

PROCUREMENT CAPACITY ASSESSMENT

Proposed Project Name: Port Vila Urban Development Project	Proposed Amount: US\$39.1 million
Implementing Agency: Public Works Department in the Ministry of Infrastructure and Public Utilities	Source of Funding: ADB, AusAID, Government of Vanuatu
Assessor: Robert G. Goodyear/Harold Qualao	Date: 10 April 2011
Expected Procurement	
<p>The proposed project is a drainage and sanitation project that focuses largely on improving roads, drainage, sanitation, and hygiene facilities by providing (i) civil works for rehabilitation of existing facilities and construction of new infrastructure, and (ii) project management services for efficient and effective project implementation. The procurement for the proposed project consists primarily of civil works, plant, goods, and consulting services. The procurement of works will consist of three packages by international competitive bidding, five packages by national competitive bidding and one package by shopping. An estimated 601 person-months (pm) (122 pm international, 479 pm national) of consulting services are required to (i) carry out design, procurement, and construction supervision; (ii) facilitate project management and implementation; and (iii) strengthen the institutional and operational capacity of the executing agency. Consulting firms will be engaged using the quality- and cost-based selection (QCBS) method with a standard quality:cost ratio of 80:20. Independent project management advice and overall urban development planning support will be provided to the executing agency through an international urban development adviser (12 pm) and a contract advisor (2 pm). These consultants will be recruited individually.</p>	
Assessment of the National Environment	
<p>A procurement assessment was carried out for the Government of Vanuatu for the Vanuatu Interisland Shipping Support Project in April 2010. There are two main categories that the government uses for the procurement of goods and services. For goods and services that are estimated to be less than \$50,000, the Guidelines for the Procurement of Goods and Services, June 2005 is used. Under these guidelines, simple procurements are not advertised and involve direct purchase off the shelf or by obtaining three quotations. Procurement of goods and services with an estimated value of more than \$50,000 (complex procurement) is governed by under the Government Contracts and Tenders Act No. 10 of 1998 and Regulations CAP 244 as amended by the Government Contracts and Tenders Act No. 11 of 2001 and Regulations CAP 245, and the Government Contracts and Tenders (amended) Act No 8 of 2009. Procurement of works, goods, and services financed by development partners under loans or grants generally follows the procurement procedures of the financing institution.</p> <p>The key provisions of the Government Contracts and Tenders Act and Regulations for a contract of an estimated value of more than \$50,000 stipulate the following steps to be adhered to during the procurement process:</p> <ol style="list-style-type: none"> Before entering into a government contract, a minister must first undertake the following: <ul style="list-style-type: none"> Ensure that the contract is consistent with government policy and is fiscally responsible, prudent, and cost effective. Use competitive and transparent process for contract awards. Prepare a written submission to the Council of Ministers including a copy of the proposed contract, commented by the Director General of the Ministry of Finance and Treasury (MOFT) and the Attorney General or his/her nominated legal representative, and certified by the Attorney General that the required legal procedures have been followed. Obtain a Council of Ministers Minutes before approving the contract. Tenders must be called for all government contracts involving consideration of an estimated value of more than \$50,000, which must be an open and competitive bidding unless another process is approved by the Central Tenders Board. The Central Tenders Board reports and is responsible to the Council of Ministers for receiving, assessing, approving (where applicable) and recommending acceptance of government tenders with value over \$50,000. The Council of Ministers must not accept tenders if those have not gone through the tender process in accordance with the Government Contracts and Tenders Act, 1998. The Central Tenders Board must recommend the tender process when it cannot make a recommendation or its recommendation is declined by the Council of Ministers. A government contract entered into, which is in breach of the Government Contracts and Tenders Act 1998, is void, of no effect, and not binding on the State or Government of Vanuatu. 	

The assessment of the national environment yielded mostly “low risk” results in the general procurement environment assessment questionnaire. There are rigid procurement procedures and policies in place that are documented in (i) Government Contracts and Tenders Act No. 10 of 1998, and Regulations CAP 244, as amended by the Government Contracts and Tenders Act No. 11 of 2001 and Regulations CAP 245, and by the Government Contracts and Tenders (amended) Act No 8 of 2009; and (iii) Guidelines for the procurement of Goods And Services (2005). The documents are complementary. However, the laws do not differentiate processes between consulting services and goods/works. International standards (usually ASSHT, Australian, New Zealand or United Kingdom) are used for quality control purposes.

There is sufficient transparency in the process, and the default method for procurement is open competition. Procurement opportunities of estimated value of more than \$50,000 and contract awards of an estimated value of \$100,000 are always advertised. There are no restrictions in terms of domestic preference or origin.

There are no standard bidding documents (SBD) across ministries, although each ministry's SBD is required to be submitted to the State Law Office when changes are made.

General Agency Resource Assessment

The Ministry of Infrastructure and Public Utilities (MIPU) has not implemented an ADB-financed project for the past 10 years. However, MIPU acted as executing agency for the past ADB-financed and AusAID-cofinanced Urban Infrastructure Project (UIP) from June 1996 to January 2003. A project management unit (PMU) was established, which oversaw the procurement of an estimated \$10 million in civil works as well as \$1.2 million worth of consulting services under the UIP. The day-to-day implementation and management of the project was undertaken by the PMU. MIPU currently has a PMU located in the Public Works Department (PWD). The PMU is headed by the Director of PWD and supported by international and national consultants and PWD technical support staff as project implementation units (PIUs). The PMU is responsible for the implementation of the Vanuatu Transport Sector Support Program (VTSSP) financed by the Australian Agency for International Development (AusAID), the Millennium Challenge Account Project financed by the Millennium Challenge Corporation, and Outer Islands Airport Project financed by Agence Française de Développement. The PMU is supported by PIUs for each project. While the PMU has been functioning satisfactorily with the support of international and national consultants, there is a shortage of trained technical staff and accounting staff within the PMU. There is no separate procurement department. The PMU employs two local staff (one part-time and one full-time) dedicated to procurement, who report to the Director, PWD who in turn is accountable to the Director General of MIPU. Procurement specialists are hired under the three active projects as needed, and additional local staff are currently being contracted through the projects. The funding for the Millennium Challenge Account project ceases on 28 August 2011, and the local staff employed in the Engineering Support Unit for construction supervision may be retained by PWD after the project is completed and may be available to work for the proposed project once construction commences.

The Director, PWD has about 17 years experience in goods, services, and works procurement. Given that the government has not borrowed from ADB for the past 10 years and MIPU staff are unfamiliar with ADB's procurement procedures, opportunities should be arranged for MIPU and PWD staff to attend project administration and implementation seminars where possible in the early stages of project implementation.

Agency Procurement Processes: Works, Goods, and Plant (BOT)

MIPU is currently implementing three foreign-assisted projects. The Guidelines for the Procurement of Goods and Services stipulates that “Purchases of goods or services funded by development aid are typically subject to the contracting and tendering procedures required by the donor institution/country. Where that is not the case, the procedures of the Government Contracts and Tenders Act should be applied in the same manner as for any other purchase costing more than 5 million vatu.”

PWD uses International Federation of Consulting Engineers conditions of contract for larger, international contracts and uses a State Law Office-approved standard bidding document for smaller, national contracts. The minimum period for preparation of bids for civil works is 30 days for national and 72 days for international contracts. For procurement of goods, it is 2-4 weeks for national contracts and 90 days for international contracts. Bids are evaluated by a Procurement Group comprised of members from the Ministry of Foreign Trade, State Law, PWD, and project consultants. This constitutes the Central Tenders Board (CTB). The evaluation is subject to review and approval of the Development Committee Officials (DCO), comprising the director generals and first political advisors of each ministry. After the recommendation of the CTB, the final approval lies with the Council of Ministers (COM). Contract awards above \$100,000 are advertised, and all procurement records are available to the public. The entire procurement process, from invitations for bids to contract effectiveness, for civil works generally takes 60 days for national contracts and approximately 6 months for international contracts.

Agency Procurement Processes: Consulting Services

As indicated above, the international procurement specialist will assist in the procurement processes. In addition to an estimated \$4.04 million (April 2011 base cost excluding physical and price contingencies) for the international design, procurement, and construction supervision consultant to be engaged through QCBS, there will be a few individual consultant contracts engaged during project implementation. An international procurement specialist is included in the project for six person months to assist with the procurement of consulting services.

Terms of reference for consulting services will be prepared with the assistance of the PPTA consultants. The expressions of interest (EOIs) and proposals will be evaluated based on standard criteria, or on predetermined criteria detailed in the request for proposal. The minimum period for preparation of bids for consulting services is 30 days. Proposals will, in general, be evaluated using the QCBS method, with an 80:20 quality:cost ratio. After evaluation, negotiations will take place within 1 week of the notification of contract award, and contract signing 1 week after negotiations. The process and decisions will be documented and circulated to the attendees, CTB, and the Director General.

Process Control and Oversight

MIPU has a standard procurement process, with a clear delineation of responsibilities. There is an established approval chain as follows: (1) An established procurement group that forms the CTB and evaluates the tenders and makes recommendations, (2) DCO, (3) COM. There is an auditable trail in the procurement process, and there appears to be adequate transparency to the highest levels of approval by COM.

Record Keeping and Audit

All original procurement files are kept in a fireproof safe in the PWD office for a minimum of 10 years, after which they are sent to the national archives. Copies of bid proposals, evaluation reports, invoices, and other related files are also retained by the PWD office. In addition, the government has a centralized Asset Management Registry maintained by MFEM.

Summary Assessment and Recommendations

To address the low capacity of MIPU through its PWD to manage finances and undertake procurement activities for large development projects such as the proposed project, MFEM as the executing agency, will establish a Vanuatu Project Management Unit (VPMU) as the dedicated unit for managing large and nationally significant projects with allocation of budget and core staff. MFEM has established procurement policies and procedures in place, and has considerable experience in implementing external assistance projects. Although there have been no recent ADB projects in Vanuatu, the executing agency has had recent experience administering foreign-assisted projects such as the Millennium Challenge Account for the Millennium Challenge Corporation and the Outer Island Airports for the Agence Française de Développement, and the VTSSP for AusAID. The VPMU will be supported by international and national consultants including procurement and implementation consultants to manage the project. Together with relevant agencies, the VPMU staff will be provided the opportunity to attend ADB training to ensure familiarization with revised ADB guidelines and procedures that will assist in minimizing the delays and award of contracts.

Specific Recommendations, Project Implementation

Capacity Constraint	Recommended Action	Responsibility and Comment
The existing PMU and the newly established PIU are unlikely to have significant experience with ADB procurement policies and procedures.	Seek opportunities for project implementation staff to attend ADB's procurement and project implementation training.	ADB. Training needs to be provided in the early stages of preconstruction activities.
Potential implementation delays due to slow engagement of consultants	Request ADB Management approval for advance action to begin the engagement of consulting services.	VPMU to be established in MFEM Project team to request approval for advance contracting during staff review meeting Project division and the Central Operations Services Office (COSO)

General Recommendations, Executing Agency Capacity		
Capacity Constraint	Recommended Action	Responsibility and Comment
General lack of procurement capacity in Vanuatu and in MIPU through its PWD	Staff the existing PMU and PIUs, and the proposed VPMU with capable staff, supported by international and national consultants, particularly in key procurement areas. Differentiate works, goods, and services clearly in the borrowers Guidelines for Procurement of Goods and Services.	ADB, Government of Vanuatu
General Recommendations, Procurement Environment		
Capacity Constraint	Recommended Action	Responsibility and comment
No cadre of strong procurement professionals exists, and there is little incentive for a public civil servant to engage and improve skills in procurement.	Ensure that procurement skills are developed in government institutions. Establish a Procurement Unit such as in MIPU.	Government of Vanuatu
Neither the government nor the Ombudsman Office has a specialized mechanism in place to review procurement related complaints.	Establish a complaints mechanism	Government of Vanuatu