurement for civil administration in Timor-Leste during the transition period was *Regulation 2000/10 on Public Procurement for Civil Administration in East Timor*, issued by the Transitional Administrator, pursuant to the authority vested upon him by the United Nations Security Council, and affirmed in Regulation 1999/1. Following independence, in accordance with the Constitution, this Regulation has been adopted by Timor-Leste and still forms the basic regulatory framework for public procurement.<sup>1</sup>

2.20 Regulation 2000/10 is based to a large extent on a draft prepared with technical assistance funded by the World Bank and reflects in a compact manner many basic principles and procedures set forth in the UNCITRAL Model Law. It represents an important basic step in the construction of a legal and regulatory framework for public procurement. The Regulation addresses issues such as: scope of application; currency of payment; procurement methods; solicitation procedures; assessment of bidders' qualifications; bidding documents; submission of bids; bid security; bid opening and evaluation; conflict of interest and improper inducements; confidentiality; record of procurement proceedings; establishment of Transitional Procurement Unit and Transitional Procurement Policy Committee, bid protest procedures; and definition of terminology. Subject to the necessary revisions recommended in this report, the Regulation can be a valuable base for the comprehensive legal and regulatory framework for public procurement that needs to be built.

2.21 While Regulation 2000/10 has a broad scope, being applicable to all procurement for the civil administration of Timor-Leste, the application of Regulation 2000/10 has centered principally on procurement with funds drawn from CFET, which have been utilized primarily for the operational, day-to-day needs of civil administration.

2.22 Procurement for the purposes of UNTAET internal operations has been conducted pursuant to applicable United Nations procurement rules, and Regulation 2000/10 is not applicable.

2.23 Regulation 2000/10 expressly provides that, in the case of donor-funded procurement, procurement rules, whose application is required pursuant to the agreement with the donor, prevail over UNTAET regulations to the extent of any conflict (Regulation 2000/10, Section 2.2). As a result, project and other capital procurement with funds from TFET are subject to donor procurement guidelines, with some residual applicability of national rules and

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<sup>1</sup> At the time when this report was finalized, a new, substantially revised and expanded public procurement law was being prepared by Timor-Leste.



procedures. Such procurement is carried out by Project Management Units (PMU's) that have been established on the basis of a Notification issued on February 15, 2001.

2.24 The United Nation Office of Project Services (UNOPS) has carried out a significant volume of procurement, including major CFET-funded civil works contracting. Such procurement, prior to independence, has been conducted subject to UNOPS procurement rules.

2.25 A number of autonomous agencies akin to parastatals have been established (e.g., Communications Regulatory Authority, established by Regulation 2001/15 on an Authority for the Regulation of Telecommunications in East Timor; Foundation for Poverty Reduction in East Timor, established by Executive Order No. 2001/7). The constituent instruments of those entities typically empower them to acquire and dispose of property and to enter into contracts for the purposes of carrying out their functions. While not expressly stated in or readily deducible from the constituent instruments of those entities, the understanding and intention in UNTAET appears to be that the procurement activity of such entities would be autonomous and not subject to Regulation 2000/10, except to the extent that government funds would be utilized.

***B. Ancillary Legislation and Applicable Law in Timor-Leste***

2.26 There are no precepts in the Constitution as are found in some countries expressly calling for the application of transparency, competition, and other fundamental principles to the procurement process. Provisions in the Constitution relevant to the design and implementation of public procurement include those prescribing decentralization of public administration as a broad public policy goal (Section 5), and designating Tetum and Portuguese as the official languages (Section 13).

2.27 In regard to areas of law that have not been the subject of issuances by the Transitional Administrator, the constituent UNTAET legal instrument (Regulation 1999/1, Section 3.1) provides that the laws applied in Timor-Leste prior to October 25, 1999 remain in effect until replaced. While that rule has been widely interpreted as referring to Indonesian law, its practical application may not be as clear or predictable as might appear at first glance. For example, some bodies of Indonesian law, such as laws on notarial services and on environment, have not been applied because of a lack of resources or because the institutional mechanisms for their application, being Indonesian, are no longer operational on Timorese territory.

2.28 An additional degree of uncertainty as to applicable law arises from a latent debate as to whether the acquired law in Timor-Leste should be deemed to be that of Indonesia or that of the Portuguese administration that prevailed prior to Indonesian administration.

2.29 Apart from Regulation 2000/10, normative instruments directly or indirectly relevant to the procurement process that have been issued include, for example:

- (a) *Regulation 2001/13 on Budget and Financial Management.* This provides *inter alia*: that expenditures of public funds are subject to issuance of an expenditure authorization by the Treasury established by the Regulation (Section 6.2); procedures for preparation of the annual budget; preparation of the budget reconciliation report; annual independent audit of financial statements; responsibility of heads of agencies

for effective, efficient and ethical use of appropriated funds for the appropriate purpose.

- (b) *Regulation 2000/9 on the establishment of a Border Service.* Although a start has been made, comprehensive regulations governing customs have not been issued, resulting in a degree of commercial unpredictability as to when import duties would be applied. This is compounded by legal uncertainty and a harmful aura of administrative discretion in an activity vulnerable to abuse;
- (c) *Regulation 2001/30 on the Banking and Payments Authority of East Timor.* Through this regulation, the Banking and Payment Authority has established itself as the central bank for Timor-Leste.

2.30 Nevertheless, significant gaps remain in the general legal framework in the country, in particular regarding commercial activity. While some advances have been made (e.g., with respect to banking and financial sector legislation, and the tax regime), basic legislation is required in such fundamental fields as companies, investment, insurance, collateral and other forms of securing a creditor's rights, leasing, bankruptcy, arbitration and commercial contracts. In some cases, draft laws have been prepared but action necessary for enactment has stalled. The World Bank-financed Second Small Enterprise Project includes a component to assist Timor-Leste in developing a Business Regulatory Framework. Commercial activity and investment is also hampered by the current disarray affecting land ownership, disarray that was present even prior to the destruction of land records in 1999, as the rate of registration of land had traditionally been below 25 percent. Important steps being prepared but still remaining to be taken include establishment of special panels of the Dili District Court to resolve conflicting land claims.

2.31 It may be noted that the Government plans to engage in a review of international conventions in order to prioritize the process of accession to international agreements. Some of those have particular relevance to the procurement process, for example, the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) and the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

### **C. Code Of Conduct and Anti-Corruption Provisions**

2.32 Provisions on rules of conduct applicable to officials involved in public procurement are found in Regulation 2000/10 (Section 27 and 28) as well as in the draft *Public Procurement Manual* (Section 7 and 8). Those provisions deal with the offering and acceptance of gratuities and conflicts of interest on the part of officials representing the procuring entity in the procurement process.

2.33 Regulation 2001/13 on Budget and Financial Management provide standards governing the conduct of public officials involved with the management of public funds. Those provisions set forth: the responsibility of heads of agencies for effective, efficient and ethical use of appropriated funds for the appropriate purpose (Section 52.1); standards applicable to business judgments by public officials (Section 53.2); prohibition of the improper use of a public position (Section 53.3) and of improper use of information derived from possession of a public position; civil penalties for violation of such strictures (Section 53.5) and compensation for resulting damage (Section 53.6); criminal liability for violation of conduct rules in the Regulation (Section 54-56).

2.34 The instrument by which the Public Service Commission has been established (Regulation 2000/3) calls for the preparation of normative and regulatory instruments for the civil service of Timor-Leste, including a civil services statute, a code of ethics, and guidelines on recruitment and disciplinary action. Those instruments are currently still in draft form awaiting enactment.

#### **D. Judiciary**

2.35 Some of the foundations of a judicial system for Timor-Leste have been laid. Pursuant to UNTAET Regulation 1999/3, and 2000/11 (as amended by Regulations 2000/14 and 2001/18), District Courts, as well as an Appeals Court located in Dili, have been established and are functioning. The draft Constitution (Section 129) envisages the establishment of a High Administrative, Tax and Audit Court, but that step has not yet been taken.

2.36 The principal challenge to be overcome in establishing an effective administrative court and judiciary generally is the underdeveloped state of the legal profession in Timor-Leste. The key symptoms include a severe shortage not only of lawyers (less than two dozen Timorese lawyers available), but also of qualified national candidates for judicial postings. During the transition period and after independence, expatriates have staffed the judiciary and other key posts in the legal system to a great extent.

#### **ISSUES TO BE ADDRESSED**

2.37 Considerable additional work and resources will be required in order to achieve a legal framework that fully reflects the needs in the contemporary procurement environment and promotes fundamental objectives of economy and efficiency, competition, transparency, and accountability. However, features of the current legal and regulatory environment that reflect weakness, hinder the achievement of those objectives and are in particular need of remedial actions include (further comments are provided in Annex 2):

- (a) There are several provisions and approaches in the Regulation that diverge from the UNCITRAL Model Law and the World Bank's Procurement Guidelines. Therefore, in Bank-funded project implementation, those provisions have to be waived or modified. They include the following, which may also be markers for revision of the Regulation: (a) restriction to payment in US dollars; (b) greater emphasis on national sources in procurement; (c) exceptions to the use of open tendering; (d) publication of invitations to bid or to apply for prequalification in the *Official Gazette*, pursuant to Section 9.1, rather than in the national press (though that is in fact the practice that has been followed); (e) expression of non-price evaluation criteria (referred to in Section 14.3 (g)) in non-monetary terms; and (f) apparently compulsory extension of bid validity periods at the discretion of the procuring entity (Section 15.6).
- (b) The Regulation includes thresholds that, while doubtlessly motivated by the emergency situation prevailing in Timor-Leste at the time of issuance of Regulation 2000/10, have outlived their usefulness. Their continuation at the present high level would seriously detract from the objectives of competition and economy in public procurement. This is particularly true for a government that lacks sufficient qualified staff to deal with the potential problems that can arise from such high thresholds. Examples in case are: (a) requests for quotations (also known as shopping) with a

threshold of up to \$200,000 is considered as a high risk; (b) similarly, for small works, the threshold of \$350,000 is significantly higher than is normal for this type of procurement; (c) the threshold for International Competitive Bidding (ICB) currently set at \$1 million is also very high.

- (c) Regulation 2000/10 does not address the planning stage of the procurement process. The lack of proper planning has been a chronic problem resulting in loss of economy and efficiency in procurement, and should be affirmed by appropriate provisions in the Regulation. Such provisions would establish the obligation to allocate adequate resources to planning, properly plan procurement and communicate such plans in a timely fashion to concerned governmental entities.
- (d) Notable for its exclusion in Regulation 2000/10 is any reference to fraud and corruption and any sanctions that may be applied when such cases have been adjudicated.
- (e) Regulation 2000/10 envisages a highly centralized procurement system, with all procurement conducted by the Central Procurement Unit (CPU). Those provisions would have to be modified to accommodate decentralization of procurement activity, to the extent that it is introduced in line with the Constitutional objective of promoting decentralization in public administration.
- (f) Regulation 2000/10 includes a provision for the establishment of a Procurement Policy Committee to advise the Government on the overall policy on procurement of goods, works and services. The committee has, however, not formally been convened. The Regulations provide for it to have functions ranging from providing policy advice, interpretation of the existing regulations, monitoring procurement and arranging training for public officials. The Procurement Policy Committee needs to be formalized and staffed accordingly and its role clarified.
- (g) Part of the legal uncertainty sometimes encountered stems from non-availability of the texts of applicable laws and other legal texts.

## **RECOMMENDATIONS**

### **A. *Short-Term (within September 2003)***

2.38 For the short-term, the CPAR Team recommends further development of the legal framework on the basis of Regulation 2000/10, and ensuring general accessibility of legal texts governing public procurement. The development of the legal framework should include:

- Making the necessary adjustments in the terminology, content and form of the Regulation, and any supporting legal instruments, to reflect the transformation of the legal environment for public procurement in Timor-Leste from the transitional UNTAET context to the context and needs of a national procurement system in an independent country.
- Removing the estimated-monetary-value thresholds for different methods of procurement from the Regulation when it is enacted as a law. It would be preferable specifically to set such monetary thresholds in instructions or regulations implementing the legislative text, rather than in the legislative text itself.

- Revision of the Regulations as to certain aspects not in line with best practice (e.g., compulsory extension of the bid validity period upon the sole decision of the procuring entity).
- Further elaboration of the Regulation to cover the entire procurement process by the addition, for example, of provisions mandating proper procurement planning and contract administration, and devotion of adequate resources for those stages, and on rules for formulating technical specifications and descriptions of procurement requirements.

***B. Medium-Term (October 2003 to December 2004)***

2.39 For the medium term, the CPAR Team recommend actions to promote an effective regulatory environment for public procurement by:

- Establishing the High Administrative, Tax and Audit Court, called for by the Constitution (Section 145(3)), and developing the necessary expertise required for it to exercise its oversight regarding public procurement.
- Extending the effective application of the legal framework at the sub-district and village levels, and ensuring that the necessary manuals, other instructions and user-materials are made available at those levels.
- Ensuring that legislation forming the broader foundation for economy and efficiency, transparency, competition, and accountability is in place, including laws on contract and commercial activity, dispute settlement, ethics, and anti-corruption.

Procurement Organization and Resources

**SALIENT FEATURES**

2.40 Regulation 2000/10 (Section 33) provides for the establishment of a Transitional Procurement Unit (Central Procurement Unit - CPU) and that its operations to be prescribed in a UNTAET directive. While the directive in question has not been issued, the CPU was established and has generally been responsible for recurrent items funded by CFET (see para. 2.21). Prior to independence, the CPU had 12 international staff and 13 national officers. Following independence, a Procurement Division was established under the Office of Government Procurement Supply and Inventory Management (OGPSIM), and four international advisors currently support it. In addition to the Chief Procurement Officer, the total sanctioned positions in the Procurement Division include 19 national officers (Level 4 and above) and 16 assistants, of which 14 national officers and 3 assistants are now in place. All the national officers in the Procurement Division have been recruited in the past year and only the Chief Procurement Officer has previous procurement experience. The Government has identified the need to recruit additional national procurement officers to meet the country's requirements, but also recognizes that scarcity of individuals with the requisite skills to be one of the greatest challenges it faces in the near term. Therefore, any recruitment of such officers has to be complimented by training to develop their capacity (see para 2.78). Annex 3 provides the sanctioned organogram of the Procurement Division. The high number of sanctioned positions is based on a desire of the Government to recruit procurement staff centrally and, after proper training and development, deputing them to line ministries/agencies (see below).

2.41 Projects funded under TFET have been mostly implemented under a system of Project Management Units (PMUs) mandated by the ADB and World Bank. These projects are in “operational” ministries such as Public Works, Education, Agriculture, Health, etc. International advisors/specialists, national consultants and national civil servants specializing in procurement are included in these PMUs. They are functioning independently of the Procurement Division, except for contracts exceeding US\$100,000 that must be submitted to the Contracts Assessment Commission (CAC) for approval, through the Chief of the Procurement Division.

#### **ISSUES TO BE ADDRESSED**

2.42 The Procurement Division functions as a centralized body whose intentions are to undertake all procurement funded by both CFET and TFET. This type of centralized operation is a hallmark of the UN system where control is strictly subject to a hierarchical system but may not be as suitable for all operations of an independent government. Under the Interim Strategy Paper of Public Procurement dated February 26, 2002, a proposal was made for further centralization of all procurement functions. The proposal was to regroup all international procurement staff currently assisting PMUs into the Procurement Division to work with local staff under “one roof”. There is fear of creating “knowledge enclaves” if procurement staff are kept in the “operating ministries”. The principal justification given in support of a continued and expanded centralization of procurement under the Procurement Division is the need to develop the capacity of the Timorese staff through in-class and on-the-job training. There is a deemed need (a) to link inexperienced government procurement staff with experienced mentors, (b) exposing government procurement staff to a wider range of procurement methodologies and contracting formats, and (c) creating a strong link with the sector technical expertise. Another factor cited for justifying a centralized procurement structure is the realization of economies of scale in the procurement of goods, works and services.

2.43 The weaknesses of such a structure may not, however, have been carefully considered. Further, there has been a tendency to confuse the procurement of regular consumable supplies where some economies of scale are possible, with the procurement of specialized goods or civil works, which are best administered by the implementing ministries. Also, it is unlikely that much of the specialized procurement knowledge gained in one particular implementing ministry can be fungible in a centralized operation. It is important to stress that procurement is not an end unto itself, justifying a large-scale centralized bureaucracy. Rather it is important to set up a system whereby implementing ministries are accountable for their programs and thus their own procurement. An exception to this is only justifiable for those items, which can clearly be procured centrally, and for which there are economies of scale in purchasing operations. Items that lend themselves to this type of purchasing include office supplies and fast moving consumables such as fuel. Other goods, equipment and civil works are more appropriately procured by operating line ministries/agencies, as and when needed, to ensure smooth functioning of programs and projects. Project entities, i.e. “implementing ministries”, are more likely to have a greater incentive to be responsible for the implementation of their programs when they have full control over the procurement linked to the various projects. If this responsibility is split up, there will be a tendency to try to shift blame for delays on the centralized procurement unit. However, for such decentralized procurement, the Operating Ministries must have the

capability and resources to undertake capital procurement. Further, oversight agencies must also be capable of monitoring performance and ensuring financial compliance. In this way reform to a decentralized structure is sustainable and yet staff held accountable.

2.44 In view of the dearth of qualified procurement staff, the Procurement Division can play an important role in their recruitment and training. By recruiting those procurement staff through the Procurement Division, they would be managed organizationally by the Procurement Division, while functioning operationally within selected Ministries with large volume of procurement to ensure efficient, effective and consistent processing of procurement. The Procurement Division is also best placed to handle procurement of consumable items where there would be economies of scale, as well as procurement for ministries/agencies where the volume of procurement is such that development of procurement capacity would not be justified. Operating ministries with large volume of procurement (e.g., Transport and Communications, Public Works, Health, Education, Agriculture, and Defense) would be responsible for their own procurement, except for consumable items. These ministries will always have the need to carry out procurement that is of a non-recurring nature since such procurement involves technical requirements that cannot be met in a totally centralized system. They will carry out this function with assistance of procurement staff assigned by the Procurement Division. The proposal to fill the vacant positions of the Procurement Division is aimed at meeting this goal.

#### **RECOMMENDATIONS**

2.45 To meet the immediate needs of the country, the CPAR Team recommends that international advisors be retained in the Procurement Division to assist in carrying out its day-to-day role as well as to provide mentoring to the national staff in the Division. Their terms of reference should specifically include transfer of knowledge and their performance should be judged on the basis, *inter alia*, of their ability to meet this requirement.

2.46 The Government should take a decision on how far decentralization of procurement functions should take place, and the need for training and levels of technical assistance. The CPAR Team recommends that:

- (i) the Procurement Division be responsible for recruitment and training of all procurement staff;
- (ii) the Procurement Division's role be defined to cover all procurement of government supplies and materials that are of a recurring nature for which economies of scale are possible, i.e. office supplies and fuel;
- (iii) for ministries/agencies involved in program and project work (i.e. Ministries of Agriculture and Fisheries, Education, Culture and Youth, Health, Transport and Communications and Water and Public Works) the current structure of PMUs and responsibilities for procurement be retained until completion of ongoing projects;
- (iv) operating ministries with large volume of procurement (e.g., Transport and Communications, Public Works, Health, Education, Agriculture, and Defense) be responsible for their own procurement, except for recurrent and consumable items as mentioned in (ii) above;

- (v) for other operating ministries, where volume of procurement would not justify developing procurement capacity, the Procurement Division should continue to be responsible for all procurement; and
- (vi) current levels of technical assistance and international procurement support in the Procurement Division and PMUs be retained until the national staff are trained to take on full responsibility.

#### Procurement Procedures and Practices

#### **SALIENT FEATURES**

##### **A. *Roles and Responsibilities***

2.47 Under UNTAET, the Central Administrative Services (CAS) was established at the center of the Government to provide support to its other functions. The CPU was responsible to the Head of CAS and, as noted above (para 2.40), it has generally been responsible for recurrent items funded by CFET, while the PMUs have been responsible for procurement funded by TFET. However, the Head of CAS signed all contracts valued at US\$100,000 or more, irrespective of the source of financing. The CAS together with the CPU has recently been abolished and the procurement function now falls within the role of the Office of Government Procurement, Supply and Inventory Management (OGPSIM) and its Procurement Division. The Director OGPSIM now signs all such contracts.

##### **B. *Manuals***

2.48 A draft *Public Procurement Manual* was prepared following the issuance of Regulation 2000/10 with the intention of amplifying the provisions of the Regulation and providing CPU with more detailed guidelines on the interpretation and application of the Regulation. The *Manual* has not formally been issued, though it is being used in its present draft form. Issues dealt within the *Manual* include, for example: responsibilities and duties of CPU, including in respect of supply management and contract administration (Section 5); requisitions for procurement to be submitted by end-user agencies to the CPU; qualification assessment and vendor registration; solicitation and submission of bids; bid opening and evaluation. While the reservations indicated above (see para 2.37) regarding the Regulation 2000/10 are also present in the *Manual*, there are additional unacceptable practices that have been introduced (i.e. telephonic quotes) or inconsistencies (i.e. the threshold for advertising the award of single source procurement in the Official Gazette) that could lead to improper application of the policies. Therefore, there is an urgent need to review and revise the *Manual*. It is important to note this is a unique opportunity to introduce harmonized policies and procedures, consistent with the good international best practices and aligned with the policies and procedures of major development partners.

2.49 The Contract Administration Manual and a draft Property Disposal Manual complement the Procurement *Manual*. These documents, once reviewed and revised, would also be useful documents to guide the procurement staff in the discharge of their duties. However, without proper training in their use, the usefulness of these manuals will be severely limited.



***C. Bidding Documents***

2.50 In the Timor-Leste context, characterized by low to non-existent capacity in public procurement, the development and utilization of sound bidding documents and other forms for conducting the various stages of the procurement process assume added importance. Some sample contract forms and other bidding documents are included in the draft *Public Procurement Manual* and have been utilized. Those include, for example, sample forms for a requisition, request for quotations, request for proposals, invitation to bid, justification for single-source procurement, contract file index (which when promulgated may help to correct the problems in filing cited by external auditors as being a particular weakness in the Procurement Division). For procurement involving international competitive bidding with CFET funds, World Bank standard documents have been employed. When the Procurement Manual is reviewed and revised (see para 2.48), these forms should also be reviewed and additional forms included, e.g., prequalification forms and bid evaluation forms. Harmonization of bidding documents is again seen as an important issue. Documents should be harmonized through consultation between the Government and major development partners. This unique opportunity to standardize documents cannot be under-stated and should be fully exploited.

***D. Classification of Contractors***

2.51 Classification of contractors is currently undertaken by the Ministry of Public Works and a new system is being developed by the Procurement Division. Experience in various countries has shown that classification systems can be abused, leading to nepotism and other forms of corruption. The system is also difficult to establish and maintain. Therefore it is recommended that the classification system be discontinued. Instead, the Government should rely on post-qualification.

***E. Information Technology***

2.52 A positive step being taken is the introduction of information technology for financial management and expenditure control. This entails the use by involved governmental entities of a budgeting and expenditure control application. A Management Information System (MIS) with a procurement module for expenditure tracking system has been acquired and installed in the Procurement Division. The MIS modules have been financed from the World Bank's Economic Institutions Capacity Building Project (EICBP), with additional financing from Canada and Germany. This should facilitate a more reliable and efficient linkage between procurement and financial management functions. Moreover, such computerization and linking of operations will facilitate monitoring and oversight of public procurement. The Government plans to extend the MIS modules to all ministries. MIS and procurement modules can be very useful in monitoring the trends of the procurement regime. The effectiveness of the procurement regime can also be scrutinized internally by the relevant ministries and oversight agencies, and externally by the general public. This enhanced level of disclosure of procurement information dramatically increases transparency. Civil society can review procurement opportunities, results of evaluations and awards of contracts. Apart from the requisite information provided in the Official Gazette, this information should be promulgated on a web site. Therefore, the information can be easily and cheaply disseminated and updated by procurement staff, and retrieved and monitored by all civil society.

2.53 While current capacity, both infrastructure and personnel, is not conducive to *E-Procurement*, the Government has extensively used the Internet for advertisement of procurement opportunities – both for international competitive bidding as well as for inviting expressions of interest from consulting firms and individuals. Possibilities for introducing *E-Procurement* can be explored in the long term when the infrastructure and personnel are available.

***E. Asset Management***

2.54 Anecdotal evidence has surfaced of ineffectiveness and abuse in management of property acquired through the procurement process. For example, setting thresholds for supply management procedures at a uniform level may not capture supply management problems and persistent losses involving small-ticket items such as cellular phones. Addressing those problems, in particular by instituting integrated and modern supply and asset management systems, will help to reduce losses and promote oversight and monitoring over the full length of the procurement process.

***F. Oversight and Dispute Resolution***

***Review of contract award decision***

2.55 The principle organ for review of contract award decisions is the Transitional Contracts Committee (TCC), established under Section 36 of the *Public Procurement Manual*. The TCC was composed of staff members of the Central Fiscal Authority, the Office of Legal Affairs, Central Administrative Services (Property Unit and Supply Unit). On June 25, 2002, the Contracts Assessment Commission (CAC) replaced the TCC. The CAC is composed of three members (backed up by three alternate members), with two members representing the Ministry of Planning and Finance, and the third member representing the Ministry of Justice. One of the members nominated by the Ministry of Planning and Finance has to be from the Procurement Division. Referral to CAC prior to finalization of the award decision is obligatory in the case of contracts above US\$100,000. However, its authority and effectiveness is limited by lack of technical expertise and by the fact that it is functioning pursuant to a mandate in a legal text (the *Public Procurement Manual*) that has not been formally promulgated.

***Bid Protests***

2.56 Bid protest procedures represent another important aspect of the legal and regulatory framework that is still to be developed. Regulation 2000/10 provided a two-pronged approach to bid protests, with the initial application for review to be lodged with the procuring entity. A second level of hierarchical administrative review was to be available before the Transitional Policy Committee. The Committee, however, has not been established.

2.57 In practice, bid protests have not been a significant phenomenon to date. Inquiries by unsuccessful bidders have in many cases stemmed from a lack of experience on their part in understanding the public procurement process.

***Arbitration***

2.58 Alternative means of settlement of disputes are likewise undeveloped. While procurement contracts concluded during the UNTAET period have routinely included clauses

calling for settlement of disputes by arbitration under the UNCITRAL Arbitration Rules, the practice of and institutions for arbitration have yet to be established in Timor-Leste. In order for arbitration to be a viable alternative to judicial means of dispute settlement, steps to be taken include enactment of a legal framework for arbitration, based on the UNCITRAL Model Law on International Commercial Arbitration, and accession to the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

#### **ISSUES TO BE ADDRESSED**

2.59 There is a need to review and revise the *Procurement Manual* in a number of respects including:

- (a) harmonizing the range of procedures, standard forms and bidding documents included in the *Manual*, consistent with requirements of the Government and major development partners;
- (b) revision of the *Manual* to reflect recent organizational changes such as the disbandment of the CAS and CPU and their replacement with the respective OGPSIM and Procurement Division;
- (c) distinguishing clearly between the methods of procurement applicable to procurement of goods, works and non-consultants' services, and the procurement methods (request for proposals) applicable to the procurement of consultants' services;
- (d) greater cognizance of procedural requirements for international procurement, given the expected significant reliance of Timor-Leste on imports for the foreseeable future;
- (e) aligning the text more closely with the revised Regulation 2000/10 (e.g., removing certain provisions in the *Procurement Manual* that do not reflect best practices, such as submission of telephonic quotations in the context of the shopping method, and requiring that the qualification information of all bidders has to be assessed in all procurement proceedings rather than only in those preceded by a prequalification exercise);
- (f) classification system of contractors should be discontinued, as previous experience indicate there are no tangible benefits from such a system and leads to complaints and corruption. Instead the Government should rely on post-qualification;
- (g) providing additional details as to procedures to be followed at various stages of the procurement process, which presently are addressed in the *Procurement Manual* only by repeating the provisions in Regulation 2000/10 rather than fully elaborating them;
- (h) lifting prohibitions against advance payments and payments by letter of credits;
- (i) distinguishing more clearly between bid-protest procedures and procedures for settlement of disputes arising in contract implementation;
- (j) providing a waiver of the bid security requirement for low-value procurement (e.g., below US\$50,000), replacing it in those cases by the sanction of disbarment for a period of time; and
- (k) developing provisions for dealing with fraud and corruption.

2.60 The levels of delegation and the type of reviews to be carried out by the Procurement Division needs urgent revision as the current thresholds are too high for current inexperienced staff. A current proposal, which the CPAR Team supports, is to have the following levels:

- below US\$25,000 delegated to the responsible Junior Procurement Officer;
- between US\$25,000 and US\$50,000 to the Senior Procurement Officer;
- between US\$50,000 and US\$100,000 to the Senior Procurement Officer with review and signature of the Chief Procurement Officer;
- between US\$100,000 and US\$500,000 delegated to the Senior Procurement Officer to prepare, with prior review of the Chief Procurement Officer and CAC, and Chief Procurement Office to sign;
- above US\$500,000 delegated to the responsible Senior Procurement Officer to prepare, with prior review of the Chief Procurement Officer and CAC, and Minister for Planning and Finance to sign.

2.61 The contract administration and supply management procedures, including central asset registries, need to be elaborated and strengthened.

2.62 Currently there is no established system of post reviews by the Government. The Internal Audit only carries out audits on an ad hoc basis and does not have the staff capabilities to expand its coverage. A formalized system of ex-post audits to be carried out by independent auditors (private) needs to be put in place to ensure that procedures are in accordance with the Regulations.

2.63 The Procurement Policy Committee as envisaged under Regulation 2000/10 has never been formalized. Because of the acute shortage of skilled procurement persons, a full time Committee is not necessary in the short-term. In the medium to long term, such a Committee can play a useful role. Until the Committee is established, a Cabinet Sub-Committee, chaired by the Minister for Planning and Finance, would continue to take decisions regarding procurement policies.

2.64 Procurement planning has been shown to be non existent or chaotic at best. The lack of proper planning is a hindrance to the establishment of proper budgets and efficient and economical procurement. It is recommended that the Procurement Division work closely with the Government ministries to establish a system of procurement planning for both the recurrent consumables required on an annual basis as well as non-recurrent items. Implementing Ministries responsible for programs and projects also need to adopt a system of procurement plans as the basis for proper budgeting.

## **RECOMMENDATIONS**

### ***Short-Term (within September 2003)***

2.65 In order to establish an effective and efficient procurement system, in the short-term, the CPAR Team recommends the following:

- Consultants should be recruited to review and revise the Procurement Manual, the Contract Administration Manual, and the Property Disposal Manual. One important

outcome from this revision would be to develop a harmonized procurement system and documents that would be acceptable to the Government, World Bank, ADB, and other development partners.

- The level of delegation of procurement decisions should be reviewed and new thresholds established.

***Medium-Term (October 2003 to December 2004)***

2.66 For the medium-term, the CPAR Team recommends the following:

- Public officials, including civil servants, should be required periodically to declare their assets as a means for curbing abuses in public procurement.
- A system of procurement planning should be established and it should be integrated with the budgetary planning process.
- The MIS procurement module should be expanded to all the operating Ministries and the use of information technology in public procurement generally should be promoted.
- The Government should adopt a policy for disclosure of results of evaluation in order to bring more transparency to the procurement process.
- The Government should ensure that bid protest procedures offer a meaningful remedy to aggrieved bidders.
- The Procurement Policy Committee should be formally established as a policy and monitoring entity, reporting directly to the highest levels of government and assisting in the development of public procurement practices and capacity.

**Audit and Anti-Corruption Measures**

**SALIENT FEATURES**

***A. Audit and Oversight***

2.67 During the period of UNTAET administration, additional oversight of procurement was provided by the Internal Audit Office of the Treasury that has carried out audits of selected procurements. However, they have thus far assumed only a limited role regarding TFET-funded procurement. The audits so far carried out have revealed some issues requiring attention to ensure that required procedures are adhered to. But their purpose appears to have been demonstrational to be used as examples of how to improve procurement in general. Further, the system appears to be very *ad hoc* and without a specific mandate. Timor-Leste has plans to establish an independent Central Audit Department. This Department would have to rely on consultants until capacity is developed. When formed, the Department's role should be formalized to ensure that a minimum sample of procurement activities is regularly subjected to internal audit.

2.68 The Government has also commissioned external audits of procurement processed by CPU/Procurement Division. So far two audits have been conducted. These audits did not identify any fraud or corruption. Its main recommendations were to streamline the procurement control mechanisms and improving records management.

2.69 Under the ETPA, the Office of the Inspector General was set up. This office investigated alleged wrong doing, reviewed compliance with procedures and regulations, functioned as an outreach for anti-corruption activities and responded to specific requests from the Chief Minister or Transitional Administrator. The Office of the Inspector General represents an important potential source of independent oversight over public procurement activity. It provides a valuable service in ensuring integrity of procurement systems as well as providing a means to aggrieved parties to seek redress. However, under the Constitution there is no provision for this office to continue functioning. From the standpoint of promoting integrity and accountability in public procurement, this is an extremely useful function that provides a safety valve for possible abuse of the procurement system and should be formalized and placed on a strong legal footing.

**B. *Debarring of Contractors and Individuals***

2.70 Apart from the prudent audit and oversight measures, one of the most effective deterrents against corruption is to effectively and timely debar firms and individuals engaged in such activities. A process for debarring of corrupt firms and individuals, including process for review and appeal, should be established. This disciplinary action should be initiated by the procuring agencies and the information held in a central database within the Procurement Division. This information should then be made available to all Ministries and promulgated on the Government's procurement web site (refer to para 2.52).

**ISSUES TO BE ADDRESSED**

2.71 The Internal Audit Office is functioning on an *ad hoc* basis in reviewing procurement and is not adequately staffed. The Office should have a clear mandate and should be strengthened. As the Office is a part of the Ministry of Planning and Finance, it cannot be considered to be independent. There is a need to establish an independent Audit Department reporting directly to the Parliament. However, the Department of Planning and Finance should continue to maintain a capacity to undertake compliance inspections.

2.72 The Office of the Inspector General is functioning without any legal mandate. There is a need to establish the Office on a clear legal footing.

**RECOMMENDATIONS**

2.73 In the short-term (before September 2003), the CPAR Team recommends that:

- the Internal Audit Office be strengthened, with clear mandate to review public procurement;
- the current practice of conducting external ex-post review of procurement, as part of the due diligence, should continue to be carried out on annual basis through independent private auditors
- a database of debarred firms and individuals should be established and maintained by the Procurement Division with information available to all Ministries and general public.

2.74 In the medium term (October 2003 to December 2004) the CPAR Team recommends that:

- an independent Audit Department reporting directly to the Parliament should be established; and
- appropriate legislation should be enacted for the establishment and functioning of the Office of the Inspector General.

### Capacity Building and Training

#### **SALIENT FEATURES**

2.75 One of the greatest challenges confronting Timor-Leste is the scarcity of individuals with requisite skills for proper functioning of core government functions. Capacity of staff to conduct procurement in an efficient manner is almost non-existent.

2.76 In addition to the agencies responsible for conducting procurement, several agencies have oversight responsibility, e.g., the Contracts Assessment Commission, the Inspector General's Office, the Internal Audit Office, the Procurement Policy Council, and the administrative court (once the latter two organizations are set up). In addition, at least one NGO is showing keen interest on governance issues. The development of national capacity to staff and manage these functions is a high priority in the overall development of public procurement capacity. To be effective, and not to impede public procurement, these agencies will require staff knowledgeable about Timor-Leste regulations as well as internationally accepted best practices. As with the Procurement Division and line ministries, procurement expertise is currently limited in these agencies and there is a high reliance on international advisors.

#### **ISSUES TO BE ADDRESSED**

2.77 The capacity of Timorese staff to manage procurement, as well as carry out oversight responsibilities is extremely limited. There is an urgent need for capacity building. In designing new projects, consideration should be given to encourage the integration of Project Management in their respective Ministries. Among the several benefits, staff from the line Ministries will gain from significant on-the-job training and technology transfer.

#### **RECOMMENDATIONS**

2.78 A capacity building program for public procurement should be a priority for Timor-Leste. The program should concentrate on skill development. It should incorporate a long-term approach to developing core professional skills, and a short-term approach to developing procurement-specific skills within the Procurement Division and selected line ministries. Details of the recommended capacity building program are provided in Annex 6. Key elements should include:

- A training needs assessment should be undertaken for the Procurement Division and selected ministries.
- Procurement training short courses should be introduced in the Civil Service Training Centre, possibly as part of a more general course on project implementation that includes planning, project management, asset management, and disbursement operations. Development of course materials, training-of-trainers, and possibly initial delivery of courses will require external resources. ADB's procurement course material developed in Indonesia could possibly be adapted to Timor-Leste needs.

- Key government officers should be provided procurement-specific training at recognized international institutions and/or through study tours.
- Intensive training on purchasing of supplies and other specialized training should be arranged for the Procurement Division and targeted ministries, e.g., the ministries of public works (construction projects), health (pharmaceuticals), education, and possibly other line ministries.
- Training on information technology, contracts management and logistics should be organized for the Procurement Division and targeted Ministries.
- Separate procurement courses tailored (modularized) to meet specific needs of oversight agencies, and NGO watchdog groups should be arranged.
- The existing on-the-job mentoring of national officers by expatriate advisors should be continued with emphasis placed on training.
- In order to be able to process international procurement, English language training is recommended for all procurement staff.
- Core professional capabilities should be developed in engineering, finance and law through a scholarship program involving foreign universities and technical schools.
- Current systems, guides and standard documents should be reviewed to ensure they are appropriate for Timor-Leste's needs and capabilities.
- Civil service regulations should be assessed and amended to establish procurement as a recognized profession, with established opportunities for career progression and salary recognition. A certification/accreditation system, including sanctions and disciplinary provisions should be established.
- Future aid/donor projects will be encouraged to integrate Project Management Units in their respective Ministries.

#### Assessment of Domestic Suppliers, Contractors and Consultants

##### **SALIENT FEATURES**

2.79 There are virtually no Timorese contractors capable of any but the smallest works. Those capable of larger contracts (in excess of US\$50,000) are a mix of locally registered branches of international firms and cooperative agreements between national and international firms

2.80 The experience of contracts bidding under TFET and CFET financing indicates that domestic contractors are not knowledgeable in the basic aspects of preparing bids. Requested information is not provided, instructions are not followed, and pricing is unreasonable (both low and high). In addition to a general lack of understanding of bidding practices, domestic contractors face a number of constraints:

- much of their facilities and equipment was destroyed during the events of 1999.
- there are no engineers or management personnel available. All must be recruited from Indonesia, Philippines, or other countries.



- it is difficult for them to obtain credit, bid securities, performance securities and similar instruments. It is generally required that they deposit the full amount of a bid security as a condition for obtaining one.

2.81 There are currently three firms offering consulting services in Timor-Leste (a fourth has indicated its interest in doing so, but it is not known if they are conducting any business). All firms are foreign although they are locally registered and use nationals in their projects. These firms appear to be the only consultants capable of offering even basic engineering design and supervision services.

#### **ISSUES TO BE ADDRESSED**

2.82 It is clear that, for the foreseeable future, Timor-Leste will need to rely on foreign contractors and consultants (either directly, or in association with national firms) to implement all but the simplest projects. Capacity building should therefore be directed to very small domestic contractors, those with the capability of doing works valued at up to US\$25,000 (or less). For these firms, only very basic training is required, something that can probably be done by the Procurement Division, the procuring line agencies, or the Civil Service Training Centre. The type of instruction given in the World Bank and ADB's typical business opportunities seminars would be at too high a level and is not recommended at this stage. The best approach to developing these firms will be for them to take on gradually larger projects, and to be sub-contractors or sub-consultants to international firms.

#### **RECOMMENDATIONS**

2.83 In order to develop the capacity of national suppliers, contractors and consultants, the CPAR Team recommends that:

- The Procurement Division should organize very basic procurement training for national contractors, suppliers and consultants. The training should be simple, hands-on type with case studies. Language is an important consideration and the Procurement Division should determine whether to have the training in Bahasa Indonesia or Portuguese, depending on the target group.
- For future Government and donor funded projects, National Competitive Bidding procedures for contracts up to a value of US\$150,000 are recommended and national contractors will be encouraged to participate
- Until capacity is developed to take on large contracts, local contractors and consultants should be encouraged to work as sub-contractors or sub-consultants to international firms.

#### **LESSONS LEARNED IN POST-CONFLICT SITUATION**

2.84 Efficiency in procurement is to a large extent dependent on the capacity of procurement staff. This is true whether procurement is carried out in a normal environment or in a post-conflict situation. When reconstruction of Timor-Leste started, such capacity was non-existent, and UNTAET had to depend on international advisors. However, some of them did not have the requisite qualifications or experience, and specific efforts were not made to transfer skills to Timorese nationals

2.85 For efficient procurement, necessary rules, regulations and procedures, with clear roles and responsibilities, should be in place. UNTAET addressed this issue through issuing Regulation 2000/10, and by preparing draft Procurement and related Manuals. While these documents had some deficiencies, they served the immediate purpose of procurement being carried out in an uncertain environment

2.86 In order to meet the immediate and targeted needs of reconstruction, the World Bank and ADB financed separate projects, and PMUs were established to implement those projects. However, during the initial stage of implementation of these projects there was confusion about the roles and responsibilities of the PMUs and how they related to the overall administrative structure. Also there were complaints from the Government because of a lack of flexibility of the World Bank and ADB rules and procedures. In spite of these problems, the PMUs served a useful purpose of implementing high priority projects. An advantage of such PMUs is that they do not become a permanent burden on the economy.

2.87 Both the World Bank and ADB showed flexibility in the design and processing of projects. Such flexibility included very high threshold for procurement through Shopping. Considering the emergency nature of the procurement, high thresholds for Shopping are fully justified.

2.88 The main lessons learnt in Timor-Leste are:

- Procurement capacity assessment should be carried out as soon as possible to identify additional capacity requirements.
- The host government should be willing to recruit international advisors or specialists to complement its own capacity. However, care should be taken in the recruitment of qualified advisors and specialists, and their terms of reference should include the transfer of skills to the nationals.
- Clear procurement policies, rules, procedures, and manuals, including appropriate controls, should be established as soon as possible, so that staff handling procurement can follow those set rules. So long as proper control mechanisms are established, those rules can be relatively flexible.
- In an emergency situation, projects are better implemented through PMUs. But, project design should encourage their integration within the mainstream of the government.
- High thresholds for Shopping are justified for emergency projects, so long as adequate control mechanisms are put in place.
- For a country with low to non-existent capacity, more time and effort should have been spent on training of procurement staff, as well as local contractors, suppliers and consultants.
- In view of the emergency nature of projects in post-conflict situation, for the design of projects, the development partners should assign experienced procurement staff. Such experienced staff would be able to bring in international best practices appropriate for implementation of emergency projects and provide guidance to government officials regarding procurement and project implementation issues. This

expertise should be readily available at least during the initial period of project implementation.

#### Unacceptable National Competitive Bidding Procedures

2.89 While Regulations 2000/10 have some unacceptable provisions, a review of the national competitive bidding (NCB) procedures show that in practice Timor-Leste follows NCB procedures acceptable to the World Bank and ADB (see Annex 4). However, until Regulations 2000/10 is revised and enacted as a legislation, to make the provisions acceptable to the World Bank and ADB, an Annex to the Procurement Schedule of the Grant/Loan/Credit Agreement shall be included to clarify compliance with the World Bank's and ADB's Procurement Guidelines. The mandatory provisions to be included as an Annex to the Procurement Schedule, for World Bank financed projects, is in Annex 5.<sup>1</sup>

#### General Risk Assessment

2.90 The general assessment of the CPAR Team is that procurement risks are "high". This conclusion is based on the extremely weak institutional capacity, and a lack of clear time bound action program of technical assistance and training. Limited experience to date does not indicate significant corruption or nepotism. In order to mitigate the risk, the training program identified in Annex 6 should be implemented. Funds for such training are already available under existing grants provided by the World Bank and ADB.

2.91 Since risks under procurement carried out through the Shopping method are very high, in order to mitigate the risks, the upper limit for contracts awarded through Shopping should not exceed US\$15,000. For contracts between US\$15,000 and US\$150,000, national competitive bidding would be more appropriate. Above US\$150,000, procurement should be carried out through international competitive bidding. Further, the recommended prior review limits for procurement of goods and works shall be US\$100,000; selection of individual consultants shall be US\$50,000; and selection of consultant firms shall be US\$100,000.

2.92 As indicated above (para 2.81), the number of qualified national consultants is limited. Therefore, until the consultants' industry is more developed, the ceiling of US\$100,000 is recommended for short-lists comprising entirely of national consultants (firms registered or incorporated in Timor-Leste). For individual projects, lower ceilings may have to be established, taking into account the nature of the project, the capacity of national consultants, and the complexity of the assignments.

#### Recommended Supervision Plan

2.93 Considering the weak procurement capacity in Timor-Leste, supervision of procurement under World Bank-financed projects shall be carried out twice a year for each project. In addition, special purpose ex-post audits shall be carried at least once a year for each project.

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<sup>1</sup> At the time this Report was finalized, a new, substantially revised and expanded public procurement law was being prepared by Timor-Leste. Once the law has been enacted, the "National Competitive Bidding" language proposed in Annex 5 will have to be amended as necessary to reflect the provisions of the new law.

## **RECOMMENDED ACTION PLAN**

2.94 In order to implement the recommendations of the CPAR, the Action Plan, as shown in Annex 7, has been agreed with the Government.

2.95 Most of the required technical assistance for implementing the Action Plan can be financed from ongoing projects, in particular ADB-financed Capacity Building for Governance and Public Management, and IDA-financed Administrative Services capacity Building Project. The Procurement Division shall be responsible for the overall implementation of the Action Plan and provide progress reports to the Bank and ADB. The Government, ADB and the Bank would jointly review progress on an annual basis. If necessary, further technical assistance would be considered during these review missions.

2.96 The Action Plan shall be reviewed and monitored on an annual basis by the World Bank as a part of the Public Expenditure Review program, and processing of the annual Transition Support Programs.

### **3. ANNEXES**

Annex 1 - List of Ongoing and Closed IDA/ADB Administered Projects

**TIMOR-LESTE**

Grant Status As of 04-MAY-2003

**IDA Administered, Government Executed Grants**

Grant No.	Financier	Name	Principal	Disbursed
23534	MULT	TP-COMMUNITY EMPOWERMENT	7,000,000	7,000,000
23623	MULT	TP-DILI COMMUNITY EMPLOYMENT GENERATION	499,000	494,269
23631	MULT	TP-SMALL ENTERPRISES PROJECT PHASE I	4,850,000	4,774,022
23768	MULT	TP-HEALTH SECTOR REHAB. & DEV. PROJECT	12,700,000	10,927,457
23824	MULT	AGRICULTURE REHABILITATION PROJECT	6,800,000	6,800,000
23834	MULT	TP-EMERGENCY SCHOOL READINESS PROJECT	13,900,000	13,890,410
24374	NETH	TP-CIVIL SOCIETY CAPACITY BLDG.-DUTCH TF	895,000	403,492
26209	JPN	TP-COMMUNITY EMPOWERMENT	1,550,000	1,550,000
27415	WBTF	SUPPORTING THE TRANS. TO ADM. INDEPENDEN	221,000	139,655
27826	MULT	TP-ECONOMIC INSTITUTIONS FOR CAPACITY BL	600,000	500,000
28376	MULT	TP-SECOND COMMUNITY EMPOWERMENT PROJECT	8,500,000	5,299,124
29888	MULT	TP-2ND HEALTH SECTOR REHAB	12,600,000	3,458,495
50151	MULT	SECOND AGRICULTURE REHABILITATION PROJ.	8,000,000	4,797,133
50152	MULT	TP-FUNDAMENTAL SCHOOL QUALITY PROJECT	13,900,000	3,748,243
50153	MULT	TP-SMALL ENTERPRISES PROJECT II	7,500,000	1,500,000
50354	DFID	EAST TIMOR - PRSP (INTERIM)	79,500	26,048
50752	MULT	TRANSITION SUPPORT PROGRAM	980,000	980,000
50765	AUSL	TRANSITION SUPPORT PROGRAM	13,500,000	5,602,747
50766	DFID	TRANSITION SUPPORT PROGRAM	6,198,000	6,142,444
50777	NZL	TRANSITION SUPPORT PROGRAM	236,000	243,506
50894	MULT	TIMOR-LESTE PETROLEUM (EASEG)	240,000	159,375
51103	MULT	THIRD COMMUNITY EMPOWERMENT & LOCAL GOV.	1,500,000	1,014,103
51190	WBTF	STRENGTHENING PUBLIC EXPENDITURE MGMT.	350,220	35,000
51307	WBTF	STRENGTHENING CAPACITY FOR POV. ANALYSIS	230,000	50,000
51365	FINN	TRANSITION SUPPORT PROGRAM	370,500	371,110
51461	AID	TRANSITION SUPPORT PROGRAM	3,920,000	3,920,000
51725	NORW	TRANSITION SUPPORT PROGRAM	3,557,143	3,454,777
40825	AUSL	GOVERNANCE IN TRANSITION	69,845	63,477
50166	DFID	SUPPORT FOR EAST TIMOR PRSP	390,000	305,546
22607	PCF	ADMINISTRATIVE SERVICES CAPACITY BUILDING	249,500	100,000
<b>Total IDA</b>			<b>131,385,708</b>	<b>87,750,433</b>

**ABD Administered, Government Executed Grants**

Grant No.	Financier	Name	Principal	Disbursed
8181	MULT	TFET FUNDED ADB ROADS (EIRP) PROJECT	29,800,000	27,952,491
8185	MULT	TFET FUNDED ADB WATER & SANITATION PROJ.	4,500,000	4,500,000
8186	MULT	TFET FUNDED ADB MICROFINANCE PROJECT	7,720,000	3,234,555
8189	MULT	TFET FUNDED ADB WATER & SAN. II PROJECT	4,500,000	3,448,815
8190	MULT	TFET-FUNDED ADB HERA PORT REHAB. PROJECT	1,000,000	646,787
8198	MULT	TFET FUNDED ADB EIRP II PROJECT	9,000,000	600,000
3879	TA	CAPACITY BUILDING FOR PUBLIC SECTOR	690,000	90,177
<b>Total ADB</b>			<b>57,210,000</b>	<b>40,472,824</b>
<b>Total IDA and ADB</b>			<b>188,595,708</b>	<b>128,223,256</b>

Annex 2 - Review by LEGPR of Regulation No. 2000/10

General

1. This review was prepared on behalf of LEGPR, in the context of a review of the CPAR for Timor-Leste.
2. The review is briefer than many other reviews of this kind, for the following reasons:
  - a) The Regulation, issued by the UN Transitional Administrator in East Timor on March 6, 2000, is largely based (see para. 2.20 of the CPAR) on an initial draft prepared in 1999 by an experienced expatriate procurement lawyer, with Bank technical assistance, and is in many ways an abbreviated version of the UNCITRAL Model Law for the Procurement of Goods, Construction and Services (the UNCITRAL Model Law). Following independence, the Regulation was adopted by Timor-Leste “and still forms the basic regulatory framework for public procurement” (para. 2.19 of the CPAR) in the country.
  - b) The CPAR itself includes detailed comments on how the Regulation should be improved (see para. 2.37 on “Issues to be Addressed” and paras. 2.38 and 2.39 on “Recommendations”). The points made in those paragraphs of the CPAR will not be repeated or referred to in this review.

Some Specific Comments

3. This is a minor point, but the definitions appear as the penultimate section in Section 43, which is not helpful. They should be moved up to the beginning of the Regulation.
4. The draft follows the UNCITRAL approach of not clearly distinguishing between “Services”, on the one hand, and “consulting services” or “intellectual services”, on the other hand (though, for “intellectual services”), there is a not very clear provision in para. 5.6 – see para. 5 below), and “services” are then defined as “any object of procurement other than goods or works”. This is not clear, and the Bank should recommend changing this as follows:
  - a) add a definition of “consulting services” as follows:

“Consulting services means services of an intellectual or advisory nature, performed by individuals or firms having the required specialized professional expertise and experience”.
  - b) add a definition of “services” as follows:

“services” means activities that are tendered and contracted on the basis of performance of measurable physical output, such as drilling, mapping and similar operations, but excluding consulting services”.
5. Para. 5.6 states that the “procuring entity *may* (emphasis added) procure intellectual services, including consultancy services, by a request for proposals”. This would allow for the procuring entity to procure consulting services also by other procurement methods, such as “open tendering”, which, in the Bank’s view, is wrong. If the above proposals regarding the definition of consulting services are accepted, para. 5.6 could be amended to read as follows:

“5.6 The procuring entity *shall* conduct the procurement of consulting services by a request for proposals.”

6. On a related point, para. 5.10 indicates that for the procurement of intellectual services (i.e., consulting services), a procurement “method other than request for proposals” may be used by the procuring entity. As stated above, this should not be acceptable, except perhaps for single source procurement, for which a provision might be added in para. 5.5.

7. Section 7, dealing with which specific sections of the Regulation should apply to which specific procurement methods, is difficult to understand, and an effort should be made to simplify it.

8. Para. 18.4 permits the procuring entity, in the manner which the entity specified in the bidding documents, to apply in bid evaluation a margin of preference in favor of domestic bidders. This leaves it to the procuring entity to decide whether or not to apply a preference, and if does apply one, the extent and the manner of application of such a preference. Having a very flexible clause like this, about a very sensitive subject, would not seem to be in the public interest, particularly if and when the procurement function, as proposed by the CPAR (see para. 2.37(e)) is decentralized. Thus, it should be the Regulation itself (or any subsequent procurement law) which determines when and how any preference is to be applied.

9. It is true that the Regulation, in Sections 11 through 13, talks about qualification and prequalification of bidders, but there does not seem to be a clear statement to the effect that a bid submitted by a bidder not meeting the qualification requirements must be rejected (other than the statement in para. 13.3 to the effect that a prequalified bidder must be disqualified if he fails to demonstrate his qualification again, if so requested, at the postqualification stage). In a similar vein, there is a provision mandating the procuring entity to correct arithmetical errors, but no statement to the effect that the bid of a bidder refusing to accept such a correction must be rejected. For these reasons, it would seem advisable to include (before Section 20 about the “Successful bid”) a very clear and specific provision similar to the one of Art. 34(3) of the UNCITRAL Model Law, to the effect that a bid shall not be accepted if (i) the bidder is not qualified, (ii) the bidder does not accept an arithmetical correction, (iii) the bid is not responsive, or (iv) the bidder has engaged in corrupt activities.

10. If the above proposals about how to deal with consulting services are accepted, the title of Section 25 should be amended to read “Request for proposals for consulting services”.

11. Para. 25.2 states that the request for proposals for consulting services shall include, among other things, “the *final* [emphasis added] selection criteria to be applied”. It is not clear what the word “final” is supposed to mean here (since there should be only one set of selection criteria), and the Bank proposes that the word be deleted.

12. Section 25 includes two paragraphs 2, the one just mentioned, and then (after para. 25.4) another one, which states that “the procuring entity may engage in negotiations with bidders with respect to their proposals and may seek and permit revisions of such proposals.” So, first, the numbering of the paragraphs needs to be adjusted. And, second, this provision seems to have its basis in one feature (“competitive negotiations”) of the UNCITRAL Model Law that the Bank has always strongly objected to, since allowing for concurrent price negotiations with more than one bidder clearly facilitates corruption. Thus, this second para. 25.2 should be deleted, either



with no substitution, or to be replaced by something like para. 2.23 of the Bank's Consultants' Guidelines.

13. In para. 25.3, the word "final" (in "final selection procedures") should be dropped (see para. 11 above).

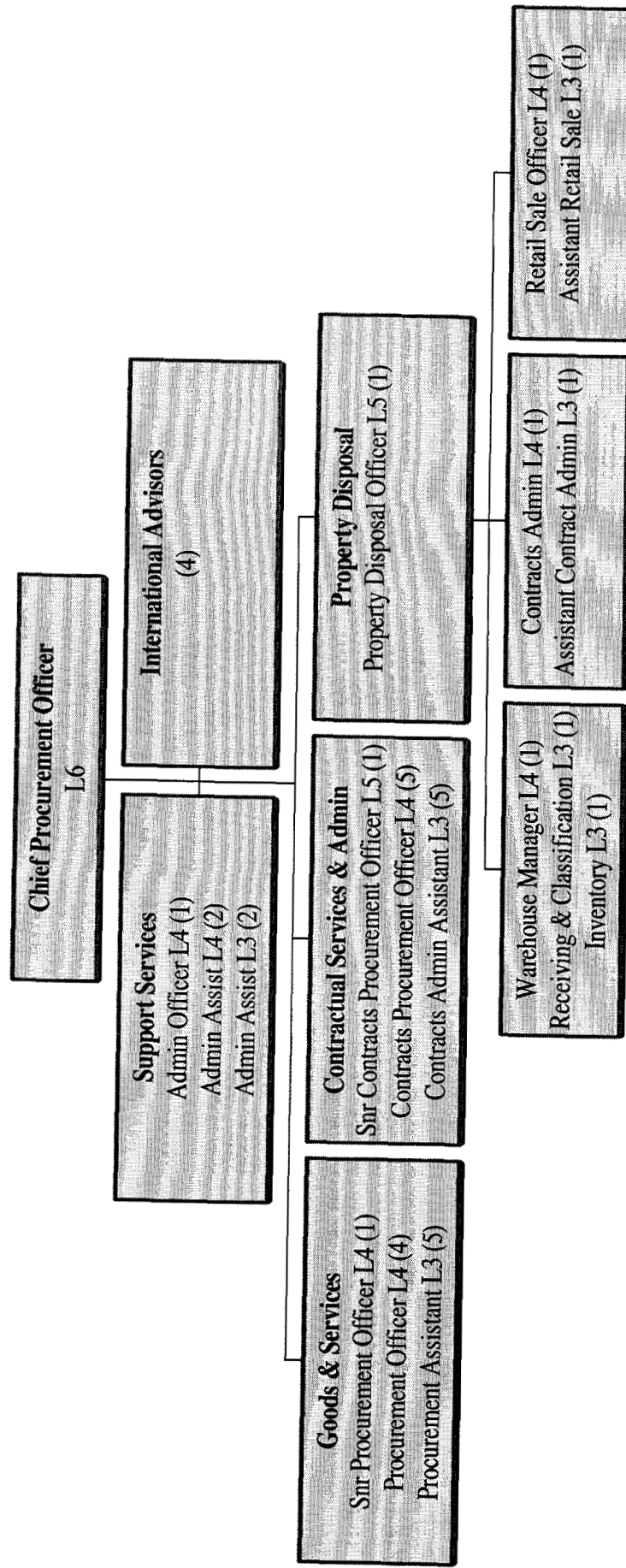
14. Para. 26. 2 states that the procuring entity "shall have regard to the use of standardized forms of contract and trade terms, where available, in formulating the terms and conditions of the procurement contract." This seems unclear and insufficient. Instead, the provision should clearly and unequivocally state that the use of standard bidding documents (including, of course, contractual terms) by procuring entities is mandatory. Such SBDs should then be prepared, concurrently with a revision of the Regulation (or any subsequent procurement law).

15. Para. 29.3, presumably designed to reflect the provision of para. 1.8(b) of the Bank's Procurement Guidelines, states that the procuring entity "shall not award a contract to a bidder associated as parent company or branch with a consultant who is responsible for preparing documents associated with the procurement process or for supervising the execution of a procurement contract". While the intention is good, the terminology ("associated" = unclear; "parent company" = insufficient, because subsidiaries should be governed by the same rule; and "branch" = unclear) is not satisfactory. The provision should be redrafted along the lines of the first sentence of para. 1.8(b) of the Bank's Procurement Guidelines.

16. In para. 37(2)(b), the word "final" (in "final selection criteria") should be dropped (see para. 11 above).

17. Section 42 provides that certain decisions of the "Policy Committee" (which among other things hears appeals against decisions of the procuring entity) may be "challenged in a court of competent jurisdiction". It would seem preferable to drop this clause: if the law of the land provides that administrative decisions of this kind may be challenged in court, then that is fine; if it does not, it seems to make little sense to provide for such a challenge in such a vague manner.

Annex 3 - Procurement Division Organogram



- The Senior Procurement Officer position is proposed to be re-classified as L5.

- The Assistants positions have to be filled in order to be placed out in the other Ministries for centralization of procurement.

Annex 4 - Checklist - National Competitive Bidding & World Bank/ADB Guidelines

#	ISSUE	Yes	No	Comments
1.	Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?		X	Not allowed by WB/ADB, except for eligibility restriction related to membership.
2.	Are there primary boycotts, which are established by law?		X	Only primary boycotts are acceptable by WB. Boycotts are not acceptable to ADB.
3.	Are bidding opportunities advertised in the local press?	X		Required by WB/ADB
4.	Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)?	X		Required by WB/ADB
5.	Are contractors/suppliers pre-qualified for large/specialized contracts?	X		Required by WB/ADB
6.	Are minimum experience, technical and financial requirements (for pre -or post-qualification) explicitly stated in the documents?	X		Required by WB/ADB
7.	Is an invitation to pre-qualify advertised for procurement involving large or complex potential contracts?	X		Required by WB/ADB
8.	Are joint ventures with local firms required for foreign firms' eligibility?		X	Not allowed by WB/ADB
9.	Are joint venture partners jointly and severally liable?	X		Required by WB/ADB
10.	Are there set limitations to the number of firms who can bid for a contract?		X	Not allowed by WB/ADB
11.	Are parastatals allowed to bid?	N/A		There are now no such parastatals that are capable to bid for goods and works.
12.	Are bidders required to register with a local or federal authority as a prior condition for bidding?		X	Should be discouraged. Acceptable only if registration criteria, process and cost reasonable/efficient and qualified foreign firms not precluded from competing

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13.	Are extensions to bid validity allowed?	X		Frequent extensions take place. Acceptable to WB/ADB only if justified by exceptional circumstances
14.	Are there restrictions on the means of delivery of bids?		X	Not allowed by WB/ADB, except when bidders have to submit physical samples. Then they can be required to deliver bids by mail, by courier, by hand, etc.
15.	Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.?		X	Not allowed by WB/ADB.
16.	Are there restrictions on sources of labor and material?		X	Not allowed by WB/ADB, except for unskilled labor, if available locally. WB/ADB policies require that all materials must be supplied from member countries and all consultants must be nationals of member countries.
17.	Is public bid opening required? Does it occur immediately or closely following the bid submission deadline?	X		Required by WB/ADB.
18.	Is a "two envelope" bid opening procedure permitted for procurement of goods or works?	X		This is not allowed by WB but permitted by ADB. For WB funded projects, "two envelope" bidding is not followed.
19.	Is automatic re-bidding required if too few bids are received?		X	Acceptable to WB, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result. Acceptable to ADB where there was a lack of competition.
20.	Is "bracketing" used in bid evaluations? Rejection of bids outside a range or "bracket" of bid values.		X	Not allowed by WB/ADB
21.	Is award made to lowest evaluated qualified and responsive bidder?	X		Required by WB/ADB
22.	Are price negotiations conducted with "winning" bidders prior to contract signature?		X	Although not standard practice, negotiations with contractors do occur before contracts are signed as experience with national contractors and suppliers has indicate a broad lack of understanding of the bidding and contract award process, however generally these negotiation do not

				lead to revised prices
23.	Are price adjustment provisions generally used?		X	Not required, but recommended for works contracts of 1 year or more in duration when domestic inflation rate is high. Duration of most of the contracts is less than one year.
24.	Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract intended?	X		WB/ADB standard documents are used
25.	Are contract scope/conditions modified during implementation?	X		Not that frequent. Acceptable, but advance approval by WB/ADB of changes subject to prior review needed if required under the Loan/Grant Agreement.

## Annex 5 – National Competitive Bidding - Mandatory Provisions

1. Goods and works for which this Schedule allows procurement under paragraphs 3.3 and 3.4 of the Guidelines shall be procured in accordance with the provisions of Regulation 2000/10 on Public Procurement for Civil Administration in East Timor, as adopted by the Democratic Republic of Timor-Leste (the Procurement Regulation). These provisions, in order to ensure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of the Guidelines (as required by paragraph 3.3 of the Guidelines), shall be modified as set forth in the following paragraphs.

### Participation in Bidding

2. Government-owned enterprises in Timor-Leste shall be eligible for bidding only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Borrower/Recipient.
3. Foreign bidders shall be eligible to participate in bidding under the same conditions as local bidders. In particular, no domestic preference over foreign bidders shall be granted to local bidders in bid evaluation.

### Advertising; time for bid preparation

4. Invitations to bid shall be advertised in at least one newspaper of national circulation, allowing a minimum of 30 days for the preparation and submission of bids, such 30 days to begin with the availability of the bidding documents or the advertisement, whichever is later.

### Standard bidding documents

5. Until national standard bidding documents approved by the Bank/IDA are available, the Bank/IDA's standard bidding documents shall be used.

### Classification of suppliers or contractors; post-qualification

6. Bidding shall not be restricted to any particular class of suppliers or contractors, and non-classified suppliers or contractors shall also be eligible to bid. Before contract award, the bidder having submitted the lowest evaluated responsive bid shall be subject to post-qualification.

### Evaluation criteria

7. Evaluation criteria shall be clearly specified in bidding documents, and evaluation criteria other than price shall be quantified in monetary terms. Only evaluation criteria so specified shall be used in bid evaluation. Merit points shall not be used in bid evaluation.

### Extension of the validity of bids

8. In exceptional circumstances, the procuring entity may, before the expiration of bid validity, request all bidders in writing to extend the validity of their bids. In such a case, bidders shall not be requested nor permitted to amend the price or any other condition of their bid. Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security, but bidders granting such an extension shall be required to provide a corresponding extension of their bid security.

### No post-bidding negotiations

9. There shall be no post-bidding negotiations between the procuring entity and the lowest or any other bidder.

Inspection and Auditing

10. Each contract financed from the proceeds of a Loan/Credit/Grant shall provide that the suppliers and contractors shall permit the Bank/IDA, at its request, to inspect their accounts and records relating to the performance of the contract and to have said accounts and records audited by auditors appointed by the Bank/IDA.

## Annex 6 - Capacity Building And Training Needs Analysis

### **BACKGROUND**

1. One of the greatest challenges confronting East Timor is the scarcity of individuals with requisite skills for proper functioning of core government functions. The international recruitment of expatriates by the UNTAET has had successes but it is a temporary and incomplete stopgap for this skill shortage. Even in the near-term, the scarcity of needed skills in East Timor will constrain the effective operation of key government functions. The scarcity of appropriate national human resources is such that a primary criterion in the most recent round of selection for procurement staff has been proficiency in the English language in recognition that candidates with public procurement experience or qualification do not exist.

### **CURRENT CAPACITY**

2. In addition to the Chief Procurement Officer, the total sanctioned position in the Procurement Division includes 19 national officers, 16 assistants and 4 international advisors. The organizational chart in Annex 3 shows staffing levels and reporting functions in the Procurement Division.

3. The capacity in the Procurement Division to conduct the full range of services necessary for a well functioning procurement unit is weak and with the exception of the Chief Procurement Officer, none of the national staff, who were recruited in the past year, have had appropriate public procurement experience. Educational background and prior work experience of the national procurement staff varies. About half of the staff completed the public administration program in East Timor at the Civil Service Training Centre. None of the national officers has studied engineering, while one has a degree in financial administration. Three reported having studied and worked in Indonesia at the diploma level in fields not directly related to procurement or finance.

4. Where procurement expertise exists it is located in line ministries, notably Education, Health, Agriculture and Public Works. International procurement advisors have been recruited to PMU's, in the ministries to facilitate procurement under TFET. Their terms of reference are primarily focused on managing and implementing TFET funded procurement in the specific ministry to which they are assigned and counterpart training is a lower order priority. However, in some cases counterpart national officers have been assigned to work with, and be mentored by, the international advisors. Notably the Ministry of Public Works has three national officers being trained in procuring civil works, with an additional four national staff handling simple contracts at the local level. Education (twenty appointments) and Health (five appointments) are recruiting architects and engineers to supervise regional construction of small works. These national staff members are developing a skill base in limited aspects of public procurement.

5. In addition to international procurement advisors, Crown Agents are involved for the procurement of pharmaceuticals in the Ministry of Health.



## **PUBLIC PROCUREMENT CAPACITY REQUIREMENTS**

6. While East Timor is a small country, substantial public procurement, in comparison to its size, will be needed in the medium term to rebuild infrastructure, government, and administrative systems destroyed in 1999. Upon the completion of the TFET projects and the initial reconstruction activities, public sector procurement can be expected to reach a steady-state level below that of the 2000-2004 period. Applying the macro indicator that governments procure at a level of about 10% of GNP, the public sector procurement budget is estimated at \$40-50 million in 3 to 5 years (GNP for 2001 is estimated at \$380 million).

7. A breakdown of expected procurement volume by sector and type is provided in the following table. Procurement under bilateral capital projects is not included as the goods and services for these projects are normally procured by the donor agency. The figures are based on a combination of sector plans and information gathered through discussions with PMU staff and government officials. It is estimated these figures account for more than 90% of expected government procurement, excluding TFET-financed procurement, in the next 3-5 years.

<i>Ministry</i>	<i>Sector</i>	<i>Main Type</i>	<i>Volume (\$m/yr)</i>
<i>All</i>	All	Routine supplies & Services	25-30
<i>Water &amp; Public Works</i>	Roads	Works (maintenance)	3-5
	Water	Works and goods	<1
<i>Agriculture</i>	Irrigation	Services (consulting)	<1
<i>Health</i>	Health	Goods (pharmaceuticals)	2-3
<i>Education</i>	Education	Goods (text books)	2-3
<i>Economic Development</i>	Energy	Commodities (fuel)	6-8

These figures indicate that government-conducted procurement in East Timor will be comprised of modest purchasing of routine supplies, a small amount of civil works contracting (mainly road maintenance, but also some rehabilitation of small buildings) and small-specialized procurement of pharmaceuticals and educational materials. This will require the development of skills and provision of supporting tools in the Procurement Division and selected line ministries.

8. Uncertainty over funding, both as to the amount and the sectors to which it will be directed, makes forecasting of institutional needs difficult. In the near term East Timor will have to continue its reliance on foreign advisors, consultants and procurement agents. Building capacity to meet the needs for the next 3-5 year period should concentrate on developing a core of national procurement professionals with expertise in (i) general purchasing of routine supplies and services, (ii) small civil works, especially road maintenance contracts, and (iii) specialized goods for health and education. As the institutional needs become clearer, decisions can be taken to expand the number of procurement specialists. Development of supporting tools (manuals, IT systems and standard documents) also needs to be assessed to insure that they fit the anticipated volume and nature of procurement work.

## **OVERSIGHT CAPACITY REQUIREMENTS**

9. In addition to the agencies responsible for conducting procurement, there are others with oversight responsibility. The development of national capacity to staff and manage these functions is a high priority in the overall development of public procurement capacity.

- The *Contracts Assessment Commission (CAC)* consists of three members (with three alternate members) representing the Ministry of Planning and Finance and the Ministry of Justice. It reviews and clears all contracts in excess of \$100,000.
- The *Inspector General's Office* has the general mandate to monitor the operations of all government agencies (including their procurement operations), investigate allegations of wrongdoing, and recommend improvements. It also provides a public awareness function, to inform the public about fraud and corruption issues.
- The establishment and operation of a *Procurement Policy Committee* is specified in Regulation 2000/10 to set overall policy directions and receive complaints. If this office is activated (as is recommended) it will require capacity building in public procurement, both in monitoring and review, as well as the development and framing of laws and regulations.
- The *internal audit office* of the Treasury is responsible for auditing contracts, and therefore reviews audits for compliance with procurement regulations.
- An *administrative court* is referred to in the Constitution. When this is set up, it will almost certainly hear procurement-related cases.
- At least one *NGO* (policy advocacy group) is interested in monitoring the government's procurement actions.

10. To be effective, and not to impede public procurement, these agencies will require staff knowledgeable about East Timor regulations as well as internationally accepted best practices. As with the Procurement Division and line ministries, procurement expertise is currently limited in these agencies and there is a high reliance on international advisors.

## **ASSESSMENT OF DOMESTIC SUPPLIERS, CONTRACTORS, AND CONSULTANTS**

11. There are, at present, virtually no East Timorese contractors capable of any but the smallest works. Those capable of larger contracts (in excess of \$50,000) are a mix of locally registered branches of international firms and entities based on cooperative agreements between national and international firms. The Ministry of Public Works has classified a number of contractors, which is also followed by the Procurement Division (see Table below). Most, if not all, of the Class contractors are affiliated with international firms.

<i>Classification</i>	<i>Size</i>
<i>Class A</i>	>US\$500,000
<i>Class B1</i>	>US\$250,000 - <US\$500,000
<i>Class B2</i>	>US\$150,000 - <US\$250,000
<i>Class C1</i>	>US\$75,000 - <US\$150,000
<i>Class C2</i>	>US\$25,000 - <US\$75,000
<i>Class C3</i>	<US\$25,000

12. The experience of bidding for civil works under TFET and CFET financing indicates that domestic contractors are not knowledgeable in the basic aspects of preparing bids. Requested information is not provided, instructions are not followed, and pricing is unreasonable (both low and high). In addition to a general lack of understanding of bidding practices, domestic contractors face a number of constraints:

- Much of their facilities and equipment was destroyed during the events of 1999.
- There are no engineers or management personnel available. All must be recruited from Indonesia, Philippines, or other countries.
- It is difficult for them to obtain credit, bid securities, performance securities and similar instruments. It is generally required that they deposit the full amount of a bid security as a condition for obtaining one.

13. The East Timor National Business Association has been formed, although the extent of its membership, and its purpose is not clear. It proposes to classify contractors and businesses according to size and sector of work (such as trading company, small business, construction, agriculture) following a system similar to that practiced in Indonesia through KADIN (Kamar Dagang Dan Industry) or chamber of commerce and industry.

14. There are currently four firms offering consulting services in East Timor. All firms are foreign although they are locally registered and use nationals in their projects. These firms appear to be the only consultants capable of offering even basic engineering design and supervision services.

15. It is clear that, for the foreseeable future, East Timor will need to rely on foreign contractors and consultants (either directly, or in association with national firms) to implement all but the simplest projects. Capacity building should therefore be directed to very small domestic contractors, those with the capability of doing works valued at up to US\$25,000. For these firms, only very basic training is required, something that can probably be done by the Procurement Division, the procuring line agencies, or the Civil Service Training Centre. The type of instruction given in the World Bank and ADB's typical business opportunities seminars would be at too high a level and is not recommended. The best

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<sup>1</sup> In addition to these three, there are four more joint venture firms.

approach to developing these firms will be for them to take on gradually larger projects and, for the time being, to concentrate on being sub-contractors or sub-consultants to international firms.

#### **DONOR INVOLVEMENT IN TRAINING**

16. Donor activities related to building procurement capacity until now have been limited to informal on-the-job training provided by international consultants and advisors, both in the PMU's and the CPU/Procurement Division. As noted above, the impact has been limited by the immediate need of the advisors to concentrate on getting projects implemented, rather than training counterparts.

17. ADB is providing ongoing technical assistance (Capacity Building for Governance and Public Sector Management), which includes possible assistance to strengthen procurement capability. The World Bank has provided a grant of US\$249,500 for the Administrative Services Capacity Building Project. An important component of the Project is specifically for procurement training.

18. CIDA is funding a capacity building program with the office of the Inspector General, related to oversight of public procurement. It is being administered by UNDP. Training is a large component of the work, which also includes production of a training guide. Other outputs of the assistance are a code of conduct, development of a resource center, production of a brochure on fraud and corruption, and an outreach program with NGO watchdog groups.

19. UNDP is implementing a range of capacity building initiatives, including strengthening of civil society and building legal capacity. One initiative related to procurement capacity building is the program with the Civil Service Training Centre. It will assess the needs for training of civil servants, and undertake a training-of-trainer program to train more than 200 trainers in the areas of governance and public administration.

#### **THE NATURE AND DELIVERY OF REQUIRED TRAINING**

20. The skill shortage is broad and acute. As noted above, there is a general lack of prior procurement experience within the Procurement Division and line ministries, and few national officers in government have engineering or business training. English is the primary language for conducting procurement, especially international procurement, yet it is not widely spoken. The situation is the same in the line ministries. The national engineers within the department of roads have minimal procurement experience. Training will need to address both the requirement to develop general professional capabilities in engineering, finance, and law, while meeting short-term needs for procurement skills. English language training is also required for anyone working in the procurement field.

21. Training facilities in East Timor are limited. The university has a faculty of engineering (merged with the former polytechnic school) but does not offer a degree program in engineering. In the past, East Timor engineers were mainly trained in Indonesia but that arrangement has been disrupted and in any event would prove financially difficult in the future, as foreign students and subject to much higher tuition. In the near term, Timor-Leste will need to rely on foreign training to develop the professions.

22. The Civil Service Training Centre is responsible for training civil servants. It relies on line ministries to provide most of the trainers. It does not provide courses in procurement and therefore is without course materials and qualified trainers. This institution would be the logical choice to provide short courses on procurement, but course materials would need to be developed, and trainers brought in

from outside East Timor, at least initially. As part of the development of an overall training program on project management and implementation (including planning, asset management, and disbursement operations), it may provide courses on the English language and on procurement.

## **RECOMMENDATIONS**

23. A capacity building program for public procurement should be a priority for East Timor. The program should concentrate on skill development. It should incorporate a long-term approach to developing core professional skills, and a short-term approach to developing procurement-specific skills within the Procurement Division and selected line ministries. Key elements of the recommended capacity building program should include:

- Procurement training short courses should be introduced in the Civil Service Training Centre, possibly as part of a more general course on project implementation that includes planning, project management, asset management, and disbursement operations. Development of course materials, training-of-trainers, and possibly initial delivery of courses will require external resources. ADB's procurement course material developed in Indonesia could possibly be adapted to Timor-Leste's needs.
- Key government officers should be provided procurement-specific training at recognized international institutions and/or through study tours.
- Intensive training on purchasing of supplies and other specialized training should be arranged for the Procurement Division and targeted ministries, e.g., the ministries of public works (construction projects), health (pharmaceuticals), education, and possibly other line ministries.
- Training on information technology, contracts management and logistics should be organized for the Procurement Division and targeted Ministries.
- Separate procurement courses tailored (modularized) to meet specific needs of oversight agencies, and NGO watchdog groups should be arranged.
- The existing on-the-job mentoring of national officers by expatriate advisors should be continued with emphasis placed on training.
- English language training is required for all procurement staff.
- Core professional capabilities should be developed in engineering, finance and law through a scholarship program involving foreign universities and technical schools.
- Current systems, guides and standard documents should be reviewed to insure they are appropriate for Timor-Leste's needs and capabilities.
- Civil service regulations should be assessed and amended to establish procurement as a recognized profession, with established opportunities for career progression and salary recognition. A certification/accreditation system, including sanctions and disciplinary provisions, should be established.

**RECOMMENDED ACTION PLAN**

<i>Assistance</i>	<i>Implementing Agency</i>	<i>Target Agencies</i>	<i>Budget</i>	<i>Timing</i>
<i>International short courses/study tours for key staff</i>	Ministry of Internal Administration	Procurement Division, Public Works, Health <sup>1</sup>	\$100,000	2003-04
<i>Scholarship Program</i>	Ministry of Internal Administration	All <sup>2</sup>	\$400,000	2003-08
<i>Presentation of short courses in procurement</i>	Civil Service Training Centre	Procurement Division, Public Works, Education, Health, Auditor, Inspector General, TCC members, Administrative court <sup>3</sup>	\$250,000	2003-05
<i>Development of training capacity</i>	Civil Service Training Centre	Civil Service Training Centre <sup>4</sup>	\$100,000	2002-04
<i>Review of civil service regulations</i>	Ministry of Internal Administration	Ministry of Internal Administration and possibly selected line ministries	\$50,000	2002-04
<i>Review and revision of procurement manual and other procedures/systems</i>	Ministry of Planning and Finance	Procurement Division, Auditor, Inspector General, Contracts Committee	\$80,000	2003

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<sup>1</sup> 6-10 individuals over 2 years.

<sup>2</sup> 20 individuals over 5 years.

<sup>3</sup> Possibly adapting ADB training program from Indonesia.

<sup>4</sup> WB Administrative Services Capacity Building Project possibly combined with UNDP program.

Annex 7 – Recommended Action Plan

No.	Actions	Completion Date	Priority	Financing Source	Estimated Cost
<b>A LEGAL AND REGULATORY FRAMEWORK</b>					
A-1	The legal framework for procurement, which is based on UNCITRAL Model Law, should be further developed taking into consideration international best practices.	September 2003	High	Administrative Services Capacity Building Project – IDA	US\$60,000
A-2	Promote an effective regulatory environment for public procurement by: <ul style="list-style-type: none"> <li>• Establish the High Administrative, Tax and Audit Court, and develop necessary expertise required for it to exercise its oversight regarding public procurement.</li> <li>• Extend effective application of legal framework at sub-district and village levels, and ensuring that necessary manuals, other instructions and user-materials are made available at those levels.</li> <li>• Ensure that legislations forming broader foundation for economy and efficiency, transparency, competition, and accountability are in place, including laws on contract and commercial activity, dispute settlement, ethics, and anti-corruption.</li> </ul>	December 2004	Medium	Unidentified	US\$800,000
<b>B PROCUREMENT ORGANIZATIONS AND RESOURCES</b>					
B-1	To address the issue of low procurement capacity, international advisors to be retained in Procurement Division to assist in carrying out its day-to-day role as well as to provide mentoring to national staff in the Division.	Ongoing	High	UNMISSET	US\$250,000

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B-2	Decision on the future role in procurement of the Procurement Division and the different ministries/agencies.	September 2003	High	N/A	
<b>C</b>	<b>PROCUREMENT PROCEDURES AND PRACTICES</b>				
C-1	Consultants to be recruited to review and revise Procurement Manual, Contracts Administration Manual, and Property Disposal Manual, and, develop a harmonized procurement system and documents that would be acceptable to the Government, World Bank, ADB, and other development partners.	September 2003	High	Administrative Services Capacity Building Project - IDA	US\$80,000
C-2	Level of delegation of procurement decisions to be reviewed and new thresholds established.	July 2003	High	N/A	
C-3	Procurement Policy Committee to be established	June 2004	Medium	N/A	
C-4	A system of procurement planning to be established and integrated with the budgetary planning process.	December 2003	Medium	N/A	
C-5	MIS procurement module to be expanded to all the operating Ministries and the use of information technology in public procurement generally to be promoted.	December 2004	Medium	Unidentified	US\$300,000
C-6	Government to ensure that bid protest procedures offer a meaningful remedy to aggrieved bidders.	December 2003	High	N/A	
<b>D</b>	<b>AUDIT AND ANTI-CORRUPTION</b>				
D-1	Internal Audit Office to be strengthened, with clear mandate to review public procurement.	September 2003	High	N/A	
D-2	Current practice of conducting external ex-post review of procurement to continue to be carried out on annual basis through independent private auditors.	Ongoing	High	Government resources	US\$80,000 annually
D-3	Independent Audit Department reporting directly to the Parliament to be established.	June 2004	Medium	Unidentified	US\$60,000
D-4	Appropriate legislation to be enacted for the establishment and functioning of the Office of the Inspector General.	December 2003	Medium	N/A	



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D-5	Public officials, including civil servants, required to periodically declare their assets to curb abuses in public procurement.	June 2004	Medium	N/A	
D-6	Process for identifying and debarring firms and individuals involved in fraudulent and corrupt practices be established and a database of debarred firms and individuals maintained by Procurement Division,	September 2003	High	N/A	
<b>E CAPACITY BUILDING AND TRAINING</b>					
E-1	Procurement training provided for staff in the Procurement Division, selected Ministries and oversight agencies.	Ongoing to continue thru December 2004	High	Capacity Building for Governance and Public Management – ADB Administrative Services Capacity Building Project - IDA	US\$150,000  US\$100,000
E-2	Civil service regulations to be assessed and amended to establish procurement as a recognized profession, with established opportunities for career progression and salary recognition. A certification/accreditation system, including sanctions and disciplinary provisions to be established.	December 2004	Medium	N/A	
E-3	Procurement Division to organize very basic procurement training for national contractors, suppliers and consultants.	September 2003	High	Government	US\$5,000

#### **4. ATTACHMENTS**

Attachment 1 - East Timor Interim Strategy Paper on Public Procurement

**1. BACKGROUND**

1.1 East Timor is a small country covering a population of about 800,000. However, there is a substantial public procurement need in the medium term in comparison to its size. In August 1999, “popular consultation” took place when the East Timorese people voted to reject an offer of regional autonomy within the Indonesian state and moved for independence, initially through a transitional government. The announcement of the results of this “popular consultation” was followed by a campaign of orchestrated violence, which displaced over half the population and destroyed 70 percent of all infrastructure. A United Nations Transitional Administration in East Timor (UNTAET) is moving the country to full independence, which will occur on May 20, 2002. During this transition period two multi-donor trust funds - Consolidated Fund for East Timor (CFET) and Trust Fund for East Timor (TFET) – have been established to assist the country to move forward and assist in the reconstruction of damaged infrastructure. The International Development Association (IDA) is the Trustee for TFET, which is managed in close coordination with the Asian Development Bank. With independence and beginning with the coming fiscal year the nature of external financing to the new government will begin a shift towards broad-based budget support rather than project-specific support.

1.2 In the above context public procurement has rightly been accorded a high priority in government planning for Independence. The government has established a *Commission on Procurement*, chaired by the Finance Minister and comprising eight sector Ministers. During its meeting on February 18, 2002, the Commission identified as a pressing concern the need to enhance oversight and control mechanisms for public procurement. The Commission placed particular emphasis on the issue of decentralized procurement. Of particular concern was procurement conducted out by Project Management Units (PMUs) under TFET financed projects. The Central Administrative Services (CAS) conducts procurement under CFET. The Commission requested the Director, CAS to submit an Interim Strategy Paper for Improvement of Public Procurement at the next Commission meeting, scheduled for March 1, 2002.

1.3 This Interim Strategy Paper is a result of close cooperation between CAS and The World Bank, and is essentially a document of the Government of East Timor. A World Bank fact-finding mission arrived in East Timor on February 13 and will be in the country until March 1, 2002. The primary objective of the World Bank mission is to initiate the preparation of a Country Procurement Assessment Report (CPAR). The main CPAR mission is scheduled for April 1 - 12, 2002.<sup>1</sup> Developing a cooperative and collegial approach to public procurement issues is a high priority. CAS and the mission are committed to working in close cooperation with relevant government agencies and enlisting the support of multi- and bi-lateral donors.

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<sup>1</sup> The proposed objectives the Bank fact-finding mission and an overview of the CPAR process were presented to the Commission by the Director, CAS on Monday February 18, 2002.

## **2. OBJECTIVES**

2.1 The principal objectives of this Strategy Paper, prepared by the joint CAS/World Bank Team<sup>1</sup>, are threefold:

- (a) to undertake an interim assessment of public procurement conducted by PMUs and CAS with particular emphasis on appropriate oversight and control mechanisms,
- (b) to frame the above review within the broader context of policy and strategic choices confronting the East Timorese public procurement system in the short- and medium-term, and
- (c) to propose a draft interim action plan which details recommended actions to address these short- and medium- term priorities.

In formulating this draft action plan the Team will have a particular focus on government capacity building and will explore how most efficient use may be made of the recently approved grant of US\$249,500 for the *Administrative Services Capacity Building Project*. The main objective of this project is to increase the capacity of East Timor Public Administration (ETPA) to prepare, implement and monitor procurement and inventory control operations of the government.

2.2 The Team recognizes that this is an interim assessment that focuses on the issues of capacity to carry out public procurement, as well as the oversight and control mechanism. CAS and World Bank will jointly carry out a more extensive review jointly during the main CPAR mission, in collaboration with the Asian Development Bank and bi- and multi- lateral donors. This review is scheduled during the period April 1 - 12, 2002, with the draft report available for review by the government and interested donors around end-May 2002.

## **3. OVERVIEW**

3.1 The overall framework for public procurement is provided in the Regulation *On Public Procurement for Civil Administration in East Timor* (UNTAET/REG/2000/10, dated March 6, 2002). A *Public Procurement Manual for Civil Administration in East Timor* has been issued by the UNTAET to amplify the provisions of the Regulation. A Directive, *On the Management of Donor Funding*, (Directive No. 2000/5, dated July 26, 2000) was issued to define the administrative procedures for the effective and efficient management of donor funding. Further, a Notification has been issued on February 15, 2001 for the establishment of Project Management Units (PMUs) for projects financed with TFET funds. In addition, there are two other manuals – Contracts Administration Manual and Property Disposal Manual that are applicable for all public procurement. The Public Procurement Regulation binds all CFET and TFET public procurement. However, the Regulation provides that if any of its provisions are in conflict with the procurement rules of a donor or funding agency with which UNTAET has agreed to comply, the requirements of those rules shall prevail.

3.2 The CAS Central Procurement Unit is responsible for all procurement utilizing CFET. While some of the departments have taken responsibility for the procurement process, the Central Procurement Unit has to ultimately sign all the contracts or purchase orders (POs) although this has not always been complied with. For contracts valued at more than US\$100,000 (goods, works or services), approval of

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<sup>1</sup> The team comprises, from Central Administrative Services, **Mr. Clare Copleman**, Director CAS, **Mr. Gregorio da Silva** (Chief Procurement Officer) and **Mr. James de Luca** (Advisor to the Chief of Procurement), and from The World Bank, **Mr. Nurul Alam** (Senior Procurement Specialist) and **Mr. Christopher Smith** (Consultant – Implementation Specialist).