

Procurement Capacity Assessment Report and Recommendations

Proposed Project Name: Palau: Water Sector Improvement Program	Proposed Amount : US\$ 16.0 million
Executing Agency: Ministry of Finance	Source of Funding: ADF/OCR
Assessor: Taisuke Miyao	Date: 31 July 2010
Expected Procurement <ol style="list-style-type: none"> 1. The program loan being prepared does not involve the procurement of Civil Works and Consulting Services. However, it is the first Asian Development Bank’s (ADB) loan to the Republic of Palau and project loans will be considered in future, the assessment was needed. 2. Following agencies were subject to executing agency capacity assessment : <ol style="list-style-type: none"> (1) Ministry of Finance (MOF) who is in charge of procurement of goods and consulting services for the government. (2) Department of Public Works (DPW) under Ministry of Public Infrastructure, Industry and Commerce who is in charge of procurement of public works (except electricity). (3) Palau Public Utility Corporation (PPUC) who is in charge of procurement for electricity. 3. Procurement of goods, works and services conducted by MOF and DPW must comply with the National Procurement Law (NPL). PPUC, an autonomous public agency, uses its own procurement regulations which are fundamentally similar to NPL. 	
Assessment of the National Environment <ol style="list-style-type: none"> 4. NPL, acted in 1991, is applied to every expenditure of public funds by the national and state governments. It states the policy of promoting fair, competitive and best value for money public procurement. Under the legal culture influenced by US, the law is obeyed and enforced well in general. 5. The law provides bidding procedure requirements including public notice, bidding time (normally 30 days), bid opening in public, evaluation and awards. It also provides employee’s conflict of interest, prohibition of kickbacks and gratuities, prohibition of collusion by bidders, and restriction of former government employee to become an employee of a contractor for the employee’s agency within one year after the award of the contract. 6. The law leaves three exceptions of open bidding. One is for the “competitive negotiated contracts” where qualities of technical proposals are evaluated first and prices are negotiated thereafter among those whose technical proposals are qualified. According to MOF, the method is used for the bidding where competition of price only is not suitable such as IT related projects. Second is “emergency procurement” where the process “shall be as” competitive as practicable but can be deviated from the normal process. This method can be used only upon the President’s decision as stated in the law and has been used “a few” in recent years, in such a case of procurement of vaccine for H1N1 pandemic. Third is the single source selection where expenditure is equal to or less than US\$10,000 with reasonable substantiation. 7. The law also provides selection process of professional services which is based on the quality of proposals and price. However, detailed evaluation process is not stated in the law and is decided depending on the nature of services selected without established guidelines. 	

8. Lack of detailed operational guidelines or manuals is a common problem among agencies. Daily work is mostly relying on individuals' knowledge and experiences, which leaves operations vulnerable. Furthermore, the lack of these documents leads to the impression that procurement personnel may decide matters with his discretion since NPL does not prescribe sufficient details in substance. In reality, the decision is normally made by selection committees established on each procurement and is substantiated in writing. Procurement documents are circulated to related authorities and maintained in files. All the procurement activities are subject to ex-post external audit (MOF and PPUC are being audited by an international accounting firm, *Deloitte Touche*. DPW has been audited by the US government recently). Transparency of decisions is maintained to some extent.
9. Conflict of interest clauses stated in NPL are well-recognized and obeyed by the government employee in general. The small community culture could lead to restrain employees from involving corruption activities. In total, the current government procurement system in Palau can be considered adequate from the point of view of competition and efficiency.
10. For future investment projects, following must be considered:
 - (i) Reconciliation with its national law and ADB's guidelines: The law states that "Insofar as the provisions of this law are inconsistent with grant terms imposed by foreign donors, the Minister of Administration shall be authorized to suspend the application of those provisions of this law." NPL does not state details of evaluation method and therefore have few sections directly inconsistent with ADB's guidelines. One of the examples ADB needs to discuss with the government for future project loans is regarding to domestic preference treatment stated in NPL since Palau is not the countries eligible for it.

1 NPL (Section 24) states that "if a responsible bid in an amount less than \$100,000 is submitted by an entity wholly owned by a person or persons of Palauan citizenship is no more than 25 percent higher than the lowest responsible bid submitted by an entity not of by wholly Palauan ownership, then the bid by wholly Palauan entity shall be accepted."
 - (ii) The agencies have no experience of large amount procurement or procurement under multilateral agency funds. In order for the management and staffs to understand ADB's requirements, seminars as well as training, will be necessary. However, since general understanding regarding transparent, competitive public procurement already exists, the training need not be comprehensive but rather simple. External assistance for procurement work including preparing bids, evaluating proposals and reporting may also be necessary depending on the volume of additional work.

General Agency Resource Assessment.

11. Property and Supply Division (PSD), Bureau of National Treasury of MOF is responsible for procurement of goods for the national government. The current chief has a solid background in engineering and procurement experiences with 2 staffs. Bureau of Public Service System (BPSS) of MOF is responsible for recruitment of consultants. The director assumed the current position 8 months ago, transferred from Ministry of Education. She has 6 staffs and heavily relies on an experienced individual.
12. DPW, in charge of procurement of public works (except power), has no specific procurement unit and relied on an engineer group called Capital Improved Program (CIP) for administration and implementation of all national and a part of state projects. CIP is consisted of 20 engineers, mainly engaged in inspecting works. Most of bidding procedures is handled by an individual, the Senior Project Manager who is a Philippine native and has been the government employee of Palau for more than a decade.
13. PPUC, in charge of electricity, has a procurement division under Accounting and Finance Department. Under the new Chief Procurement Officer, 3 staffs are engaging in the work.
14. Although the agencies respect the NPL (or, in case of PPUC, its own Procurement Regulations), the

guidelines or manuals underneath do not exist, or at least could not be identified during the mission. The operations are relying on individual's knowledge and experiences. The situation creates high operational risk.

15. Staffs have procurement experiences but no specific job descriptions. New staff has no specific training program but on the job training. Lack of specific job descriptions and training program might create the risk of mishandling procurement matters, however, the fact that staff numbers are small might mitigate the risk since staff knowledge and experiences can be shared easily.

Agency Procurement Processes: Goods and Works

16. PSD undertakes procurement of goods for the national government in accordance with NPL. An ad hoc committee consisted of MOF staffs and members appointed from relevant ministries is established when evaluation for the bids from technical aspects is necessary. Normally the bidding is one envelop among qualified bidders. As mentioned above, "competitive negotiated contracts" and "emergency procurement" are also conducted, depending on the nature of procurement. Decision of the Chief of PSD is final.
17. DPW undertakes procurement for contractors for public works projects (excluding power) in accordance with NPL. It also establishes ad hoc committees for selection when it is necessary. The selection methods are one envelop or scoring system when technical aspects are important. In case of scoring system, the weight for technical aspects is 70% or, in fewer cases, 80% while financial aspects is given the weight of 30% or 20%. Bidders are able to know if the bid is evaluated by cost only or by both technical and financial bids at the time of project information conference. However, no details such as the weight allocation among technical and financial proposals and detailed evaluation criteria are unavailable before the bid. One of the reasons for this is that these are finalized at the first selection committee meeting which is held at the time of start of evaluation. Importantly, detail evaluation results including copies of scoring sheets for each bidder are distributed to all bidders afterwards. This activity mitigates the risk of non transparent evaluation.
18. Normally, PPUC uses open bidding if the estimate cost of purchase exceeds US\$25,000. Diesel oil is one of the main things to purchase. The procurement division usually requests quotation from two bidders for diesel oil. The procurement decision can be normally made by the Chief Financial Officer of the corporation, except when the cost exceeds US\$200,000, the decision shall be made by the Board of Directors.

Agency Procurement Processes: Consulting Services

19. BPSS under the MOF conducts recruitment of consultants upon request of line ministries. Ad hoc selection committees, comprised of members from MOF and relevant ministries, are established for the selection. The law states that the selection shall be "on the basis of demonstrated competence and qualifications at a fair and reasonable price." However, detailed method of evaluation is not available in the law or any other documents. From BPSS's explanation, the selection is normally conducted in two envelop. First, committees evaluate technical proposals. Then, the committee selects a lowest price bidder among those who were qualified. However, the committee can choose not the lowest bid with justifications, such as when the non lowest bidder proposes to conduct additional work with reasonable price difference from the lowest bidder. The director of BPSS has the authority to approve committees' conclusion.

Process Control and Oversight

20. There is no independent authority that supervises procurement processing of responsible entities. However, following factors contribute its process control system to a satisfactory level. Each agency reports the progress of procurement to its higher authority periodically. The law states that the contract must be awarded in no later than 30 days after the opening of bids. Ex-post audit will find undue delay if it occurred.

Records Keeping and Audit

21. All the agencies appear to keep sufficient files of essential procurement documents for a certain period. Two concerns exist:
- (i) There is no separate storage room for procurement records.
 - (ii) There is no clear regulation specifying when procurement files can be disposed of.
22. All the agencies are subject to annual external audit. It covers procurement process and points out the issues to be improved, if any. One of the examples the auditor found in PSD's procurement recently was lack of sufficient substantiation for a decision PSD made. The audit result is reported to higher authorities. The audit system gives a certain indication that public procurement in Palau follows its rules fairly strictly.

Summary Assessment and Recommendations

23. NPL, acted in 1991 and has been applied to government procurement, is well observed among government agencies. PPUC has established its own procurement rules and the procurement division apparently follows them.
24. NPL leaves certain ambiguity in procurement process, particularly detailed evaluation method. Lack of operational guidelines or manuals leads bidding process not transparent to some extent. However, the procurement decision is usually discussed among committee members and approved by the authorized person with substantiation. The documents are well maintained and external audit will contribute to find any deviancy on procurement decisions from the law.
25. For future project loans, ADB's requirement shall be introduced and if necessary NCB annex shall be developed. Due to the severe constraint of human resources, external assistance for procurement work may also be necessary depending on the volume of additional work.

Specific Recommendations, Project Implementation

Capacity Constraint	Recommended Action	Responsibility and comment
N.A.		

General Recommendations, EA Capacity

Capacity Constraint	Recommended Action	Responsibility and comment
26. There is no separate storage room for procurement records.	The agencies need to identify a separate and secure storage room for all its procurement documents and files, with sufficient capacity to handle all records for the project.	Agencies.
27. There is no guidelines and manuals for procurement works.	The agencies need to develop its internal guidelines and manuals.	Agencies. However it should be noted that updating these documents from time to time might be practically difficult due to severe constraints of human resources.
28. The period to maintain documents shall be set.	The government should develop a rule of the period for maintaining public documents.	Government.

General Recommendations, Procurement Environment		
Capacity Constraint	Recommended Action	Responsibility and comment
29. It should be ensured that ADB's guidelines and SBDs are understood and actually used for future projects.	ADB should explain details of its requirement and require Prior Review for procurement. External support should be sought for additional work.	ADB and agencies. .

ADB = Asian Development Bank, BPSS = Bureau of Public Service System, CIP = Capital Improved Program; DPW = Department of Public Works, N.A. = not available, NPL = National Procurement Law, PPUC = Palau Public Utility Corporation, PSD = Property and Supply Division.