



Australia Indonesia Partnership
Kemitraan Australia Indonesia



PROCUREMENT REFORM AT THE MINISTRY OF PUBLIC WORKS



**INDONESIA
INFRASTRUCTURE
INITIATIVE**

Indonesia Infrastructure Initiative

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Stuart R. Andrews and Budihardjo Hardjowiyono
Jakarta, September 2009

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ACRONYMS

ADB	Asian Development Bank
APBN	Anggaran Pendapatan Belanja Negara (State Budget)
APBD	Anggaran Pendapatan Belanja Daerah (Local Government Budget)
Balai	Regional Operational Office /Hub
BAPPENAS	Badan Perencanaan Pembangunan Nasional (National Development Planning Agency)
Bawasda	Badan Pengawas Daerah (Regional Level (Province/ District) Internal Audit Agency)
Bina Marga	Directorate General of Highways
BLIs	Base Line Indicators
BPK	Badan Pemeriksa Keuangan (State (Supreme) Audit Institution and External Auditor)
BPKP	Badan Pengawasan Keuangan dan Pembangunan (Internal Development Audit Agency)
BRR	Badan Rehabilitasi dan Rekonstruksi (Agency for Rehabilitation and Reconstruction) NAD-Nias
CPI	Consumer Price Index
C/PIs	Compliance/ Performance Indicators
DAC	Development Assistance Committee
DG	Director General
DGH	Director General Highways
DIPA	Daftar Isian Proyek Anggaran (Spending Authority Warrant for Activity)
DPR	Dewan Perwakilan Rakyat (Parliament/ House of Representatives)
FY	Fiscal Year
GOI	Government of Indonesia
ICB	International Competitive Bidding
IDPL	Infrastructure Development Policy Loan
IDR	Indonesian Rupiah
IFGI	Infrastructure for Growth Initiative
IG	Inspector General
IND II	Indonesia Infrastructure Initiative
IUJK	Company License
Kabupaten	District
Keppres	Presidential Decree that designates responsibilities for specific tasks/ positions
KKN	Korupsi, Kolusi, dan Nepotisme (Corruption, Collusion, and Nepotism)

KPPN	Kantor Pelayanan Purbendaharaan Negara (Regional Office of DG Treasury, MoF)
KPPU	Commission for Supervision of Business Competition
LKPP	Lembaga Kebijakan Pengadaan Pemerintah (National Public Procurement Office)
LPJK	National Construction Development Board or Institute
M&E	Monitoring and Evaluation
MOF	Ministry of Finance
MPW	Ministry of Public Works
MTEF	Medium Term Expenditure Framework
NCB	National Competitive Bidding
NOL	No Objection Letter
NPPO	National Public Procurement Office (Lembaga Kebijakan Pengadaan Pemerintah)
OE	Owner's Estimate
OECD	Organization for Economic Cooperation and Development
PC	Procurement Committee
PERPRES	Presidential Decree that describes how government policy should be applied
PFM	Public Financial Management
PISK	MPW's Satker- orientated training course
POK	Pertunjuk Operasional Kerja – Line ministry document detailing what is in RKA-KL
PP	Government Regulation
PPK	Pejabat Pembuat Komitmen – Official(s) Making the Commitment
P2JJ	Support Services Satker
PPP	Public-Private Partnership
PU	Pekerjaan Umum (Public Works)
PUSDIKLAT	Training Centre
QCBS	Quality and Cost-Based Selection (of Consulting Services)
Renja KL	Line Ministry Work Plan
RFP	Request for Proposal
RKA-KL	Rencana Kerja dan AnggaranKementerian/ Lembaga (Ministry Work Plan and Budget)
RKP	Rencana Kerja Pemerintah (Government Work Plan)
SAI	Supreme Audit Institution
SAPSK	Amendment to breakdown of budget by allocation/unit per taskforce
Satker*	Activity/ Project Spending/ Management Unit
SBDs	Standard Bidding Documents
SBU	Certificate of Company Competency
SK	Circular Decree

SKA	Certificate of Competency in Management/ Administration
SKPD*	Local Government Spending Unit
SKT	Technical Certificate of Competency
SOE	State Owned Enterprise
TSA	Treasury Single Account
ULP	Unit Layanan Pengadaan or Procurement Services Unit
Wilayah	Regional Office
WB	World Bank Group

* Throughout this report the generic term “Satker” may apply to both central ministry and local government (SKPD) spending units.

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EXECUTIVE SUMMARY

The World Bank Infrastructure Development Policy Loan (IDPL) requires the Government of Indonesia (GOI) to meet a series of policy triggers to enable release of loan tranches. The Aus-AID-funded Indonesian Infrastructure Initiative (IND II) Facility funded four studies focusing on those triggers associated with the Ministry of Public Works (MPW). Based on “Trigger 11”, which requires the establishment of a *“Procurement Task Force within the Directorate General of Highways (DGH)”*, the objectives of this study are to (i) provide MPW with an overview of its procurement activities, existing institutional arrangements for procurement and responsibilities relating to procurement of goods, works and services required to implement its budgeted program, with particular emphasis on the DGH program, (ii) provide an analysis of the performance of such procurement processes, and (iii) make recommendations not only to improve the processes themselves, but also where additional support could be provided within both MPW, and DGH in particular, to improve their efficiency and effectiveness. The *Findings and Recommendations* are organized around six central themes as highlighted below.

Public Financial Framework in which Procurement Takes Place

Public procurement utilizes public (GOI) funds and is, therefore, inextricably entwined with GOI’s budget planning and annual “stop-go” execution processes. MPW, and DGH in particular, has already adopted advance planning and procurement actions. The *Medium-Term Expenditure Framework (MTEF)* will help plan funding of multi-year activities for three consecutive years beyond the current FY and earmark allocations for what would be expected to be probable inclusion in those subsequent years. What may prove more difficult is the required change in focus of program/ activity achievement assessment with the adoption of *Performance-based Budgeting* from the amount of resources allocated to the activity to the outcomes achieved or realized from the use of those resources. The preparation of documentation for Spending Authorizations (DIPA) is quite rigid with extensive information *constraining downstream implementation due to the level of detail required*. If, when comparing the draft DIPA with the detailed budget submission (RKA-KL), the Ministry of Finance (MOF) finds one (or more) criteria has (have) not been fulfilled, then that DIPA will be marked with an asterisk or star (bintang) symbol indicating that while it is in the system, its approval has been blocked and disbursement cannot occur until the matter is rectified. Law 17/ 2003 on state finances does not allow the “carry over” of IDR capital funds from one FY into the next. This requirement to “use” the DIPA within the year or “lose” it contributes to the accelerated pace of expenditure with up to 50% of the budgeted funds often being utilized in the last quarter of the FY. *This year-end rush of expenditure could compromise the quality of the procurement process resulting in poor quality of the end product and sub-optimal expenditures.*

DGH collects regionalized unit cost information for a multitude of items, which are used in the costing of maintenance and new construction activities. As in the case of determining the Engineer’s Estimate, the Procurement Committee (PC) applies unit costs adjusted for inflation, usually based on CPI, to a formula which calculates the Owner’s Estimate (OE). *It is recommended, where possible, unit costs be adjusted for expected inflation based on detailed price projections for specific individual items rather than the CPI assumption in the budget, which could result in skewed or inaccurate figures. Also, since errors can be made in applying unit costs, it is recommended, as a cross-check, that the PC adjusts OEs calculated for recent projects and compares them to that calculated by means of the formula.*

Procurement Legislative and Regulatory Framework

The Lembaga Kebijakan Pengadaan Pemerintah (LKPP) or National Public Procurement Agency, which reports directly to the President of the Republic of Indonesia, was established under Presidential Decree (Keppres) 106/2007. It is responsible for sustainable, integrated, focused and coordinated planning and development of strategies/ policies/ regulations associated with the procurement of Goods/Works/ Services using public funds.

LKPP Department of Strategy and Policy Development, with the involvement of stakeholders, has undertaken minor revisions/ clarifications and consolidated the current National Procurement Regulation (Keppres 80/2003), and its subsequent amendments, into the form of a new Perpres and has submitted the draft to the Cabinet Secretariat. One issue that has been clarified concerns accountability and the role of the Pejabat Pembuat Komitmen Unit (PPK), as executor and administrator of contracts, compared with that of the Procurement Committee (PC) that undertake the actual procurement.

Under the current Keppres 80/2003, it is only necessary for a company to be registered by GOI and hold a current License to be entitled to bid for goods, works and services financed through the budget whereas Government Regulations under Construction Law require (i) key staff within construction companies to hold competency certificates in either general management expertise (SKA) or relevant technical skills (SKT) and (ii) every construction company/ corporation to have a certificate of competency/ capability (SBU) with a Grade delineating the size of work in terms of amount/ value that the company is entitled to carry out before it can obtain its Company License. Another issue requiring resolution relates to the process for selecting private companies to participate in Public-Private Partnerships and whether it is appropriate to apply *Success Fees*.

The rapid change to decentralization has created the risk of overlapping jurisdictions thereby resulting in potential segmentation of both the procurement market and the procurement legal framework. Indonesia's legal framework for public sector procurement can best be strengthened by anchoring it with *an overarching consolidated and comprehensive national public sector procurement law at the highest level*. The revision and consolidation of Keppres 80/2003 has been undertaken by LKPP on the basis that a draft law, which it proposes to submit to Parliament (DPR) in 2010 may take several years to be enacted.

Important MPW internal decrees and circular letters relating to procurement using budget funds, with the exception of those concerning integrity and conduct issues, concern (i) the procuring of construction services by GOI entities, (ii) issuance of company licenses, (iii) standards and guidance for construction work, (iv) regulations in respect of leasing buildings etc., (v) guidance on competitive bidding for construction works, (vi) advance procurement actions prior to issuance of DIPA and (vii) guidance on calculating Owner's Estimates. In addition DGH issued a Circular Decree in August 2009 establishing a Procurement Advisory Unit within DGH.

Institutional Framework and Capacity

The Minister of Public Works, as "User of the Budget", has delegated responsibility to implement projects to a designated Satker at either central or regional level, which establishes a Procurement Committee (PC) to undertake the procurement process and, following award of contract(s), to a designated PPK unit within that Satker to execute and administer the contract(s). The role of the various planning, technical and operational directorates within Headquarters is supervisory and monitoring. While Balai in the Directorate General of Water Resources are also responsible for managing specific water catchments, the recent establishment of Balai in DGH may have created a potential overlap and duplication with the functions carried out by Wilayah. With the responsibility

to implement projects delegated to Satkers (there are about 200 in DGH and 400 in Human Settlements), procurement has become widely dispersed and is carried out in individual provinces.

Keppres 80/2003 requires that all members of PCs nationwide must hold a basic level procurement practitioner's proficiency certificate, the examination for, and issuance of which, is currently the responsibility of LKPP. Since the current certification system is only at a basic level, it will allow LKPP room to develop programs at higher levels. While no decisions have been made yet, consideration may be given to creating a *Competency Steering Group* initially, that could later evolve into a separate *"Procurement Training Institution"* under LKPP that would include representatives, not only from LKPP and other GOI Agencies such as line ministries, but also the private sector and tertiary educational institutions. The education and training of procurement practitioners would be outsourced to tertiary *education service providers*, suitably accredited to do so. *Procurement is not regarded as a profession within the public service and there are currently no incentives or career path for it to become so. Likewise, there is no existing structure within GOI agencies such as MPW that could provide a career path for procurement professionals.* In addition to training for Basic Level Procurement Certification, MPW Training Department (PUSDIKLAT) also provides a series of one month comprehensive Training Courses related to project implementation (including procurement and contract administration) for Key Personnel of Satkers (PISK). *It is recommended that consideration be given to adopting an internal MPW Certification System for both Satker and PPK Managers based on PISK examination results so to ensure there are MPW staff in these key positions with the competency to deliver a quality product during project implementation.*

In addition to improving the capacity of procuring entities such as MPW, it is equally important that the capacity of the other main stakeholder in the procurement process, being those bidding for the supply of goods, works and services also be improved. Construction company associations certify the competency/ capability of their member companies but do not carry out any training for their members, which they regard as being the responsibility of the relevant professional associations that are responsible for determining the competency/ capability of their individual members. One such reputable professional association is the Indonesia Road Development Association or HPJI. Its focus in training is more on *technical* rather than *business* competency with courses on *Design* (Pre-Procurement) and *Construction and Supervision* (Post Procurement). *It is recommended that GOI, through MPW Construction and Human Resources Agency, considers providing funding, either in whole or in part, to professional associations such as IRDA/ HPJI, to enable them to include in their curricula courses on the actual procurement process that focus on (i) how to prepare fully compliant and successful proposals/ bids, (ii) understanding how such bids would be evaluated by the Government procuring entity such as MPW/ DGH and (iii) on the need for integrity and transparency in this business process.* Funding for this specific capacity building could be provided by donors.

At the moment there are disincentives and risks for staff to become PC members because (i) they experience pressure both from outside and from above, (ii) they can be made personally liable, (iii) membership is part-time requiring their other work to be continued, and (iv) remuneration in terms of honoraria is a pittance. *PCs should be regarded as an important and vital resource within MPW and DGH. They should become prestigious units that are well insulated and protected with incentives to serve.* In order to achieve this, it is recommended that (i) *MPW accept liability for the actions of the PC, unless there is absolute proof that an individual member has been either grossly negligent or engaged in KKN, in which case that individual member should be held liable for his/her actions* and (ii) *the honoraria paid to PC Members be increased to a similar level to that offered by the BRR NAD-Nias to members of its PC.* Likewise, *it is recommended that bonuses in form of remuneration should be provided if the procurement is undertaken on schedule.*

Operations and Market Practices

A problem still exists in some line ministries in undertaking actions in advance of issuance of the following year's DIPA, due to the uncertainty with respect to funding. Because MPW is involved in implementation of civil works projects/ activities on a day-to-day basis it has developed a strong capability of implementing projects and, unlike some other line ministries, MPW and DGH are very much aware of the need to prepare for project implementation in advance. Another problem with procurement delegated to PPK Commitment Officers within Satkers is that procurement can tend to be undertaken in smaller packages associated with the province in which the Satker is located. The breaking down of a national roads project into small packages of only a few kilometres each may not necessarily be efficient in terms of delivery or ensuring consistent quality over its entire length. It is appreciated, however, that the need for efficient delivery needs to be weighed against providing opportunities for smaller construction firms to bid.

There is a big disparity between the authority delegated to PPK Commitment Officers to execute and administer contracts up to IDR 50 billion (USD 5 million equivalent) under IDR-funded (i.e APBN/ APBD) procurement and donor-assisted procurement where thresholds tend to be "ad hoc" depending on the nature of the project. Usually donors require the use of ICB for packages somewhere between USD 200-500 thousand equivalent thereby requiring documents in the English language, which can cause problems in remote regions. Likewise donors may require *prior reviews* at even less thresholds, which can cause delays due to the need for documents to flow from Satkers up the chain through MPW Headquarters to donors and then back again. There are two possibilities that could be considered. *First, following discussions with GOI officials, especially those within LKPP, donors to increase and GOI to decrease their respective prior-review thresholds to a mutually agreed harmonized level that suits the fiduciary requirements of both sides and is applied by all. Second, donors to move entirely to ex-post reviews and, where donors find irregularities relating to either non-compliance with regulations and/or proven KKN, GOI will agree to support, and work in tandem with donors, in the application of appropriate actions such as (i) the declaration of "mis-procurement", (ii) consistent application and enforcement of penalties/ sanctions in accordance with Indonesian laws, and (iii) re-imburement of funds, if requested by donors.* Donors also tend to require overlay upon overlay of consultants including *Supervisory, Procurement Advisory Services and Procurement Agents*. Are such consultants actually providing donors with value for money? Likewise, there can be problems when the PCs and Procurement Agents fail to agree on the recommendation for contract award. It should be borne in mind that it is MPW, on behalf of GOI, that must sign and subsequently administer the contract.

Construction company associations (GAPENSI, AKI and GAPEKSINDO) and the Consulting Company Association INKINDO have been delegated responsibility to issue competency/ capability certificates (SBUs) with gradings thereby allowing a company to undertake works up a specific value in accordance with the grade. By delegating responsibility for issuance of the SBU to the various associations of construction and consulting companies, GOI has created a *conflict of interest* because the administrators of the certification system are the supplier/ provider associations, themselves. Such associations can have vested interests and could apply protectionist policies thereby creating cartels and a segmented market, affecting competition. As a consequence, there needs to be revisions to the subordinate regulations of the Construction Law, and especially PP28, as well as the MPW Decree on Supervision.

Integrity and Transparency

It is recommended that a system of Probity Auditing be adopted, at least for more complex packages. Under such a system, an independent auditor is selected to (i) endorse the probity of the procurement plan (i.e. the stage-by-stage process in conducting the procurement), (ii) monitor the procurement in real time so as to ensure the endorsed plan (stage-by-stage process) has been followed correctly, and (iii) screen any subsequent complaints and, where appropriate, dismiss those where claims are made that the process was not correctly followed.

It is felt that, as a first port of call, complaints should continue to be made initially to MPW, as the procuring entity. However, in the interests of perceived independence and to create an integrated “one-stop shop” with consistency in handling all types of complaints, be they related to the procurement process or to alleged fraud/ corruption, it is recommended that the unit handling second-tier complaints (i.e. those directed to the Minister of Public Works) currently within the Construction and Human Resources Agency be absorbed into the Office of the Inspectorate General.

The failing of the current mechanism is that complaints can only be routed to the procuring entity (in this case MPW). There are potential conflicts of interest with the entity handling the complaint also being the procuring entity. In view of this potential conflict of interest, the current system cannot be considered to operate in a completely fair and balanced manner with due process. One proposal under consideration by LKPP is that after exhausting all avenues with the procuring entity such as MPW, appeals may then be made to LKPP which, in the interests of fairness/ equity, would set up “Adjudication Tribunals” in the appropriate region from which the complaint has been sourced. The constituents of each Tribunal would comprise procurement experts from (1) LKPP (as Chairman), (2) GOI entity equivalent to, but NOT, the entity undertaking the procurement, and (3) the Company Association representing the bidder. If the Adjudication Tribunals are not considered to be truly independent then another alternative could be to consider independent Arbitrators or Arbitration Teams, possibly sourced from reputable international firms. While arbitrators are normally used in respect of contractual disputes, they could also be used to adjudge third level appeals from complainants. There is concern that the proposed third level mechanism, being independent of the procuring entity, may be contrary to Law 17/2003 on state finances which stipulates the Line Minister, as the “Budget User”, to be solely responsible for the utilization of funds under the Minister’s control. It is considered the need for a higher-level “appeals” process to an “independent” body rather than the procuring entity should outweigh this concern.

Additional Procurement Support within MPW

In response to the World Bank IDPL Policy Trigger requiring the establishment of a “*Procurement Task Force*” within DGH a Decree was issued in August 2009 creating an Advisory Team comprising (i) a Steering Team, (ii) a Technical Team and (iii) an Expert Practitioner Team. Perpres 8/2006 amending Keppres 80/2003 refers, among other items, to the establishment of *Procurement Service Units (Unit(s) Layanan Pengadaan or ULPs)* within all Government entities that use APBN/APBD to procure goods, works and services. Subsequently, LKPP has issued guidelines elaborating on the formation of such ULPs. Should MPW adopt the recommendations in this report establishing a ULP for MPW as a whole, then procurement support would be available to DGH where it is needed at the regional level where procurement is carried out. As a consequence, the proposed *DGH Advisory Team* would become redundant and not be needed. It should be noted that the proposed higher level (first-tier) Steering Team is, in fact, more like a *DGH Management Coordination Board*, and should be set up accordingly in that role as recommended in the recent World Bank report assessing Financial Management within DGH.

Any proposed structure should improve the efficiency of procurement operations, provide procurement support where it is actually needed and provide the necessary checks and balances for accountability, while not being too complex. Having regard to MPW existing structure, the ULP should be *structural* in nature. The ULP Headquarters would consist of (i) *Office of the Kepala* (Echelon 1?) with associated Secretarial support, (ii) *A Policy and Support Directorate*; and (iii) *MPW Tender Review Board* with an associated Secretariat. The *Headquarters Policy and Support Directorate* would be responsible for aspects such as policies, standards, monitoring and evaluation as well as establishing PCs needed centrally that are not under the jurisdiction of ULP regional offices. The *Headquarters Tender Review Board (TRB)*, comprising (i) *Kepala, ULP*, (ii) *DG of the concerned/ involved operational directorate general* and (iii) *the Inspector General (or their nominees)* would sit formally to vote on recommendations for award of contracts *equal to, or greater than, IDR 50 billion* prior to the Minister signing the contract. The TRB is assisted by an expert *Secretariat* which would (i) carryout evaluations independent of the PC, as a check and balance, for procurement packages *equal to, or greater than, IDR 50 billion* and (ii) review Bid Evaluation Reports submitted by PCs within MPW that are *greater than IDR 25 Billion and less than IDR 50 billion* and issue No Objection Letter (NOL) to enable the PPK Commitment Officer to proceed to execute the Contract.

Procurement is currently the responsibility of Satkers at provincial level and, with approximately 200 Satkers in DGH and about twice that in DG Human Settlements, is *widely dispersed and lacks capacity*. *It is recommended that procurement, which will become the responsibility of the ULP, be raised from Satker to Balai level (in the case of DGH there are 10 Balai) where procurement support would be provided on hand (i.e where it is needed) in the form of ULP Balai Policy and Support Offices across all directorates general within MPW.* By raising procurement to Balai level it is envisaged there could be a lesser number of PCs with more capable members. While the establishment of permanent PCs is not advocated for integrity reasons, either (i) standing PCs could be created for fixed periods with members seconded for several months on existing remuneration plus honoraria, bonuses and a guarantee of being able to return to their old job positions at the end of their tenure, or (ii) a “pool” of *trained MPW procurement specialists could be developed to serve on PCs* established on an “ad hoc” basis. *As expertise develops, it would be mandatory for at least one of these ULP procurement specialists to serve on every PC* in conjunction with other appointed members, including those with technical expertise relevant to the procurement package. Such procurement experts would serve on PCs on a rotational basis. It is stressed that the roles/ functions of Satkers and PPK units would continue to be the same with them continuing to be the productive units executing the MPW budget in accordance with Law 17/2003 on state finances with the designated PPK Commitment Officer executing and administering procurement contracts and the Satker Treasury Officer arranging payments. The only difference is that instead of the Satker establishing the PC to undertake the procurement process, this work would, in future, be outsourced to the ULP and the ULP would establish such PCs at Balai level where the ULP would have procurement expertise available to support each PC. Even though it is recommended that procurement be raised from *Satker* to *Balai* level, it is important that ULP Balai Offices ensure there continues to be good liaison between the PCs established by the ULP Balai and the Satkers/ PPK units and that those who are responsible for the design are consulted, should the need arise, during the evaluation process.

Possible future support, both in setting up MPW’s new ULP and during its first year of operations, is shown in ANNEX 5 to the report.

CHAPTER 1: INTRODUCTION

1.1 PREFACE

The Australian Government's Aid Policy Framework recognizes that economic growth is essential for reducing poverty and realizing the Millennium Development Goals, and that *infrastructure investment* is a key driver of economic growth. This is reflected in the launch in 2007 of the Infrastructure for Growth Initiative (IFGI), which aims to help regional partner governments improve their infrastructure policies and finance high-priority infrastructure investments. The Indonesia Infrastructure Initiative (INDII) has been developed within the IFGI framework with the goal of promoting economic growth in Indonesia by enhancing the relevance, quality and quantum of infrastructure investment. INDII aims to assist national and sub-national government agencies, such as the Ministry of Public Works (MPW), (Pekerjaan Umum (PU)) address constraints to infrastructure investment and to improve infrastructure project delivery. This will be accomplished by financing technical assistance and training services and by providing infrastructure enhancement grants. Accordingly, this study has been financed by INDII.

1.2 SCOPE

To maximize its development impact, INDII, within the IFGI framework is collaborating with and supporting infrastructure-related interventions of the World Bank, Asian Development Bank and other multilateral agencies. The World Bank Infrastructure Development Policy Loan (IDPL) requires the Government of Indonesia (GOI) to meet a series of policy triggers to enable release of loan tranches. One such trigger required to be met in FY2009 is "Trigger 11" requiring the establishment of a *"Procurement Task Force within the Directorate General of Highways (DGH) (Bina Marga) staffed, funded and mandated to provide support to Procurement Committees (PCs) in terms of advice, capacity building, review and problem resolution."*

A key aspect that impacts on budget implementation and disbursement of public funds is the efficiency and effectiveness of the public procurement process. The objective of this study is to (i) provide MPW with an overview of its procurement activities, existing institutional arrangements for procurement and responsibilities relating to procurement of goods, works and services required to implement its budgeted program, with particular emphasis on the DGH program, (ii) provide an analysis of the performance of such procurement processes, and (iii) make recommendations not only to improve the processes themselves, but also where additional support could be provided within both MPW, and DGH in particular, to improve their efficiency and effectiveness. This report should also be considered as an input to MPW institutional strategic plan titled *"Indonesia's Public Infrastructure 2025 in response to global changes and national development challenges"*.

1.3 APPROACH

MPW, which is the third largest budget spender with disbursements of IDR 16.7 Trillion (USD 1.7 billion) in fiscal year FY2006, IDR 22.8 Trillion in FY2007, and IDR32.0 Trillion in FY2008, has a wide-ranging responsibility in respect of infrastructure across several sectors, with separate Directorates, each under a Director General (DG), being responsible for a particular sector or group of sectors.

DGH is the largest spender in the Ministry of Public Works responsible for approximately 40 percent of the ministry's budget. The key function of DGH is the management and future development of the national road network which spans about 35,000 Km. DGH offers several good practice examples for other directorates general including a recent undertaking to re-define the ministry's strategic role, mission and mandate for the DG; and some practices in the management of financial resources. DGH has recognized the need to revise its strategy. DGH's plan to create a roads agency for freeways, the structural change apparent in the introduction of regional hubs (Balais), and its pro-active approach to the implementation of a medium-term planning and expenditure framework as mandated in Law 17 of 2003 are some examples of the foresight being shown in DGH. DGH has made significant progress in the planning and implementation of operational and maintenance activities for roads. The ministry is also planning and undertaking new construction to support the target economic growth of Indonesia. RENTRA, DGH's master plan, which outlines the five-year plan for roads, while ambitious in the planned outputs, is fairly comprehensive including construction of new roads segments as well as maintenance of the existing roads network. Unlike some other GOI ministries and directorates general within MPW, DGH has maintained very high rates of budget implementation, with 99.3 percent budget implemented in 2005, 93.8 percent in 2006, 88.3 percent in 2007 and 96.2 percent in 2008. As a result of this, according to a recent survey, 80% of the road network in Indonesia is well-maintained. Along with other directorates general, DGH has also been pro-active in moving toward the implementation of a full e-procurement system and is also undertaking a strong initiative to strengthen asset management.

On the basis that (i) DGH sets a relatively good bench mark in light of the above, (ii) each directorate general within MPW has more or less the same structure and delegated responsibilities and (iii) the World Bank-funded IDPL Trigger 11 specifically mentions DGH, then, having regard to the study deliverable time lines, it was decided to focus primarily on DGH. While some interviews were conducted in other directorates general for comparative purposes, it was felt that by setting DGH as the benchmark, the findings and recommendations applicable to DGH could also be applied to other operational directorates general. Also, where appropriate, consideration was given to the possibility of centralizing some procurement activities/ support across MPW as a whole. Interviews were also conducted with other relevant stakeholders such as staff from the National Public Procurement Agency (LKPP), the private sector and multi-lateral agencies such as the World Bank (WB) and Asian Development Bank (ADB).

Findings and recommendations from the assessment are organized around six central themes, namely (i) the Public Financial Framework in which Procurement Takes Place; (ii) the Procurement Legislative and Regulatory Framework; (iii) Institutional Framework and Capacity; (iv) Procurement Operations and Market Practices; (v) Integrity and Transparency; and (vi) Additional Procurement Support within MPW and DGH.

CHAPTER 2: PUBLIC FINANCIAL FRAMEWORK IN WHICH PROCUREMENT TAKES PLACE

Public procurement utilizes public (GOI) funds and is, therefore, inextricably entwined with GOI's budget planning and budget execution processes. It is, therefore, necessary to provide some background information on the budget process and potential constraints that this may impose on procurement within line ministries and specifically MPW and its DGH.

2.1 PLANNING AND BUDGET FORMULATION

GOI follows a strictly annual budget process. The annual internal planning and budgeting process in MPW and DGH is embedded in, and dependent on, the Government-wide budget preparation cycle, as stipulated in Law 17/2003 on state finances and Law 25/2004 on development planning and as shown in Figure 1 below. It is a four party process involving the Ministry of Finance (MOF) together with Line Ministries such as MPW, the National Development Planning Agency (Badan Perencanaan Pembangunan Nasional or BAPPENAS), and the Parliament (Dewan Perwakilan Rakyat or DPR) from the beginning of the process through to approval of the consolidated work plan and budget and preparation of the Budget Presidential Decree (Perpres). Based on Law 17 of 2003 the Indonesian Government now draws up a unified national budget (Anggaran Pendapatan Belanja Negara or APBN) that has regard to a Medium Term Expenditure Framework (MTEF) and performance-based budgeting approaches. It adopts an institutional approach rather than the previous sector approach with dual recurrent and development budgets. i.e. the budget no longer uses a sector approach but rather a FUNCTIONAL one. Likewise, it no longer refers specifically to development projects. MOF has also established a Treasury Single Account (TSA). Indonesia's budget system uses the following terminology (categories) being (1) Functions, which are based on international standard GFS201 economic and functional classification, (2) Programs, and (3) Activities/ Sub-activities. GOI is currently using 11 functions. Expenditure is also specified in 8 economic classifications e.g. personnel, capital, maintenance etc.

2.1.1 Planning Phase

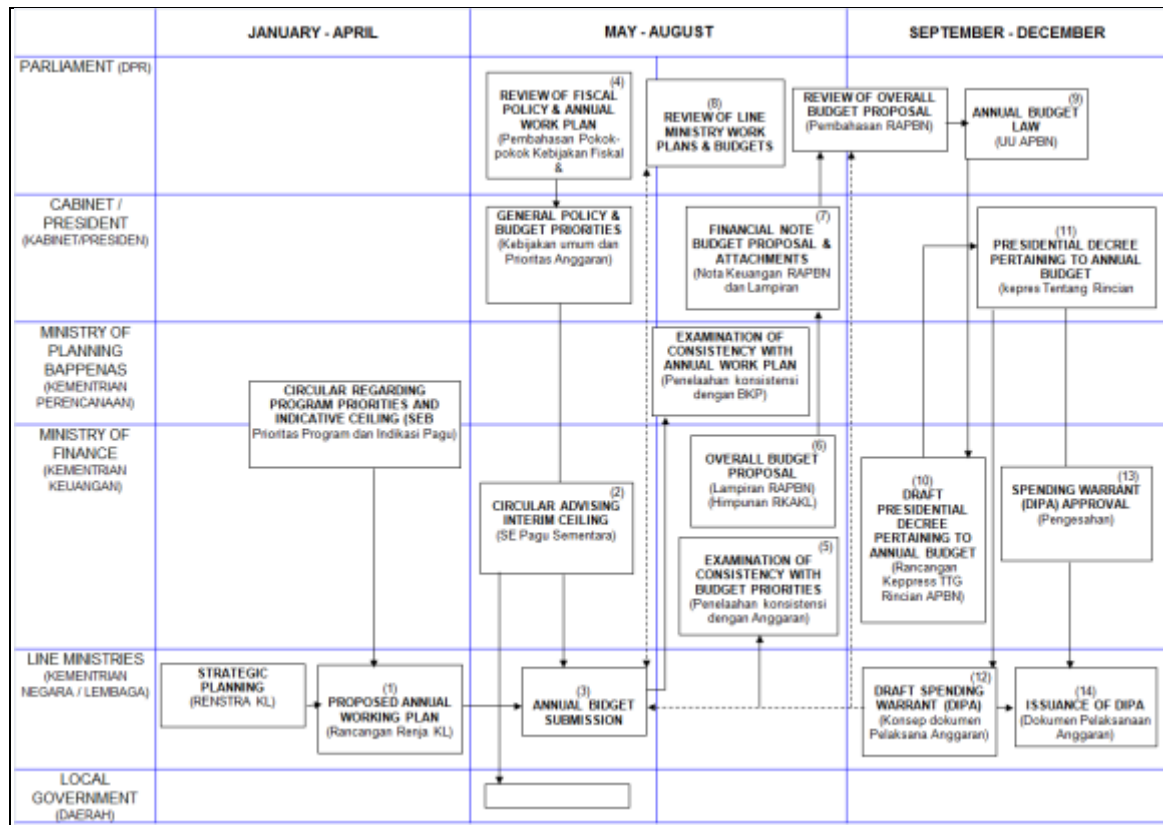
The *planning phase* for the following year commences in February/ March after MOF and BAPPENAS issue a joint circular with indicative annual ceilings for all line ministries. These ceilings reflect overall government priorities and provide the basis for the preparation of the annual work plan (RENJA-KL), first at the DG level and then later on at MPW level. While the ceilings are provided at the level of programs, and separated for discretionary and non discretionary expenditure items, there is flexibility at the ministry level to re-prioritize among programs and concerned DGs. DGH receives funding for three programs, the road and bridges maintenance program, the road and bridges construction program, and the state leadership and governance program. The former two finance all "*infrastructure developmental*" expenditures related to the management of the national road system, while the latter is funding establishment costs of DGH, including salaries of DGH staff.

Based on the indicative ceilings, MPW allocates budget to each echelon I unit¹, which provides the basis for the planning exercise within each unit such as DGH. The Directorate for Planning and Programming (Bina Program) within each directorate general then identifies priority activities that

¹ Echelon 1 units are units at the Directorate General Level.

are included in the annual work plan of MPW and submitted to BAPPENAS as an input for the GOI work plan (RKP) which is submitted to the DPR in May i.e. they adapt their working plans to the ceiling provided. In the case of DGH, for example, a key decision in the planning and budgeting process is between the amount of expenditures for new construction and maintenance. This decision is taken by the Directorate of Planning and Programming based on expected budget constraints as reflected in the indicative and temporary ceiling and existing commitments, with priority given to maintenance activities. During the planning phase DGH also conducts planning meetings with regional Balai and Satkers (Spending/ Implementation Units) thereby being a bottom up process.

Figure 1. Flow Chart of GOI Annual Budget Process



Source: MoF DG Budget

2.1.2 Budget Formulation Phase

The *budget formulation phase* starts about June. A second budget circular is issued by MOF with revised interim annual ceilings that typically reflect the relative priorities set at the planning stage adjusted to changing fiscal conditions and the expected overall resource envelop. Ceilings are detailed for each echelon I unit within MPW and, at this stage, there is only limited room for reallocation within line ministries. These ceilings provide the basis for the preparation of the detailed budget submission (RKA-KL). Within DGH, budget submissions are prepared based on budget constraints and top down prioritization among the Satkers. This is followed by the preparation and submission of detailed line item budgets for each Satker, which are then consolidated at the DG level.

2.1.3 Cost Estimates

Cost estimates for activities are prepared and budgeted for in the detailed budget submissions (RKA-KL) during the budgeting phase. Detailed engineering designs that are prepared for new construction projects include cost estimates referred to as the *“Engineer’s Estimate”*. MOF does not include specific standard unit costs for MPW activities in their circular, as it does with some other ministries. DGH collects regionalized unit cost information for a multitude of items, which are used in the costing of maintenance and new construction activities. The sub-directorate for budgeting *adjusts these unit costs for expected inflation; however, these adjustments are based on the CPI assumption in the budget rather than detailed price projections for specific individual items*. Upon approval of the budget, the Minister of Public Works and various DGs issue Letters (1) confirming key appointments within Satkers and sub-units entitled Pejabat Pembuat Komitmen (PPK) which, literally translated, means the *“Official(s) Making the Commitment”* in respect of funds viz. delegated to sign and administer procurement contract(s) for a specific project based on the recommendation of the Procurement Committee (PC) and (2) requesting that project preparation and advance procurement action commence. PCs, whether *“standing”* or *“ad hoc”*, are also sub-units of Satkers and are appointed by the Head of the Satker. PCs finalize bidding documents and, just prior to calling bids, prepare the *“Owner’s Estimate (OE)”* with adjusted costing based on the technical specification, which provides a benchmark for expected subsequent bid prices. As in the case of determining the Engineer’s Estimate, the PC applies unit costs adjusted for inflation, usually based on CPI, to a formula which calculates the OE. *Since errors can be made in applying unit costs, it is recommended, as a cross-check, that the PC adjusts OEs calculated for recent projects and compares them to that calculated by means of the formula*. While such advance actions within DGH are to be commended, some Satker Heads and PPK Managers have confirmed that, on occasions, the original project scope on which the OE was prepared needed to cut back due to the budget allocation being reduced during the budget formulation phase.

2.1.4 Medium Term Expenditure Framework

The implementation phase of many infrastructure projects can span more than one year whereas GOI’s existing budget process is an annual one. GOI has now adopted a *“Medium Term Expenditure Framework”*, which is a policy-based approach to the budget, where budget management decisions will be made for a rolling multi-year period. This will enable the budget to manage the provision of multi-year projects and also future contracts that require advance commitment and planning, including those whose period of implementation will span more than one year. Such multi-year contracts, which can reduce the number of bidding processes to just one for a multi-year project, thereby reducing transaction costs, are normally only awarded in DGH for new road and bridge construction works with the prior approval of MOF. In 2008 about IDR 5 Trillion, or 29 percent of the total DGH budget, was executed through multi-year contracts. The MTEF will ensure expenditure committed up front in multi-year contracts is given priority in subsequent FYs during the budget allocation process. Therefore, it will be important that MPW and DGH prioritize their programs and ensure that they are synchronized with the National Strategic Plan. Also, for those multi-year activities incorporated in their programs, they will need to provide accurate disbursement projections over the three year period having regard to multi-year procurement plans. DGH is one of the more pro-active directorates general within MPW in endeavouring to adopt MTEF. While the MTEF is an appropriate step toward forward planning by considering budget implications beyond the current FY, the budget cycle will continue to remain a stop-and-go process with the DPR continuing to approve the consolidated budget (RKA-KL) and ceiling on an annual basis. As a consequence, while it will not alter the process of confirming the allocation of funds on an annual basis, it will help plan funding of multi-year activities for three consecutive years beyond the current FY and earmark

allocations for what would be expected to be probable inclusion in those subsequent years. What this provides is a four-year rolling window in respect of budget planning, which better suits infrastructure development projects.

2.1.5 Performance-Based Budgeting

In addition to MTEF, the other approach adopted by GOI under Law 17/2003 is “*performance-based budgeting*”, and this will be implemented in DGH from the FY2010 program onwards. Performance-based budgeting considers the relationship(s) between input funding and both outputs and expected results, including the efficiency in achieving these outputs and outcomes. Ideally, performance-based budgeting should change the focus of program/ activity achievement assessment from the amount of resources allocated to the activity to the outcomes achieved or realized from the use of those resources. The current budgeting process has had emphasis on the approval/ rejection of specific detailed line items, expenditure control, the amount of funds released and disbursed annually rather than due consideration of performance, what has actually been achieved and national priorities. Planning by MPW/ DGH at sector level still focuses more on the annual allocation or ceiling (due to the planning process explained above), rather than on sector short- and medium-term priorities. With performance-based budgeting, the measures of performance must ensure that taxpayers are receiving value-for-money. Consider the case of roads as an example. Outputs and targets are usually measured in terms of kms of road maintained/ rehabilitated, constructed etc. Targets are claimed to be achieved when these kms of work are done, with little consideration being given to quality standards. For instance, is the road able to serve traffic throughout all seasons and reduce vehicle operating costs and travel times?

2.2 BUDGET EXECUTION

With the establishment of Balais, institutional arrangements for budget execution in DGH are still evolving. In MPW, the Minister, as the User of Budget, has delegated responsibility for execution of the Budget through the Balais to their Satkers and respective PPK units. In other words, it is the Satkers and their PPK units that are the productive units executing the MPW budget. Budget execution starts with a ministerial decree (SK) issued towards the end of the previous budget year, which relates to the budget and related work schedules for the budget year. The decree includes appointments to key financial positions in Satkers and includes technical competencies and administration requirements. Financial responsibilities are delegated to several key positions in a Satker to increase checks and balances, and increase accountability for financial decisions taken by the Head of Satker, who cannot act simultaneously as the Satker Treasurer.

2.2.1 Spending Authorizations

Under GOI’s budget system (as shown in the flow chart in Figure 1) an approved Spending Authorization/ Warrant or *Daftar Isian Proyek Anggaran (DIPA)* is required for any “on-budget viz. on-APBN” expenditure to occur during the year of implementation. MOF check approximately 20,000 DIPAs against the newly approved budget RKA-KL. Some are processed in MOF regional offices with the Budget Execution Directorate in MOF Jakarta being responsible for approval of the remaining DIPAs from all EAs/ line ministries that are not approved by regional offices. Codes are applied depending on the function (e.g. MPW) the DIPA will be used for.

While it may be correct for MOF to claim that all DIPA are available for issuance at the commencement of the new FY, this is somewhat misleading. MOF mark some DIPA with an asterisk or star (bintang) symbol indicating that while they are in the system, their approval has been blocked and cannot be disbursed, either in whole or in part, by the DG Budget. This occurs because a comparison between the draft DIPA and the RKA-KL indicates one (or more) criteria for budget allocation has (have) not been fulfilled. Examples of a possible total blockage could be (i) the necessary documents supporting the proposal have not been properly completed by the concerned EA/ line ministry or (ii) in the case of donor-assisted projects/ activities loan/ grant agreements have not yet been signed. Examples of partial blockages might relate to the purchase of new motor vehicles where there is now a strict GOI policy in place requiring justification or restrictions on non-binding civil service travel. Such partial blockage only applies to that component and does not prevent the implementation of the remainder of the activity.

The preparation of DIPA documentation is quite rigid with the information required being extensive and, to some extent, duplicating that already provided, in the RKA-KL. MOF contends that, with computerization, it should be relatively straight forward for Satkers to produce DIPA having already produced the RKA-KL. However, it is not so much the production of the DIPA documentation that is the problem (although it has been confirmed that it can be a very time consuming process), but rather the *constraints imposed on downstream implementation* due to the level of detail required. While it is appreciated that the DIPA is a necessary expenditure control document, an error in information pertaining to what might be a relatively minor or insignificant component in the context of an overall project could either delay DIPA approval, or, while not affecting DIPA approval, could delay actual disbursement by the relevant MOF Regional Office of DG Treasury (Kantor Pelayanan Purbendaharaan Negara (KPPN)), and hence delay implementation of the entire project including the signing of procurement contracts.

Minor DIPA revisions internal to the concerned PPK unit, including re-allocations between sub-activities, can be approved by MOF directly, although such revisions are usually not considered after 31 October due to high disbursements toward the end of the FY. On the other hand, under current virement laws, revisions that involve re-allocations from one project/ activity (hence PPK unit) to another officially requires DPR approval but, rather than micro-manage to this level, authority is normally delegated in the annual budget law to MOF (DG Budget) to reallocate between PPK units and between activities under the same program (with some restrictions in each case). Where the changes result in re-allocations between programs, the DPR must still approve.

2.2.2 Mid-Year Revisions

Regular budget revisions are typically processed in June of the given fiscal year. Over the past years, mid-year revisions mostly resulted in budget increases accounting for between 5 to 10 percent of the initial budget. The process largely replicates the annual budget formulation process, albeit a leaner version, with iterations between BAPPENAS, MOF, MPW and ultimately DGH on how to use additional funds. Such revisions, under the Budget Amendment Law take about 2-3 months (August to October). The mid-year revisions also offer an opportunity to vire funds between DGH's three major programs that would otherwise require legislative approval. However, reportedly, intra-program revisions are less typical in the DGH environment. The three existing programs, construction, maintenance and administration are fairly broad allowing enough room for adjustments within the confines of programs (most of which require MOF approval, as stated above, but can be processed independent of the mid-year revisions).

2.2.3 Carry-Over of Capital Expenditure Funds

Law 17/ 2003 on state finances does not allow the “carry over” of IDR capital funds from one FY into the next, although ongoing non-discretionary costs such as salaries, utility costs etc. can be carried over in addition to donor-assisted funds. The requirement to “use” the DIPA within the year or “lose” it contributes to the accelerated pace of expenditure at the end of the fiscal year. Up to 50% of the budgeted funds are often utilized in the last quarter of the FY. This year-end rush of expenditure could compromise the quality of the procurement process resulting in poor quality of the end product and sub-optimal expenditures. The practice of awarding multi-year contracts for a portion of new construction projects increases the need to monitor and improve allocative efficiency by active in-year cash planning and management. The ability to carry over IDR capital funds into the next FY was suggested as a trigger for a recent WB-funded Development Policy Loan, but was subsequently withdrawn.

CHAPTER 3: PROCUREMENT LEGISLATIVE AND REGULATORY FRAMEWORK

3.1 NATIONAL REGULATORY FRAMEWORK

3.1.1 Background to Legal Reform

Important steps in the public sector procurement legal reform process were, first, Presidential Decree (Keppres)² 18/2000, which superseded a Keppres that had been in existence, albeit with amendments, since 1994. Second, a higher level Construction Industry Law 18 was enacted in 1999 which, among other aspects, governs the procurement of civil works and related consulting services. New directives for this Construction Industry Law were also issued in 2000. In addition, other laws in respect to State Finance, Treasury, Audit, and Small Scale Business all make reference to, and impact on, public procurement.

Following the financial crisis of the late 1990s, events that provided an impetus to the procurement reform process in Indonesia were (i) its prioritization by the Consultative Group on Indonesia (CGI) in 2000, (ii) the release of a Country Procurement Assessment Report (CPAR) for Indonesia in 2001 with some initial recommendations, and (iii) a commitment by GOI to the CGI in 2001 to create a National Public Procurement Office (NPPO). Until 2007, BAPPENAS was responsible for national public procurement reform. Initially BAPPENAS established a steering committee, supported by a secretariat and three working groups responsible for legal and policy, institutional, and human resource development. Stemming from this Steering Committee, and have regard to the consequences of decentralization, Presidential Decree 80/2003 was issued as a national standard regulation for the procurement of goods, works and services using public funds either from the national budget APBN or local government budgets (Anggaran Pendapatan Belanja Daerah or APBD). Over the intervening years since the promulgation of Presidential Decree 80/2003, the National Development Planning Agency established within its organization an interim “Center for Development of Public Procurement Policy”. This Center not only focused on the future establishment of an NPPO, but also became both GOI’s central focal point and driver for ongoing public procurement reform initiatives across what are now known as the OECD/DAC four Pillars and which constitute the titles of Chapters 3-6 inclusive of this report.

3.1.2 National Public Procurement Agency

Presidential Decree (Keppres) 80/2003 also committed to the future establishment of a National Public Procurement Office (NPPO). Presidential Decree (Keppres) 106/2007 was signed in December establishing an independent (i.e. non-departmental) agency, the Lembaga Kebijakan Pengadaan Pemerintah (LKPP) or the National Public Procurement Agency (Indonesia’s NPPO equivalent), which is responsible for sustainable, integrated, focused and coordinated planning and development of strategies/ policies/ regulations associated with the procurement of Goods/Works/ Services using public funds. This institution reports directly to the President of the Republic of Indonesia.

Under its current organization structure, LKPP is headed by a Chairman and an Executive Secretary. In addition there are four departments, each headed by a Deputy Chairman. All these are Echelon I positions. The four departments each have separate responsibilities for each of:

² Differentiation is made between Presidential Decrees that designate responsibilities for specific tasks/ positions (Keppres) and Presidential Regulations that describe how government policy should be applied (Perpres).

- a) Strategy and Policy Development,
- b) Monitoring-Evaluation and Information Systems,
- c) Human Resources Development, and
- d) Legal Affairs and Complaints Settlement.

The Executive Secretariat has three Bureaus and each Department has three Directorates. One Directorate under the Deputy for Monitoring-Evaluation and Information Systems is responsible for Electronic Procurement (e-Procurement). Support is being provided to LKPP through the AusAID-funded Indonesia Public Procurement Strengthening Program (ISP3).

3.1.3 Current Implementing Laws and Regulations

Stemming from decentralization, an improved national public procurement regulation or standard, being Presidential Decree (Keppres) 80/2003, was issued, superseding 18/2000. It generally promotes the basic principles of procurement: transparency, open and fair competition, economy, and efficiency. It covers all areas of procurement (goods, works, and services [including consulting services]) that use public funds (APBN and APBD) irrespective of value, and is supposedly to cover contracting entities (government procurers) at all levels viz. National and Sub-national. Subsequently, there have been a series of seven amendments to Keppres 80/2003 over the years 2004-2006.

Under the auspices of the joint World Bank and OECD Development Assistance Committee (DAC) Procurement Round Table initiative, developing countries and bilateral and multilateral donors have worked together to develop a set of tools and standards in the form of Base-Line Indicators (BLIs) and Compliance/Performance Indicators (C/PIs) that assist in determining the relative strengths and weaknesses of a country's public procurement system. Irrespective of the size of a country and its economy, it is considered appropriate to "benchmark" it in accordance with the generally accepted international standard "model system". The assessment of the BLIs presents a "snapshot" comparison of the actual system against the international standards or "model system" that the BLIs represent.

GOI accepted an invitation to pilot test the benchmarking methodology as per the OECD/DAC Procurement Joint Venture paper Version 4 July 2006 and undertook this benchmarking exercise in 2007. It found that Keppres 80/2003 and its amendments, as the current regulatory standard, meets most of what is generally regarded as accepted international practice.

It was assessed to fully meet the criteria in respect of:

- Advertising rules and time limits;
- Tender documentation and technical specifications;
- Submission, receipt and opening of tenders;
- Procedures for Pre-qualification;
- Procedures suitable for contracting of services or other requirements in which technical capacity is a key criterion; and
- General conditions of contract (GCC) covering goods, works, and services consistent with national and, when applicable, international requirements.

In the case of the GCC, although standard contract documents are not yet formally issued, the general requirements and their mandatory use are specified in the regulations.

It was assessed to partially meet the criteria in respect of:

- *Procurement methods*, on the basis that the Decree currently only regulates provisions related to National Competitive Bidding (NCB); and
- *Complaints*, on the basis that, while the regulations do make provision for appeals/ complaints to both the procuring agency and its Minister, they do not make provision for administrative review by an independent body with authority to grant remedies.

Since the establishment of the National Public Procurement Agency (LKPP), considerable work has been undertaken by its Department of Strategy and Policy Development, with the involvement of all stakeholders, in revising and consolidating Keppres 80/2003. This revision/ consolidation in the form of a Perpres is now complete and a draft has been submitted to the Cabinet Secretariat.

There are no major changes between the current and revised versions with the revisions being of a general nature primarily to consolidate the original decree and its subsequent seven amendments plus reword parts in the Indonesian Language in order to clarify and avoid potential misunderstandings. One issue that has been clarified concerns accountability and the role of the Pejabat Pembuat Komitmen Unit (PPK), as executor and administrator of contracts, compared with that of the Procurement Committee (PC) that undertake the actual procurement. While this is an issue that relates more to *Procurement Operations* (see Chapter 5 of this Report), there needs to be closer liaison/ communication between the PC and the PPK, especially where the procuring entity has a central PC, since PPK is not involved in the procurement process but must administer the contract.

LKPP has currently produced:

- a matrix comparing Keppres 80/2003 with the revised/consolidated draft Perpres
- a draft of the revised/consolidated Perpres
- a draft of attachments to the revised/consolidated Perpres
- drafts of SBDs

LKPP has endeavored to make the revised/ consolidated Perpres more user-friendly. In addition to the general provisions, it has been separated into four parts relating to the procurement of (1) “Goods”, (2) “Construction/ Works”, (3) “Consulting Services” and (4) “Other Services”. Likewise a matrix has been prepared of other Laws, Decrees etc relating to Procurement such as those pertaining to Budget, Finance, Treasury and establishment of LKPP etc. While the revision/ consolidation goes into much more detail than the Procurement Guidelines produced by donors such as ADB, World Bank, AusAid etc. meaning they might have less flexibility, such an approach is understandable when considering the environment in which members of Procurement Committees must work and the scrutiny they are under (refer Sections 4.4 *Human Resources and Capacity* and 6.3 *Audit*).

It is hoped that these ongoing reforms will enable donors to eventually adopt Indonesia’s own system in accordance with the Paris Declaration. It should be pointed out, however, that the revised/ consolidated Perpres will continue to provide protection to Indonesian bidders using APBN/APBD funds with international participation allowed above thresholds of >IDR 50 billion for Goods/ Works and >IDR5 billion for consulting services.

In the case of MPW, in addition to Keppres 80/2003 and its proposed revision, legislation that impacts on its operations, including procurement activities, is the Construction Industry Law 18 that was enacted in 1999 which, inter alia, governs the procurement of civil works and related consulting services. New directives for this Construction Law were also issued in 2000. Generally, there is no conflict between Law 18/1999 and Keppres 80/2003 as far as the procurement processes are

concerned. Government Regulation (PP) No. 29 under this Law states in Clause 3 that “The guidance for procuring contractors, consultants, and suppliers of goods, works and services under APBN/APBD and foreign-funded projects shall be determined through Presidential Decree (viz. Keppres 80/2003) and in accordance with related Government Regulations”.

However, under company law, a company is required to hold a license and be registered by GOI referred to as the IUJK. This is all that is necessary for a company to participate in bidding for public sector procurement under the current Keppres 80/2003 and will continue under the proposed future revised/ consolidated Perpres. One potential conflict with Construction Industry Law 18/1999 is that relevant subordinate PPs under this Law providing detailed guidance, being (i) PP28 relating to the development of the Construction Industry, (ii) PP29 relating to Procurement and (iii) PP30 relating to Company and Professional Associations etc., require key staff within construction companies to hold competency certificates in either general management expertise (SKA) or relevant technical skills (SKT) and every construction company/ corporation to have a certificate of competency/ capability (SBU) that provides a Grade delineating the size of work in terms of amount/ value that the company is entitled to carry out. In other words, under the Construction Industry Law, it is necessary to obtain an SBU before the company can obtain its License (IUJK). GOI as regulator originally delegated this role to a quasi-government institution being LPJK (National Construction Development Board) which consists of GOI officials, tertiary educational institutions, associations of construction industry entities, and professional associations. In turn, LPJK has delegated SBU certification to the relevant associations of construction or consulting companies and individual SKA and SKT competency certification to the relevant professional associations. The implications of delegating responsibility for issuance of the SBU to the various associations of construction and consulting companies is discussed further under Section 5.2 of this report entitled *Functionality of the Public Procurement Market*.

The use of Public-Private Partnerships (PPPs) is an important instrument in the development of Infrastructure. Perpres 67/2005, is a Presidential Regulation that provides a framework for cooperation between GOI and private business entities involved in the provision of infrastructure. It is written keeping in mind the provisions of Keppres 80/2003 concerning the Implementation Guidance for the Provision of Government Goods/Services and its subsequent amendment under Presidential Regulation 32/2005. An issue that still needs resolution both in respect to Keppres 80/2003 and its amendments, as revised and consolidated in the proposed new Perpres, relates to the process for selecting private companies to participate in PPPs and whether it is appropriate to apply *Success Fees*. Normally, the application of such *Success Fees* would benefit both the client and the advisor. The client benefits by knowing that the best efforts of the transaction advisor will be directed toward closing the transaction and the advisor benefits by creating the potential for additional reward in exchange for good work. While current regulations do not appear to preclude the application of such fees, this issue has not yet been addressed in the proposed revised/ consolidated Perpres.

3.1.4 Regulations relating to Electronic Procurement

Originally, consideration was given to issuing a separate Presidential Decree related specifically to electronic procurement (e-Procurement). However, in 2007, the DPR enacted legislation referred to as the “Cyber” Law 11/2007. This Law applies to e-commerce in general and the need to be interoperable with Indonesia’s regional trading partners. i.e. it impacts on a range of business and public sector legislation and is much broader than simply applying to suppliers dealing with GOI. Among its many features, it deals with aspects such as the authenticity of electronic signatures. As a consequence, in the light of the “Cyber” legislation, it was decided to simply incorporate an

appropriate clause allowing the use of e-Procurement in the revised/ consolidated Perpres. Should any further details/ instructions in respect of e-Procurement be needed, then it is anticipated they would simply be issued in the form of a Circular Letter (SK) by the Chairman of LKPP.

3.1.5 National Standard Bidding Documents, Users' Guides etc.

The use of *National Standard, or Model, Bidding Documents* is not yet mandatory but specific mandatory clauses are promulgated in the current Keppres 80/2003. Earlier, the interim "Center for Development of Public Procurement Policy" within BAPPENAS produced a number of draft national standard bidding documents (National Procurement Model Documents or SBDs) based on Keppres 80/ 2003 which, in addition to an Explanatory Guide, included documents for "Goods", "Works", and "Services other than Consulting" (with separate documents for Prequalification and Post-qualification), "Consulting Services", "PPPs", "Force Account" etc. In accordance with the four parts of the revised/ consolidated Perpres, the number of SBDs have now been reduced and consolidated into four documents being:

- a) "Goods",
- b) "Construction/ Works",
- c) "Consulting Services", and
- d) "Other Services".

3.1.6 Future Procurement Law

In theory, national Presidential Decrees should take precedent over regional laws, decrees and Instructions. However, with the rapid decentralization, the situation became complicated. The plethora of decrees, regulations, and instructions ranging from Ministers, Governors, Bupatis (Mayors) etc that contain conflicts and inconsistencies as well as not meeting currently accepted international practice, could create confusion. In addition, the rapid change to decentralization has created the risk of overlapping jurisdictions thereby resulting in potential segmentation of both the procurement market and the procurement legal framework. Such conflicts/ inconsistencies and overlapping jurisdictions could enable both local governments and individual persons to manipulate these to their advantage. Indonesia's legal framework for public sector procurement can best be strengthened by anchoring it with *an overarching consolidated and comprehensive national public sector procurement law at the highest level*.

LKPP and its forerunner, the interim "Center for Development of Public Procurement Policy" within BAPPENAS, have undertaken considerable preparatory work in respect of a new Procurement Law. In parallel with the drafting of a revised and consolidated Perpres to replace Keppres 80/2003 and its amendments, LKPP has also produced an academic paper for discussion providing the rationale for introducing a new Procurement Law. Based on this preparatory work, LKPP now has a draft law ready for submission to the DPR in 2010. In preparing this draft, in addition to previous work, consideration has also been given to current Laws relating to procurement using public funds in other countries such as Viet Nam and the Philippines. The law itself is general in nature with proposed subordinate Government Regulations (PPs). When submitting the proposed draft law, it would also be necessary to consider other laws, such as the Construction Industry Law 18/1999, on which this new law may impact and make any amendments to these, if necessary. It is expected that this procurement legislation may take more than one year to pass through the DPR.

3.2 INTERNAL MINISTERIAL DECREES AND DOCUMENTATION

Internal Ministerial Decrees and Circular Letters relating to procurement using APBN/APBD funds must be in accordance with current national laws and regulations. A summary of key Decrees and Circular Letters related to procurement within MPW, but excluding those related to integrity and conduct requirements, is provided in Table 1 below.

Table 1. MPW Ministerial Decrees and SKs relating to Procurement (excluding those relating to Integrity and Conduct)

NO	NAME OF DECREE	NO OF DECREE	SYNOPSIS
1	Ministry of Human Settlements and Regional Infrastructure Decree on Guidance for Procuring Construction Services by Government Entities.	339/KPTS/M/2003 31 DEC 2003	<p>The Guide is to be used for procuring construction services ie design of works, supervision, construction of works for civil works, architecture, mechanical, electrical and environmental structures.</p> <p>This decree comes into effect on January 1, 2004.</p> <p>Content of attachment :</p> <ol style="list-style-type: none"> 1. Scope of guidance is for all construction activities financed under APBN/ APBD. 2. Allows for small companies to bid for the works 3. Package of works should fulfill the criteria as stipulated in this decree for : <ol style="list-style-type: none"> a. Small. b. Medium technology. c. High technology d. Complex works, including works above IDR 50 billion 4. The task procedures consist of: <ol style="list-style-type: none"> a. Certification/ Grade of construction business entities. b. Method of selection, i.e competitive bidding, limited bidding, direct selection or direct appointment. (in accordance with criteria as stipulated in Keppres 80/2003.) 5. Qualification rating. <ol style="list-style-type: none"> a. Evaluation will be simple yes or no analysis. b. Construction services will be evaluated through a merit system with consideration given to individual's SKA and SKT certification.

NO	NAME OF DECREE	NO OF DECREE	SYNOPSIS
2	Ministry of Human Settlements and Regional Infrastructure Decree Concerning the Issuance of Company License (IUJK)	369/kpts/m/ 2001	<p>This Decree provides guidance in relation to the provision of Registration/ License for national construction business entities thereby permitting them to start up their construction works/ activities</p> <p>The License is referred to as IUJK. Those involved in this permit process is as follows:</p> <ol style="list-style-type: none"> 1. IUJK will be issued by local government entity where the business entities are domiciled. 2. The cost of issuance should be in accordance with the prevailing regulations. 3. National business entities should submit their proposals to the designated unit appointed by the Mayor or Bupati including all necessary information in relation to their proposed future activities, supported by documented data concerning their company. 4. All administrative terms and conditions are stipulated, based on prevailing laws and regulations. 5. IUJK License is issued for a 3 year period and can be extended. 6. The appointed unit for issuing the IUJK License is required to report periodically to Governor and Minister. 7. Supervision/ monitoring of the issuance of Licenses is the responsibility of the Mayor or Bupati.
3	Ministry of Human Settlements and Regional Infrastructure Decree concerning Standards and Guidance for Construction Works.	257/KPTS/M/2004	<p>The Decree provides the standards and guidance for procurement in construction activities consisting of:</p> <ol style="list-style-type: none"> 1. An instruction providing guidance in the following: <ol style="list-style-type: none"> a. Construction services <ol style="list-style-type: none"> i. National standard bidding document on construction works. ii. Bid Evaluation guidance for national competitive bidding for construction of works using a unit price contract. iii. Bid evaluation guidance for national competitive bidding for construction of works using lump sum contracts. iv. Guidance for qualification to bid using national competitive bidding for construction of works b. Consulting services. <ol style="list-style-type: none"> i. Standard document for national selection of designing and supervision consulting services. ii. Proposal evaluation guidance for national selection for design and supervision consulting services. iii. Guidance for qualification to bid using national selection for design and supervision consulting services. 2. Standards and guidance for construction services and other consulting services as mentioned in sub clause 1 of this attachment. 3. Standards and guidance for construction services and consulting services applicable for projects or activities funded by IDR, either in part or in total, through APBN and or APBD including loans/grants for construction services tendering. <p>All activities, works undertaken previously or simultaneously with the signing of this decree will continue as before, however for those works, activities commencing after signing must be in accordance with this Decree.</p> <p>The content of any other decrees that contradict with this Decree should be disregarded and this Decree shall apply.</p>

NO	NAME OF DECREE	NO OF DECREE	SYNOPSIS
4	Ministry of Public Works Ministrial Regulation on Calculating Formula for Leased Equipment, Lease of Land and Buildings, including the Lease of Building Infrastructure within the Ministry of Public Works	15/KPTS/M/2004	This Ministerial Regulation consists of 5 clauses and 3 attachments for mandatory use within the ministry. The clauses are as follows: 1. The formula for calculating the lease of equipment as stipulated in attachment 1. 2. The formula for calculating the lease of buildings and land as stipulated in attachment 2. 3. The formula for calculating the lease of infrastructure as stipulated in attachment 3. 4. In coincidence with this regulation, the regulation for calculating the tariff for lease of equipment as determined through Ministerial Regulation no 585/kpts/m/1988 is no longer effective. 5. This regulation comes into force immediately upon the day of signing this regulation by the Minister
5	Ministry of Public Works Decree on National Standards and Guidance in Competitive Bidding for Construction Works.	181/KPTS/M/2005	This Decree is to be use for those types of contract that are mentioned in Decree 257 /2004 i.e. 1. National Standard Bidding Document for construction of works, applicable to multi-year contracts. 2. National Standard Bidding Document for mixed contracts, unit price contracts and lump sum contracts. 3. National Standard Bidding Document for construction contract that allow for subcontractors. 4. National Standard Selection Document for design and supervision consulting services with allowance for individual consulting services.
6	Ministry of Public Works Circular Letter (SK) relating to Advance Procurement Actions prior to Issuance of the DIPA/DPA	12.1/SE/M/2006	This Circular Letter (SK) is written to accommodate Clause 9 Sub-clause 6 of a recently issued Perpres 8/2006 in respect of the following activities: 1. The selection of service provider should be done at an appropriate time in advance of issuance of DIPA/DPA with the following provisos: 2. The Procurement Committee (PC) should be appointed by the relevant official at the time such activities take place. 3. The Letter of Appointment can only be executed after the related DIPA has been issued. 4. In the case of any complaint, the PC should proceed to answer the complaint. 5. The bid evaluation report should be submitted to the relevant PPK for approval.
7	Ministry of Public Works Guidance for Calculating the Owner's Estimate through Analysis of Unit Prices.	08/BM/2008	This Guide for Calculating the "Owner's Estimate" explains the various steps involved in the process, including calculating basic prices of materials, equipment, manpower/ labour and by applying these unit prices determining the so called "Owner's Estimate" (OE or HPS) for either the construction or maintenance of roads and bridges. The Guidance is composed in accordance with 1. Presidential Decree 80/2003; 2. Book 3 of MPW Guidance on Procurement; 3. Regulation from Ministry of Manpower (kep-02/men/1999) relating to the minimum tariff for manpower; and 4. MPW regulation (43/prt/m/2007) concerning standards and Guidance for Procurement

CHAPTER 4: INSTITUTIONAL FRAMEWORK AND CAPACITY

4.1 OVERVIEW OF MPW ORGANIZATION

The Ministry of Public Works (MPW), referred to as *Pekerjaan Umum (PU)*, has wide ranging responsibilities. The Minister of Public Works is the designated “*User of the Budget*”. An overview of MPW organization is shown in ANNEX 1. MPW is organized into *four distinct operational Directorates General*, each responsible and accountable for a particular sector. They are the Directorates General of:

- *Road Development (Highways) or Bina Marga*
- *Human Settlements or Cipta Karya*
- *Water Resources or Sumber Daya Air* and
- *Spatial Planning or Penataan Ruang*

In addition to the four operational Directorates General, MPW also includes:

- *Secretariat General* with responsibilities for aspects such as Finance, Personnel, Legal, Logistics, Data Processing, Overseas Cooperation, Communications and Training
- *Inspectorate General*
- *Research and Development Agency* and
- *Construction and Human Resources Agency* with responsibilities for developing construction enterprises, techniques, expertise and competencies. In addition, it provides guidance in construction including procurement. In this latter role, it is currently responsible for assessing and making recommendations in respect of second-tier procurement complaints that are addressed to the Minister.

While this report focuses primarily on the Directorate General of Highways (DGH) for the reasons given in Section 1.3 *Approach*, the organizational and accountability structures are more or less similar in the other operational Directorates General. Therefore, the recommendations made in respect of DGH should be capable of being applied across all four operational Directorates General.

4.2 ROLE OF DIRECTORATE GENERAL OF HIGHWAYS (DGH)

Within MPW, the Directorate General of Highways (DGH) (*Bina Marga*) has several wide and diverse responsibilities. These include:

- a strategy and policy role establishing the overall policy for development and maintenance of the roads network in Indonesia. The provision and maintenance of the roads network is currently considered a national responsibility solely within the domain of GOI. DGH, within MPW, is responsible for setting the strategy and policy objectives for the highways network and allocating budget for implementing the strategy;
- an infrastructure provider role, engaged in the development, and maintenance of the roads network. In its service provider role, DGH implements approximately 29 percent of the budget on new construction, mostly bridges, and maintenance of the existing network; and
- a client for services provided by contractors. A large part of the new construction, including design, is outsourced. In its client role, DGH is responsible for contract management on behalf of government.

The focus of this report is primarily on DGH's role as an infrastructure provider and hence as a client procuring goods, works and services in order to provide that infrastructure. However, in a draft World Bank Report entitled "Financial Management Assessment of the Directorate General of Highways", dated October 2008, it is suggested that DGH's large mandate diversifies its core focus, stretches its resources and requires that the Directorate General to develop very diverse skills including those of policy maker, program and project manager, technical engineering skills and procurement/ contract management skills. Examples from other countries suggest it may be better for GOI to be responsible for setting MPW's strategy and policy for the roads network while outsourcing the implementation of that policy to other agencies. The recommendations made in this report have regard to DGH's existing structure and how delivery of infrastructure projects based on that structure could be improved through more effective and efficient procurement structures and processes.

4.3 ORGANIZATION WITHIN DGH AND ACCOUNTABILITY

The Directorate General is organized on a functional basis, as shown in ANNEX 1, which, while having regard to strategy and policy, broadly reflects the different stages in a project life-cycle.

4.3.1 Role of Various Directorates within DGH Headquarters

With DGH Headquarters (Pusat), in addition to a Secretariat responsible for finance, human resource management and administrative matters, there are five other Directorates as follows:

- The Directorate for Planning and Programming is responsible for highways policy and regulation, planning and budget formulation including preparation of five year and annual plans for the road network, and in-year monitoring of the same;
- The Technical Affairs Directorate is responsible for preparing the Detail Engineering Design (DEDs) for construction projects in liaison with the concerned Satker in the region. The DEDs prepared by the technical affairs directorate are used by the planning and programming unit during budget preparation;
- The Directorate for Freeways and Urban Road,
- The Directorate for Road and Bridge West Region, and
- The Directorate for Road and Bridge East Region;

The latter three Directorates can be regarded as "operational" directorates *supporting* project implementation in the regions. However, it should be noted that for those projects funded solely by APBN/ APBD (viz. solely IDR-funded projects) the Minister of Public Works, as "User of the Budget", has delegated responsibility to implement such projects to a designated Satker at either central or regional level and, following award of contract(s), to a designated PPK unit within that Satker to execute and administer the contract(s). In the case of donor-assisted projects, while they are usually still "on-budget" (viz. sourced through APBN/APBD), donors usually require the threshold value of delegated responsibility to Satkers and their respective PPK Units to be less. In addition, donors often require additional overlays of advisory and supervisory consultants, including those providing advice on procurement activities, to be located at various levels, including the "operational" Directorates within Headquarters. As a consequence, in addition to the important planning and technical design roles, the overall structure within DGH Headquarters can be regarded as one of monitoring and support to the Minister, while the delegated responsibility for implementation lies in the regions.

4.3.2 Role of Regional Wilayah, Balai, Satker and PPK Units

The current organizational responsibilities within DGH throughout the Project Cycle are shown in Figure 2 below.

*Satker*s are units that the Minister, as the “User of the Budget”, has authorized to implement designated projects during the fiscal year(FY), including withdrawal of funds upon receipt of the authorized Spending Warrant (DIPA) and making payments for approved works in accordance with contracts. i.e. they are the authorized budget users for a particular FY. The role of the *Satker* is to monitor and supervise the implementation of those projects for which it has been designated responsibility only within its particular province or area. Within a *Satker*, in addition to particular designated positions such as Accounts Officers, Treasurers etc. there are sub-units such as Pejabat Pembuat Komitmen (*PPK*) responsible for particular projects and administering particular contract package and Procurement Committees (PCs) that are established as required. *PPK* Units can comprise about 20-25 staff each on average. The Head of each *Satker* is also responsible for (1) appointment of individual *PPK* units including its Head/ Project Manager and (2) establishment of Procurement Committees (PCs). There are just under 200 *Satker*s within DGH. These include a few located directly at central and regional hub (Balai) levels. However, about 90 percent are located at provincial level. Even though they are located at provincial level, they are DGH *Satker*s implementing projects funded from DGH budget allocation. As a consequence, they are often referred to as SNVT³ *Satker*s.

Regional governments can receive funds that flow directly into their local budgets (APBD) or they can receive funds “off-APBD”⁴ that are sourced from line ministries such as MPW. In such circumstances, while the funds are part of MPW, the spending/ implementing *Satker*, or SKPD, is provided by the local government and that SKPD executes (disburses) these MPW funds.

Within DGH, there are usually at least three different types of *Satker* within any one Province. These are:

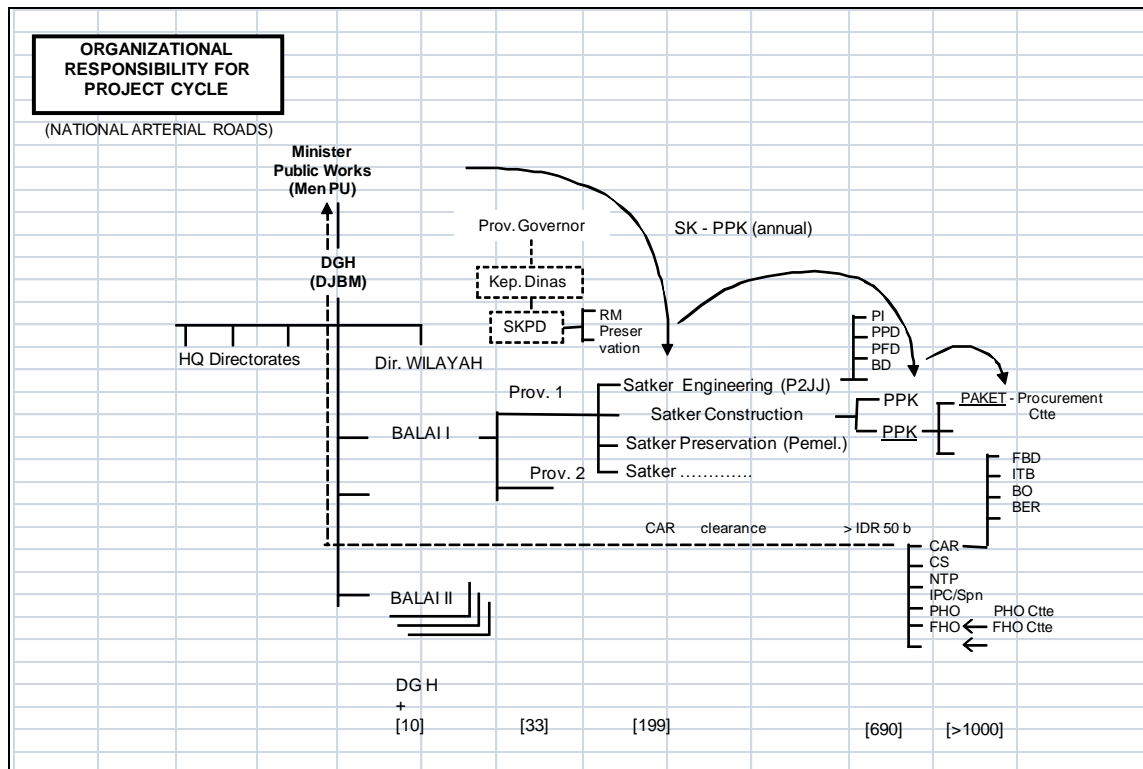
- “*Preservation*” *Satker* responsible for road maintenance
- “*Construction*” *Satker* responsible for Construction of New Roads, and
- “*Support Services*” (*P2JJ*) *Satker* responsible for Engineering Services

In addition, there may be other *Satker*, as the situation dictates, including *Local Government (SKPD)* *Satker*.

³ *Satker* Non Vertikal Tertentu (SNVT) is a central government *Satker* that implements national projects at the regional(provincial) level.

⁴ These are either “De-concentrated” Funds routed through the Provincial Governor or “Co-administered” funds provided to autonomous local government units

Figure 2. Project Cycle Organizational Responsibilities



ABBREVIATION	EXPLANATION
SE	: Ministerial Decree
SK	: Circular Letter with instructions usually from the Minister or DG
WILAYAH	: Regional Office of DGH
BALAI	: Regional Hub – In DGH responsible for Satkers in three Provinces
Kep. Dinas	: Kepala Dinas or Head of Local Government Unit
SKPD	: Local Government Satker
SATKER Preservation	: Satker responsible for Road Maintenance
SATKER Construction	: Satker responsible for Construction of New Roads
SATKER P2JJ	: Satker responsible for Engineering Services
PPK	: Unit that executes and administers the contract - i.e. "commits" the funds
PI	: Project Identification
PPD	: Project Preliminary Design
PFD	: Project Final Design
BD	: Bidding Documents
FBD	: Finalize Bidding Documents
ITB	: Instructions to Bidders
BO	: Bid Opening
BER	: Bid Evaluation Report
CAR	: Contract Award Recommendation

ABBREVIATION	EXPLANATION
CA	: Contract Award (Formal Notification Letter)
CS	: Contract Signing / Execution
NTP	: Notice to Proceed
IPC/Spn	: Interim Payment Certificate / Supervision
PHO Ctte	: Partial Hand Over Committee
FHO Ctte	: Final Hand Over Committee

A Ministerial decree (SE) on the technical competencies and administration requirements of key officials within Satkers, and their selection and appointment is issued every year. This practice applies mostly to regional Satkers who have functional staff, as opposed to the few central Satkers (in Jakarta) who have structural staff. The Director General (DG) proposes the list of candidates for key positions through the Secretary General, to the Minister in response to the SE that was issued towards the end of the previous budget year. The Minister's decision on the appointment of the key officials in the Satker and their specimen signatures is then communicated to the concerned MOF regional treasury office (KPPN). This is done to identify the person authorized to withdraw funds from the state budget. In performing their daily activities, key officials are assisted by staff members directly appointed by the immediate supervisor of the Head of the Satker, acting on behalf of the DG. Since the Satker is acting as an authorized budget user to withdraw funds and execute the budget for a particular FY, the appointment of the key financial officials in the Satker is limited to that FY coinciding with the period of validity of the DIPA. With the implementation of many projects requiring several years to complete, this system of reappointing key budget execution officials at the beginning of every FY is cumbersome, reduces continuity in managerial accountability and can delay budget implementation, thereby impacting on procurement and contract administration. It is understood that the DG treasury within MOF is preparing a new regulation that would accept the names of key Satker officials throughout the period of implementation unless there is change by way of rotation, promotion, attrition or project completion.

The number of Satkers in MPW, and especially within DGH, has increased with the increase in the number of projects. DGH changed its organizational structure in 2008 with the introduction of an additional tier of administrative control between DGH and its subordinate Satkers being regional hubs, called *Balais*. The role of the Balai, which reports directly to the Director General, is to provide operational management and oversight and planning within the region for which it is responsible. The *Balai* coordinates DGH budgeting, planning and project implementation activities, and monitors and supervises all activities (including procurement), throughout the various Satkers in the region (on average about three provinces) for which it is responsible. With 10 Balai within DGH and approximately 200 Satkers (see Figure 2), this means that, on average, each Balai is responsible for approximately 20 Satkers across three provinces. With the evolution of Balai within DGH, the organization structure may need some *rationalization to ensure accountability* and avoid potential duplication and overlapping of managerial control (1) between the responsibilities of the operational Directorates within DGH Headquarters and the Balai and (2) between the Wilayah and the Balai.

While the introduction of Balais within the DGH structure only occurred in 2008, regional Balais have been in existence in DG, Water Resources, for some time. Unlike the creation of Balai in DGH being regional hubs responsible, on average, for about three provinces and nine Satkers, the Balai in DG Water Resources were created primarily having regard to *river basins and water sheds*. In DG Water Resources, each Kepala Balai becomes the Manager of the particular river basin/ water shed for which that Balai is responsible and, therefore, is responsible for controlling water flows, water draw down etc. within that river basin/ water shed. Currently, within DG Water Resources there are 31

Balai and 39 Satkers. In addition to their role/ responsibility in respect of water management, in most instances each Balai is also responsible for at least one Satker, although a few have responsibility for more than one. Within each Satker there can be several PPK units. Having regard to the number of Satker for which each Balai is responsible within DG Water Resources, DGH is also considering consolidating the number of Satker into only one per province. While all implications need to be considered before any decision is made, if such consolidation takes place, each Balai within DGH would then only be responsible for about three Satker instead of twenty.

4.4 HUMAN RESOURCES AND CAPACITY

Not only structural inefficiencies, but also human resources policies and practices/ training can have a significant impact on capacity and efficiency of operations including in the field of procurement.

Out of a total MPW staff strength of about 16,000, just over 4,500 are employed in DGH. Of these, about 1600 are technical staffs, with professional qualifications. Jobs, which are structural, are organized into a hierarchy of four echelon grades. Promotions are awarded mainly, if not entirely, on the basis of seniority with pay determined entirely by the policies and rules set for the whole GOI civil service. Following a zero-growth recruitment policy about 10 years ago and an ageing workforce (about 20% of staff is due to retire this year) there is a very significant gap of mid-level professionals. Both the lack of succession planning and recruitment policies has contributed to this critical condition. As an interim measure, this deficit of senior technical skills is being addressed by a large proportion (almost 50 percent) of consultants working as highways engineers.

Procurement is not regarded as a profession within the public service and there are currently no incentives or career path for it to become so. Likewise, there is no existing structure within GOI agencies such as MPW that could provide a career path for procurement professionals.

4.4.1 Capacity and Certification

LKPP is currently undertaking a survey with the aim of setting up structures/ potential career paths and determining job profiles and what skills/ competencies might be needed at various levels with the aim of creating permanent positions that can improve procurement efficiency and hence accountability in the use of public funds and will be looking at the recommendations contained in this report in respect of MPW to see whether they could be replicated in other line ministries.

Keppres 80/2003 initially required that all members of Procurement Committees nationwide must hold a basic level procurement practitioner's proficiency certificate by 1 Jan 2006. Unfortunately, this target date was somewhat ambitious, bearing in mind the need to (i) develop a nationwide training system including the training of either public or private training providers, (ii) amend and improve training modules and materials produced previously, (iii) develop and design a testing and certification system for procurement practitioners, and (iv) undertake workshops. Because of the ambitious time constraint for national certification imposed, there was insufficient time to prepare training materials, conduct training, and undertake testing of prospective procurement practitioners. Therefore, while at first glance it might seem to be putting the "cart before the horse" to undertake testing before any training has taken place, a decision was taken to prepare computerized (multiple choice questions) for a basic level test. Originally this test was prepared and conducted by the interim "Center for Development of Public Procurement Policy" in BAPPENAS, but is now the responsibility of LKPP. The questions test practical knowledge of procurement from "hands-on" experience, as well as basic knowledge of Keppres 80/2003, being the current national regulation in

respect of procurement using public funds. In effect, the basic level test enables prospective procurement practitioners to be screened. Those who pass will be certified, whereas those who fail will be required to undertake further training. Subsequently, this requirement for basic level certification was postponed until 1 Jan 2008. So far, approximately 80,000 persons overall have achieved the basic certification. LKPP would continue to be responsible for certification of GOI certification practitioners (i.e. their level(s) of competency).

Fortunately, the current certification system is only at a basic level, thereby allowing room for LKPP to develop programs at higher levels. Actual levels of certification such as Basic, Intermediate and High etc. have still to be decided and will depend on what competencies/ skill sets are required for envisaged procurement structures within both national and sub-national GOI entities.

While no decisions have been made yet, consideration may be given to creating a *Competency Steering Group* initially, that could later evolve into a separate *"Procurement Training Institution"* under LKPP that would include representatives, not only from LKPP and other GOI Agencies such as line ministries, but also the private sector and tertiary educational institutions. The education and training of procurement practitioners would be out-sourced to tertiary *education service providers*, suitably accredited to do so. It would be the role of the *Competency Steering Group* to set up criteria for accreditation of training institutions. An initial seminar has already been held with tertiary institutions inviting expressions of interest for accreditation. In addition to courses for certification purposes, providers may also be required to provide other procurement-related specialist courses.

In the case of MPW, its Training Department (PUSDIKLAT) provides a 5 day procurement course without examination, as and when needed, throughout its twelve regional training centers. This training is for those seeking the Basic Level Procurement Certification and is based on fundamentals including the requirements of Keppres 80/ 2003.

In addition to training for Basic Level Procurement Certification, MPW Training Department also provides a series of one month comprehensive Training Courses related to project implementation (including procurement and contract administration) for Key Personnel of Satkers (PISK). These are split into courses for Satkers within each of the respective directorates general that deal with different sectors. Examinations are provided simply for ranking purposes. MPW does not have any internal certification system to ensure the competency of staff prior to their appointment as PPK, Satker or Balai Heads. Key PISK Topics that may apply to some, or all, courses are as follows:

- *Construction Contract Law*
- *Policies for Environmental Impact Assessments*
- *Project Planning and Administration of Donor-assisted Projects*
- *Financial Administration of Foreign Loans*
- *Laboratory Management and Quality Control*
- *Workshop and Equipment Management in Kabupaten*
- *Pre-contract, Contract Administration and Contract Law*
- *Construction and Quality Control Management*
- *Project Management (several levels)*
- *Regional Development*
- *Reporting on Civil Works and Financial*
- *Management Information Systems*
- *Procurement of Goods and Services*

- *Negotiations*
- *Development of Training Curricula*
- *Training of Trainers*
- *Personnel Training Manuals*
- *GOI Personnel Inventory*
- *GOI Asset Inventory*
- *Society Empowerment in Development of Human Settlements and Regional Infrastructure*

It is recommended that consideration be given to adopting an internal MPW Certification System for both Satker and PPK Managers based on PISK examination results so to ensure there are staff in these key positions with the competency to deliver a quality product during project implementation.

In addition to improving the capacity of procuring entities such as MPW, it is equally important that the capacity of the other main stakeholder in the procurement process, being those bidding for the supply of goods, works and services also be improved. The apparent lack of capacity among construction companies bidding for MPW contracts is evident by the fact that a bidder whose price is the lowest at bid opening often assumes that bid will be recommended for award of contract without appreciating that, in accordance with the requisite clauses pertaining to evaluation of bids in the bidding documents, (i) the company might be rejected during post-qualification and (ii) price adjustments might be necessary such that the lowest price at bid opening may not necessarily be the lowest evaluated bid. While construction company associations certify the competency/ capability of their member companies (see Section 5.2 below), they do not carry out any training for their members in such aspects as the preparation of bids and their subsequent evaluation in accordance with GOI procedures. They assume this to be the responsibility of the relevant professional associations that are responsible for determining the competency/ capability of their individual members.

One such professional association that impacts on the performance of contractors undertaking work for DGH is the Indonesia Road Development Association (IRDA) or Himpunan Pengembang Jalan Indonesia (HPJI). This reputable professional association, which has over 17,000 members from the construction and consulting industries, promotes development in civil engineering with particular emphasis on roads. It provides courses targeting three main areas being (i) *Design*, (ii) *Construction*, and (iii) *Supervision* and issues competency certificates (SKA and SKT). While IRDA/ HPJI has issued professional competency certificates to over 20,000 individuals, feedback is that, with the current lack of competency within the construction industry, probably more than double the number of professionals holding such competency certificates is required. The professional *Design* Course targets technical design prior to procurement occurring (pre-procurement) and the *Construction* and *Supervision* courses target implementation and contract administration after procurement has taken place (post-procurement). It was confirmed that what is lacking, not only in the courses provided by IRDA/ HPJI, but also from other professional associations, is a course for consulting and construction companies on the actual procurement process itself. i.e this is the vital “missing piece of the jigsaw puzzle”.

While it is important that any proposed *Competency Steering Group* that might be created by LKPP has due regard to the capacity requirements of private sector bidders in addition to GOI procuring entities, it is felt that it is in the interests of GOI to uplift the capacity of bidders, such as those in the consulting and construction industries, when bidding for GOI-funded goods, works and services. As stated above, while there is emphasis on technical competency, which is vital, less emphasis has been placed on business competency and especially in relation to procurement. *It is recommended, therefore, that GOI, through MPW Construction and Human Resources Agency, considers providing*

funding, either in whole or in part, to professional associations such as IRDA/ HPJI, to enable them to include in their curricula courses on the actual procurement process in accordance with the national regulations (currently Keppres 80/2003) that focus on (i) how to prepare fully compliant and successful proposals/ bids, (ii) understanding how such bids would be evaluated by the Government procuring entity such as MPW/ DGH and (iii) on the need for integrity and transparency in this business process. Funding for this specific capacity building could be provided by donors.

4.4.2 Selection and Composition of Procurement Committees

It is a mandatory requirement in respect of Keppres 80 for all members of Procurement Committees (PCs) to be certified as having a basic knowledge in procurement. Minimum staffing requirements for PCs are as follows:

< IDR 500 million for goods and works or < IDR 200 million for consulting services,

the MINIMUM requirement is 3 persons

Above these thresholds the MINIMUM requirement is 5 persons

As shown in Figure 2, with the current structure within DGH there is currently, on average, about 6 Satkers per province and there can be several PPK (of the order of about 30) per Satker. While each Satker may create PCs to handle several packages within its sphere of work (viz. Preservation, Construction, Engineering Support etc.) the main issue is that procurement is widely dispersed, usually on a provincial basis, with a large number of PCs being created, thereby diluting the availability of capable resources to serve on them. As an example, Satkers within Balai Besar IV endeavor to include on its PCs one person from the Balai and four other persons with separate expertise/ knowledge in:

- a) technical design;
- b) finance;
- c) procurement procedures with emphasis on requirements for bidding documents;
- d) legal/ contract knowledge

It was confirmed that it is currently not easy to fulfil the mandatory requirement of basic certification plus achieve the above skills.

Also, in the interests of good governance, it is common within MPW for Satker Heads to co-opt staff from other directorates general to serve on PCs. For instance, for procurement within DGH, may be co-opted from Water Resources, Human Settlements etc. While this may provide some independence, such spread of expertise may well diminish the technical capacity of the PC.

It is suggested that there is currently a *large un-tapped resource* available not only to MPW, but to any GOI entity, that could be used either to (i) serve as formal members on PCs, should legal / regulatory requirements, including certification, allow, or (ii) provide training, not only to potential PC members, but also to bidders. *This large un-tapped resource is retirees of concerned GOI entities with appropriate experience, both in technical requirements and in procurement processes.*

4.4.3 Improve Status/ Prestige of Procurement Committees

PCs should be regarded as an important and vital resource within MPW and DGH. They should become prestigious units that are well insulated and protected with incentives to serve.

At the moment there are disincentives and risks for staff to become PC members because

- They experience pressure both from outside and from above;
- They can be made personally liable;
- Membership is part-time requiring their other work to be continued; and
- Remuneration in terms of honoraria is a pittance

There is currently a perception that such disincentives are making persons *reluctant* to serve on PCs and one way to avoid serving on a PC might be to fail the basic-level certification examination. Originally the test was more difficult to pass because, although multiple choice, marks were deducted for wrong answers. Now the scores are based solely on correct answers.

In order to encourage quality staff to serve on PCs and make PCs become more *prestigious* the following are recommended:

Liability – While the overall GOI remuneration package, and particularly the salary component, is low, under Keppres 80/2003, procurement committee members could be held personally liable for any irregularities/ mistakes that may result in GOI incurring costs. These could potentially result in investigation by MPW Inspector General, BPKP or KPK and the imposition of penalties such as jail or personal reimbursement. However, anyone can make genuine mistakes. It is MPW that appoints staff to the PC. i.e. appointed members are, in effect, delegated that responsibility by the Minister and are acting on behalf of the Minister. Therefore, in such circumstances, it is recommended that *MPW accept liability for the actions of the PC, unless there is absolute proof that an individual member has been either grossly negligent or engaged in KKN, in which case that individual member should be held liable for his/her actions.* It should also be borne in mind that the PC has no alternative but to accept all tenders, which are legal documents, submitted by bidders at “face value”. Subsequently, should any of these documents be found to be fraudulent, then it is not the PC, but the concerned bidder, that has committed a criminal offence. Perhaps because of the issue of personal liability and the prospect of being audited, PC members can be very rigid in their approach and focus on everything that is not in accordance with the bidding documents, even when such breach(es) by a bidder is not in any way material to the outcome of the evaluation.

Incentives - in order to encourage people to serve on PCs the honorarium should be increased substantially. The honorarium is currently only IDR 150,000 (approx. USD 15.00 equivalent) per month for what is a part-time task in addition to a member’s normal day job. Such level of honorarium does not provide any incentive for what is a part-time job fraught with risk due to liability issues and pressures from the media and civil society “watch dogs”. In the case of the emergency following the Aceh/Nias earthquakes/ tsunamis, the Badan Rehabilitasi dan Rekonstruksi (Agency for Rehabilitation and Reconstruction) NAD-Nias or BRR was given the authority to offer members sitting on its centralized procurement committees IDR 2.5 million per month i.e. about sixteen times the normal honorarium. Procurement undertaken by the BRR appeared to be successful achieving generally lower prices and less apparent fraud and corruption. It should be noted also that, under donor-assisted procurement, the remuneration of procurement consultants/ agents immersed in the operational DGs at the instigation of the donors may be many hundred times more than the honoraria of PC members. Therefore, *it is recommended that the honoraria paid to PC Members be increased to a similar level to that offered by the BRR to members of its PC.* Likewise, it is

recommended that bonuses in form of remuneration should be provided if the procurement is undertaken on schedule (i.e. within the previously prescribed period from finalization of bidding documents and OE through to recommendation for award of contract). If GOI is unable to fund this, then, at least *in the case of donor-assisted procurement, donors should consider approaching the Government to allow payment of increased honoraria and performance bonuses to PC members from donor funds*. Although this is currently may not be allowed under MOF regulations, the ensuing benefits of timely delivery are likely to far outweigh the amount involved.

Continuity and Job Security - It is also recommended that provisions be made to allow staff to be seconded to a PC on a full-time basis for a designated period on their existing salary, but with the monetary benefits of serving on the PC, thereby providing continuity with the guarantee that they can return to their old position/ job at the conclusion of that period.

CHAPTER 5: PROCUREMENT OPERATIONS AND MARKET PRACTICES

5.1 EFFICIENCY OF PROCUREMENT OPERATIONS

5.1.1 Project Readiness and Cycle

About FY2000, GOI agreed to adopt a system of start-up Readiness Filters for donor-assisted projects. Such criteria should also be applied to IDR-funded projects so that all projects are ready for implementation upon issuance of DIPA for the first year of implementation. The criteria consisted more or less of the following, depending on the activity/ project:

General Criteria

- Confirmation from Regional Governments (if applicable) of participation in the activity/ project
- Satkers established and staffed
- Where applicable, land acquisition and resettlement plans in place (at least for the 1st year of implementation).

Finance-related Criteria

- Financing Plan agreed upon with MOF and BAPPENAS.
- Domestic/ counterpart funds for the 1st year of implementation, including those from regional governments where applicable, are committed.

Procurement-related Criteria

- Procurement Plan for 1st yr of implementation in place
- Advance procurement action to enable award of key contracts immediately after DIPA is issued. ie. Preparation of RFPs (bidding documents etc.) for procurement and, where appropriate, calling for bids, evaluation and recommendation for award.

There has been a problem in the past in undertaking actions in advance of issuance of the following year's DIPA, due to the uncertainty with respect to funding. MPW/DGH and its Balais and Satkers are already involved in advance planning in preparing the RKA-KL and, derived from that, the draft (concept) DIPA itself i.e. in programming the project/ activity in the budget process. In addition, the move to MTEF with four-year rolling window will assist in forward planning. Because MPW is involved in implementation of civil works projects/ activities on a day-to-day basis it has developed a strong capability of implementing projects and, unlike some other line ministries, MPW and DGH are very much aware of the need to prepare for project implementation in advance. As an example, under the new approach to the budget planning including MTEF, DGH has adopted parallel advance actions in order to prepare for project implementation in the following year as opposed to a previous sequential approach after issuance of DIPA. An activity schedule in bar chart format in Figure 3 shows the approach DGH has adopted.

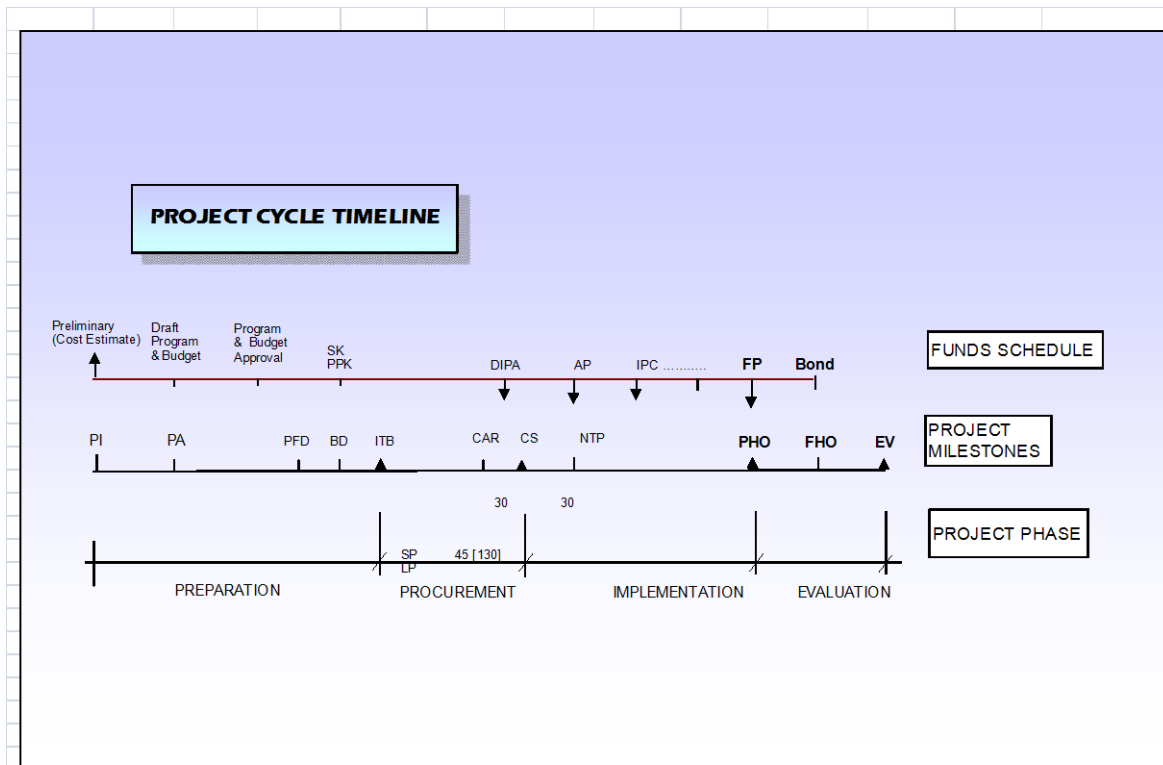
Figure 3. DGH Advance Actions to Plan and Execute Following FY Budget

Actions Taken Within DG Highways (DGH)													
Ministry of Public Works													
To Plan and Execute Following FY Budget													
	Current Year												Next
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan
Activity	1	2	3	4	5	6	7	8	9	10	11	12	1
1 RKP-National Work Plan													
2 Interim Ceiling													
3 Discussions DPR Commission													
4 RKA-KL											20/11		
5 Design-Prepare Bidding Documents													
6 Advance Procurement Actions													
7 Satker/ PPK Key Appointments													

Project design and preparation of bidding documents for contracts to be implemented in the following year commence in May of the current year. Once the DPR approves the national consolidated RKA-KL and ceiling, the Minister of Public Works issues a letter requesting that advance procurement actions commence, thereby enabling invitations to bid to be called immediately. On average, about 30 percent of the contracts awarded by DGH are multi-year (e.g. more complex civil engineering contracts usually for the construction of new roads and bridges) necessitating the need to ensure that funds are available for those contracts in subsequent years. MTEF assists DGH forward planning in this regard. The approach of adopting advance planning and procurement in the year prior to expected disbursement will assist in improved delivery, not only spreading disbursements more evenly throughout the subsequent year, but also ensuring a higher absorption rate.

A Project Cycle Time Line that compares the various phases of the project cycle with project milestones and the funds schedule in accordance with the Financial Framework described in Chapter 1 is shown in Figure 4 below. In the case of procurement, advance actions up to Contract Award Recommendation can be carried out in advance of issuance of the Spending Authorization or DIPA. Legal Documents such as the Formal Letter of Appointment and Contract Signing can only be executed once the DIPA is issued. Of course, when signing multi-year contracts, DGH is also committing to disburse funds in future years subject to satisfactory performance in accordance with the Contract even though the DIPAs to enable disbursement are not yet issued.

Figure 4. Project Cycle Timeline

**Abbreviation :**

PI	- Project Identification
PA	- Project Appraisal
PPD	- Project Preliminary Design
PFD	- Project Final Design
BD	- Bidding Document
PPK	- Pejabat Pembuat Komitmen (Project Commitment Officer)
Satker	- Satuan Kerja (Work Unit)
FBD	- Final Bidding Document
CE	- (Owner) Cost Estimate
ITB	- Invitation to Bid
BO	- Bid Opening
BER	- Bid Evaluation Report
CAR	- Contract Award Recommendation
CS	- Contract Signing
NTP	- Notice to Proceed
AP	- Advance Payment

5.1.2 Procurement Packaging

One of the problems with procurement delegated to PPK Commitment Officers within Satkers is that procurement can tend to be undertaken in smaller packages associated with the province in which the Satker is located. For instance, in the case of DGH, a national roads project could be broken down into small packages of only a few kilometres each. Is this necessarily the most efficient delivery of a national road and will it ensure consistent quality over its entire length? This issue is as much one concerning the planning process within DGH as it is concerning procurement. It is appreciated, however, that the need for efficient delivery needs to be weighed against providing opportunities for smaller construction firms to bid.

5.1.3 Procurement using National Regulations

As explained in Section 4.3 of this report, the Minister, as the “User of the Budget”, has authorized Satkers to implement designated projects during the fiscal year(FY), including withdrawal of funds upon receipt of the authorized Spending Warrant (DIPA) and making payments for approved works in accordance with contracts. i.e. they are the authorized budget users for a particular FY. Under Keppres 80/2003, the PPK Head or Project Commitment Officer (in effect, the Project Manager) is delegated the authority to approve a Procurement Committee’s recommendation to award contracts up to a ceiling of IDR 50 billion (approx USD 5 million equivalent) for goods, works and services. Such a high threshold places immense responsibility in the hands of the PPK Project Commitment Officer. For contracts above this threshold, the approval of the Minister is needed, which can take about 2-3 weeks in order to enable review of the PC’s recommendation by a unit within the MPW *Construction and Human Resources Agency*. In addition, contracts above that value are also referred to MPW’s legal bureau for a legal opinion prior to signing.

5.1.4 Donor-Assisted Procurement

Language – A key problem in relation to procurement under donor-assisted projects is the requirement that the procurement process be conducted in the English language. Bidding documents requiring complex technical specifications and legal terminology in the general and special conditions are often a huge barrier and particularly for some PPK and PCs located in the more remote provinces.

Consultant Overlays – When designing the donor-assisted project/ activity, donors usually require the provision of consulting services to assist the Satker and PPK unit in managing the activity/ project. Such *Supervisory* consultants are not usually used for IDR-funded projects where the project is managed by the PPK unit directly. Whether the use of Project Management/ Supervisory consultants under donor-assisted projects either improves implementation performance and/ or its outcome in terms of project quality in comparison with IDR-funded projects is not the purview of this report. However, in addition to these Project Management Consultants, it is also common in some donor-assisted projects to include:

- *Procurement Advisory Service* consultants, funded out of loan funds i.e. by GOI, to provide overall support in respect of the procurement processes due to the need to follow the Donor’s own guidelines, which may require ICB and English Language documents above certain thresholds; and
- *Procurement Agents*, funded directly by donors, whose primary role is to carryout bid evaluations in parallel with the PC. The problems occur when there is a difference of opinion between the Procurement Agent and the PC. It should be borne in mind that the PPK unit has to work subsequently with the successful contractor in administering the contract. Since it is the PPK Commitment Officer, on behalf of the Minister, who signs the contract, then the ultimate responsibility for donor-assisted procurement will still lie with the PC and the PPK Commitment Officer.

The question arises whether this overlay upon overlay of consultants under donor-assisted procurement is actually providing value for money? If donors feel that supervisory support is needed, then why isn’t the scope of the supervisory consultants expanded to include procurement support rather than providing additional layers of consultants? While this may be an appropriate short-term measure, a better approach is to have

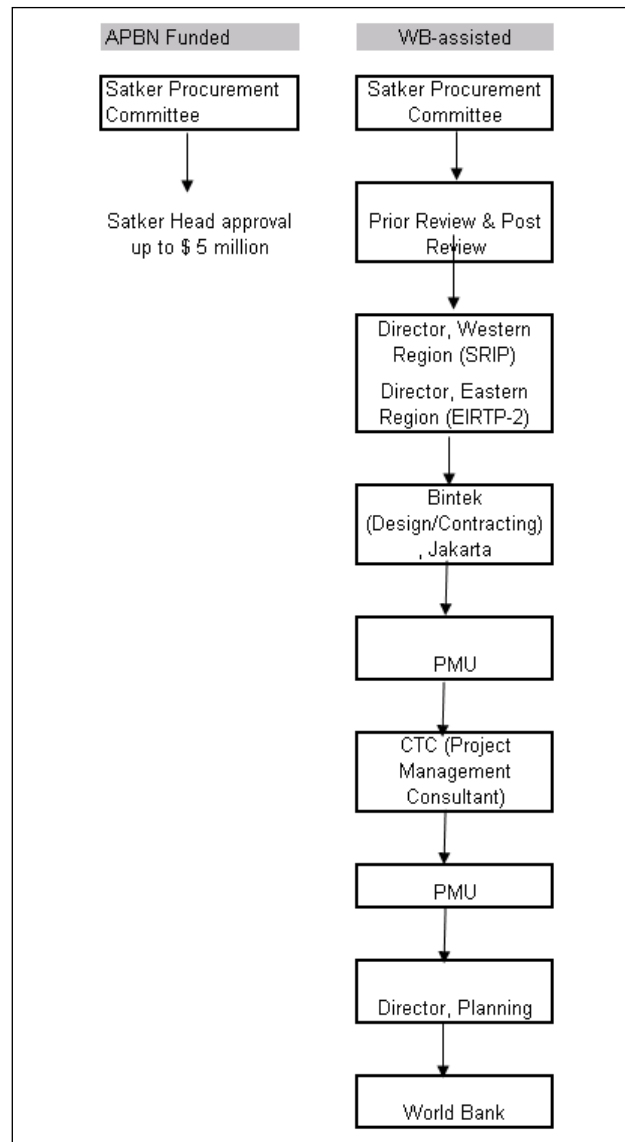
- appropriate project management and public procurement capacity building programs in place so as to ensure, in the long term, GOI Satker and PPK Managers and the PC members are certified as being competent to undertake procurement and administer contracts themselves; and
- procurement expertise in the form of support, preferably from national rather than international experts in the long term, provided at the “front-line” where the procurement is being carried out. viz. where the PCs carryout their function.

Chapter 7 of this report recommends a new structure for procurement support within MPW and DGH. Such support could be replicated, not only in other directorates general of MPW, but also within other line ministries needing a structured approach in terms of procurement support.

Thresholds – In the case of donors, while their Guidelines may not specify thresholds, they often impose thresholds above which International Competitive Bidding (ICB) should be applied. These could be somewhere between USD200,000-500,000 equivalent for Goods and USD3 million-5million equivalent for Works. Despite the best of intentions, it is rare for international firms to bid for construction works in Indonesia. In addition, donors may also impose prior-review thresholds, which can vary from project to project depending on the national public procurement system/ reforms and the perceived capability of the line ministry and its implementing Satker and PPK. Such prior-review thresholds are usually set below the ICB thresholds and demonstrate a wide divergence/substantial gap with the post-review threshold of IDR 50 billion (approx USD 5 million equivalent) in accordance with Keppres 80/2003, that is provided to PPK Managers under IDR-funded procurement. The imposition of prior-review thresholds by donors, which are perceived to be low, is a contentious issue. While such controls can create unnecessary implementation delays in donor-assisted projects, they may also help improve quality by reducing the potential for corruption, collusion and nepotism (Korupsi, Kolusi, dan Nepotisme or KKN) during donor-assisted procurement.

Document Flow – In considering the reasons why procurement takes longer under donor-assisted projects/activities, it is appropriate to consider the internal requirements/procedures of DGH when submitting documents from PCs to donors for *prior-review*. Viz. the document flow and the number of stages (reviews/approvals) needed within DGH until receipt by donors. As an example, in the case of World Bank-assisted Second Eastern Indonesia Regional Transport Project (EIRTP-2) and Strategic Road Infrastructure Project (SRIP) Figure 5 below indicates the various stages of review/approval needed within DGH prior to documentation being received by World Bank staff for review. For these projects it was mutually agreed that bid evaluation reports be submitted to World Bank for review within six weeks from bid opening. Based on this time period, a spread sheet was prepared for each project/activity that set deadlines for this documentation to be submitted to the various internal DGH offices such as Regional Directors, Design/ Contracting Unit etc. and finally to the World Bank. Evidence shows that, in almost every instance, the receipt of documents by the World Bank was long overdue and, in some cases, by several months. Upon receipt of the documents, the World Bank endeavoured to adhere to its prescribed delivery standards, but acknowledged there were also some delays on its part. Also, on occasions, documents may have to go back and forth up and down the chain, until donors are satisfied their requirements have been met. It should be borne in mind that the document flow shown in Figure 5 does not include Balai, which were only established in DGH in 2008 and would add yet another stage in the process. With the imposition of prior reviews by donors, it is the internal requirements/procedures in sending documentation from the PC (Satker) to the donor and back again that can create a significant delay.

Figure 5. Comparison of Documentation Flows between World Bank-Assisted EIRTP-2 and SRIP Projects Requiring Prior Review and IDR- (APBN-) Funded Projects



There are two actions that GOI and donors should consider taking as interim measures until such time as ongoing reforms enable donors to adopt Indonesia's own system in accordance with the Paris Declaration. While such actions could potentially face some resistance from both GOI and donor sides, they would be expected to improve times taken to procure goods, works and services, and, as a consequence, project implementation and disbursement. These are:

- Following discussions with GOI officials, especially those within LKPP, donors to increase and GOI to decrease their respective prior-review thresholds to a mutually agreed harmonized level that suits the fiduciary requirements of both sides and is applied by all. The suggestion to decrease GOI's prior-review threshold is solely for fiduciary reasons. The problem is to balance fiduciary requirements with efficient implementation. Unless appropriate substitute mechanisms are put in place by GOI, a lowering of GOI's prior-review threshold is likely to delay implementation with more IDR-funded procurement needing to go to the relevant line minister for review and approval. If a harmonized threshold between GOI and donors is to be achieved with donors seeking a reduction in the current GOI threshold, then LKPP and donors would need to consider

an appropriate substitute mechanism for efficient review of IDR-funded packages above the threshold. On the other hand, donors may wish to consider harmonizing their thresholds at GOI's current level.

- Donors to move entirely to ex-post reviews and, where donors find irregularities relating to either non-compliance with regulations and/or proven KKN, GOI will agree to support, and work in tandem with donors, in the application of appropriate actions such as (i) the declaration of "mis-procurement", (ii) consistent application and enforcement of penalties/ sanctions in accordance with Indonesian laws, and (iii) re-imbursement of funds, if requested by donors.

5.1.5 Survey of Selected DGH Satkers

Due to time constraints, nine pertinent questions relating to the procurement process using public (APBN/APBD) funds were put to 30 Satkers from within DGH selected at random and spread throughout Indonesia. Of these, 18 or 60 percent responded. A summary of the questions and answers is provided in ANNEX 2. While cognisance of the answers was taken when making recommendations in this report, it should also be borne in mind that the regional Satkers, as the current delegated contracting and spending units on behalf of DGH, are but one stakeholder in the process, and the answers received were not unexpected.

5.1.6 Monitoring Procurement Operations

Both GOI (line ministries such as MPW and BAPPENAS) and donors have Results Monitoring and Evaluation/ Project Performance Management Systems with monitoring and evaluation (M&E) criteria/ indicators in place in order to determine whether projects as a whole result in the required outcome.

MPW already has functioning *e-Monitoring*, which is a Management Information System that can be accessed in real time either from computer or 3G phone and which is capable of providing hardcopy reports at specific times twice during the day. Information available both at overall MPW level and at DG or lower levels includes:

- Realization/absorption progress in comparison to budgeted amount and graphical representation in the form of "S" curves plus the ability to compare with the last 2 or 3 Fys;
- Procurement progress/status e.g. Not Yet Tendered, Under Bid, Contract Award and amount either by DG or Satker or PPK; (it should be noted this does not provide specific details relating to each procurement package – such information can be obtained from MPW's e-Procurement system);
- DIPA that are blocked by MOF (Bintang) either totally or partially;
- Status of funds available for different types of expenditure such as salaries, administrative goods, social subsidies etc.

LKPP is still working on appropriate national procurement Performance Indicators in order to determine (i) whether the national procurement system is operating efficiently, and (ii) identify those areas where compliance or performance is weak. Some management information relating to status of procurement within MPW, either in real-time or as status reports, could be readily uploaded to LKPP as part of its national database. Also, suggested *Performance Indicators* for procurement in line ministries such as MPW, and which can be obtained from tangible data, is attached as ANNEX 3. These have been provided to LKPP for consideration.

5.2 FUNCTIONALITY OF THE PUBLIC PROCUREMENT MARKET

5.2.1 Regulatory Issues

There is one consulting company association within Indonesia, being INKINDO, and there are three contractor's associations being:

- GAPENSI, which is the largest in terms of membership with 58,976 member companies;
- AKI, *the Indonesian Contractors Association* whose members usually have a high grade and undertake large works; and
- GAPEKSINDO – *Indonesian Collaboration of Construction Implementors*

The Institute of Construction Service Development (LPJK), on behalf of GOI, has developed a grading system for construction contractors as follows:

- Grade 1 – Individuals
- Grade 2- undertake projects to the value of IDR 0-300 million
- Grade 3- undertake projects to the value of IDR 0-600 million
- Grade 4- undertake projects to the value of IDR 0 - <1 billion
- Grade 5- undertake projects to the value of IDR 1-10 billion
- Grade 6- undertake projects to the value of IDR 1-25 billion
- Grade 7- undertake projects to the value of IDR 1- >25 billion

and for Consulting Companies as follows:

- Grade 1 –undertake projects to the design or supervision value of IDR 1-200 thousand
- Grade 2- undertake projects to the design or supervision value of IDR 1-400 million
- Grade 3- undertake projects to the design or supervision value of IDR 400,000 - 1 million
- Grade 4- undertake projects to the design or supervision value of IDR > 1 million

One of the problems with this grading system is that firms with the highest grade are quite entitled to bid for work at a lesser value in which case they are bidding against firms of a lower certified grade. If a procurement package is of sufficient value, it may well encourage larger national firms to compete with smaller firms of lesser grade and potentially outbid them. Therefore, when considering the size of procurement packages (see Section 5.1.2 above), it is necessary to weigh aspects such as more efficient delivery and consistency in quality from using larger value packages with the potential risk of smaller lower graded firms having less opportunities when competing against higher graded ones. Despite this, it should also be borne in mind that this is the market at play and the procurer needs to obtain the best price while ensuring quality product delivered on schedule.

It has already been explained in Section 3.1 that, under company law, a company is required to hold a license and be registered by GOI referred to as the IUJK and this is all that is necessary for a company to participate in bidding for public sector procurement under the current Keppres 80/2003 and the proposed future revised/ consolidated Perpres. However, the Construction Industry Law 18/1999 PPs, requires a company to obtain an SBU before it can obtain its License (IUJK). GOI as regulator originally delegated this role to LPJK which, in turn, has delegated SBU certification to the relevant associations of construction or consulting companies. LPJK also delegated individual SKA and SKT competency certification to the relevant professional associations.

Company Competency Certification - One of the major responsibilities of the above associations is to certify new members in accordance with the above grading system and assess whether existing members can be re-registered/ upgraded. In so doing, the associations issue an SBU certifying and grading a company to undertake works up a specific value in accordance with the above grades. In determining the grade of certification, the associations have regard to a company's capital, experience (includes individual experience of management) and availability of plant. By delegating responsibility for issuance of the SBU to the various associations of construction and consulting companies, LPJK has created a *conflict of interest*. This arises from the fact that the administrators of this certification system are the supplier/ provider associations, themselves. Such associations can have vested interests and could apply protectionist policies thereby creating cartels and a segmented market, thereby affecting competition. As a consequence, there needs to be revisions to the subordinate regulations of the Construction Law, and especially PP28, as well as the MPW Decree on Supervision.

5.2.2 Access to Market

A well functioning procurement regime should be market driven and self policing, based on the primary objective of getting best value for money for public funds. While questions of capacity and capability of providers are a separate issue, Indonesia does have sufficient numbers of providers to enable competition and comparative pricing when compared to prices for similar requirements in local, regional, and international markets. Several factors have either influenced the market in the past, or continue to do so now. These are (i) Decentralization, (ii) SBU Certification by the supplier/ provider associations, and (iii) Collusive Rings. Mention has been made in Section 3.1 that rapid decentralization has resulted in some instances in overlapping jurisdictions with potential segmentation of both the procurement market and the procurement legal framework. Such conflicts/ inconsistencies and overlapping jurisdictions can enable both local governments and individual persons to manipulate these to their advantage and restrict suppliers/ providers to only those within their regions thereby segmenting the market. As mentioned above, the current SBU Certification system for suppliers/ providers could be anti-competitive and also create market segmentation without fair and equal opportunity for all. The issue of collusive rings is discussed in Chapter 6 below.

CHAPTER 6: INTEGRITY AND TRANSPARENCY

A public procurement system will only function well when it operates with integrity (i.e. is fair, transparent, and credible). Mechanisms should be available for the independent control and audit of its operations, so to ensure accountability and compliance, and for participants to lodge complaints/appeals and challenge decisions through administrative and judicial review bodies having appropriate levels of independence and the legal power to impose corrective measures and remedies against participants, be they PPK procuring units or providers/ suppliers that are in breach of the regulatory framework.

6.1 AUDIT

An independent and well-functioning external audit function and efficient internal audit functions within line ministries are an important means to detect fraud and corruption. Indonesia has both external and internal audit functions within the public sector as follows:

External Audit. The Audit Board of the Republic of Indonesia (BPK) is the Supreme Audit Institution (SAI) and, following a 2003 constitutional amendment, is the only *external auditor* of Government at both the central and regional level. It has sole authority to investigate state financial management and accountability, and to provide an audit opinion to central and regional governments;

Internal Audit. The internal audit system is more complex.

- BPKP, established under Presidential Decree 103/2001, carries out internal audits at the central level of Government. Since decentralization, BPKP no longer has any mandate to audit regional levels of government;
- Each line ministry has a unit responsible for conducting internal audits within that ministry headed by an Inspector General (IG) who reports to the line Minister; and
- At the regional level (province or district) of Government each local Government has an internal audit function called the Bawasda formed under the decentralization laws.

The current legal audit framework has potential overlapping mandates and unclear roles not only between BPK and BPKP, but also between BPKP and the various line ministry Inspectorates General (IGs). Given the role of the IGs in the line ministries, the specific mandate of BPKP on their ability to audit line ministries is still somewhat blurred.

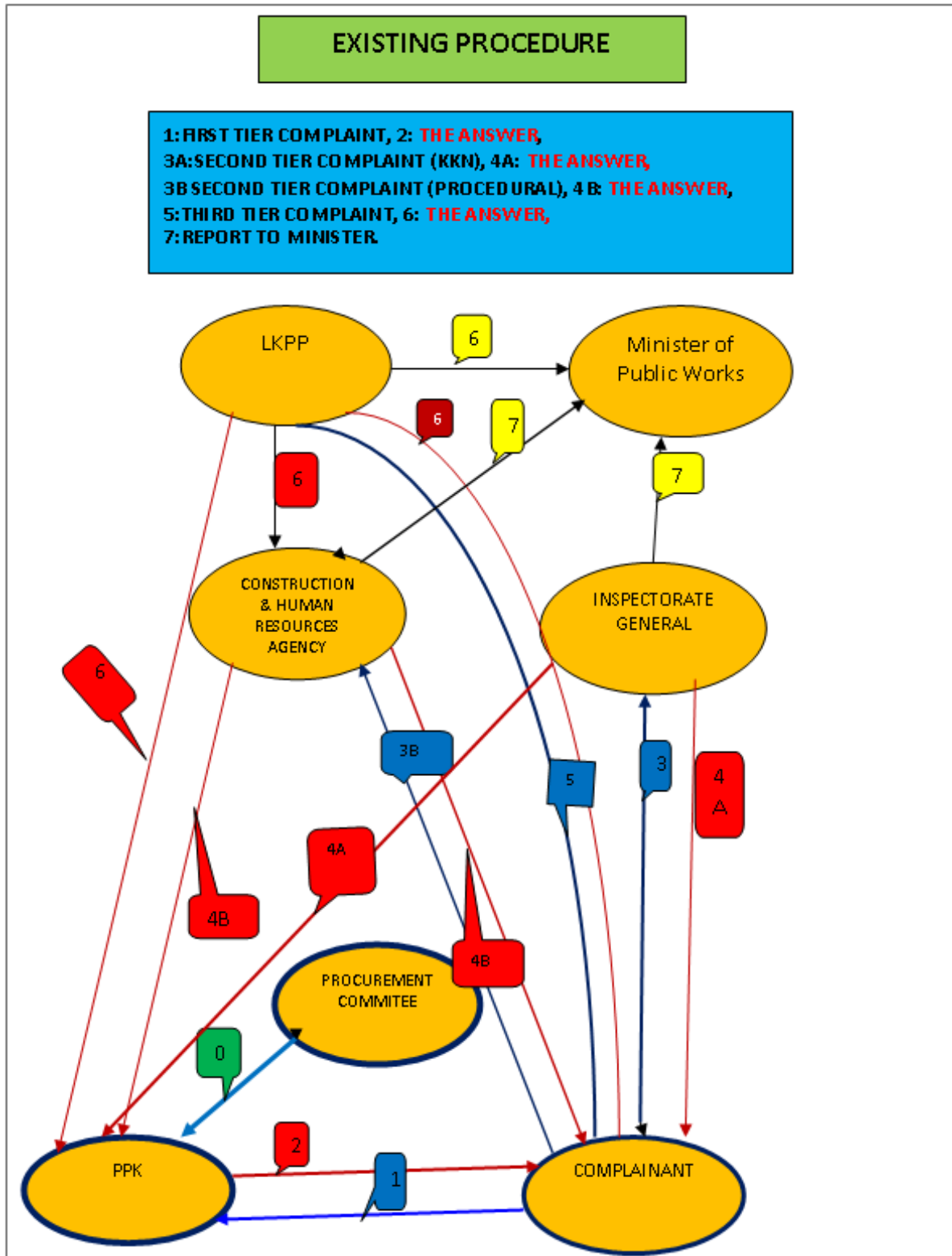
In addition to this study, AusAid, through its Indonesia Infrastructure Initiative, is funding a study to introduce modern risk-based methodology and practices into the audit and internal review functions of MPW.

With respect to procurement, it is recommended that a system of Probity Auditing be adopted, at least for more complex packages, such as, for example, major multi-year contracts for the construction of new roads. Under such a system, an independent auditor is selected to (i) endorse the probity of the procurement plan (i.e. the stage-by-stage process in conducting the procurement), (ii) monitor the procurement in real time so as to ensure the endorsed plan (stage-by-stage process) has been followed correctly and fairly, and (iii) screen any subsequent complaints and, where appropriate, dismiss those where claims are made that the process was not correctly followed. The role of the independent Probity Auditor is solely to monitor the probity of the process and not to

make any decisions in respect of the procurement itself. An example of a Procurement Probity Plan for a water reclamation project in the State of Victoria, Australia, is shown in ANNEX 4.

6.2 COMPLAINTS/ APPEALS MECHANISMS

Figure 6. Existing Complaints Mechanism in MPW



The current complaints handling mechanism requires that complaints be addressed to the procuring entity. A flow chart showing the existing “complaints mechanism” is shown in Figure 6 above.

As a first stage of the current complaints process within MPW, bidders must initially refer their complaints to the Commitment Officer/ Project Manager in the PPK unit delegated responsibility for the procurement and contract signing by the Minister. The complaint is then forwarded onto the PC for comment as necessary. Such complaint must be made within 5 working days of the PPK announcing its decision to award contract. If no complaints are received within the five working days or, if any complaints received are not upheld by PPK, then PPK will proceed to sign/ execute the contract. Most complaints are related to whether the correct procurement process has been carried out. If the complaint appears to relate to fraud/ corruption issues then the PPK Commitment Officer/ Project Manager is also obligated to advise MPW Inspectorate General of the complaint.

If the complainant feels the issue has not been resolved by the PPK unit to its satisfaction, then as a second stage (second-tier), the complainant has the right to address the complaint to the Minister of Public Works. For consistency in respect of complaints handling, the Minister has delegated the Construction and Human Resources Agency to handle all procurement complaints relating to the procurement process, be they for goods, works or services, received from all operational DGs within MPW. The Minister is obligated to respond to the complaint within 15 working days from date of receipt of the complaint by the Minister’s office. As far as MPW is concerned, the decision reached by the Minister is considered to be final and irrevocable. If the complaint is upheld by the Construction and Human Resources Agency (i.e. upheld by the Minister) and PPK has already proceeded to sign the contract, then it would become necessary for MPW to cancel that contract. Cancellation of a contract has only occurred on rare occasions.

Of the thousands of packages for goods, works and services procured by MPW in any one year only about 150-200 complaints concerning potential irregularities in the process are received by the Minister annually, which is considerably less than 1 percent. (There were 149 complaints in total received by the Minister in 2008 and, as at 18 August, 192 complaints had been received so far during 2009). While, in theory, MPW can process complaints relating to both IDR-funded and donor assisted procurement, it is rare to receive complaints relating to donor-assisted procurement. Virtually all second-tier complaints handled by MPW to date have related to IDR-funded procurement. This may be because of the prior review requirements of donors, and the fact that complainants also have an additional avenue in which to address their complaints, being the donor agency. Likewise, the Minister would only approve contract award upon receipt of the donor No Objection Letter or NOL.

In order to process second-tier complaints that relate to the procurement process, MPW requires representatives from the PC to travel to its Headquarters in Jakarta with all relevant documentation including (i) bidding documents, (ii) the evaluation report, and (iii) all tenders received. Out of the second-tier complaints handled by annually, on average about 35 percent or just over one third are actually upheld. Most problems arise because (i) the PC did not follow procedures as required under Keppres 80/2003 and MPW internal manuals, and (ii) bidders do not understand that the *lowest price at bid opening may not necessarily be the lowest evaluated bid*.

In addition to complaints by bidders relating to the procurement process, any complaints relating to potential fraud and corruption (KKN) either received from bidders or outside entities not involved directly in the procurement process, such as NGO watch dogs etc., are referred to the Office of the Inspector General. The Inspector General would then inform the relevant Director General of the complaint and, depending on the response from the DG, the Inspector General may arrange for a team to conduct an audit of the concerned Project Manager and PPK unit.

It is felt that, as a first port of call, complaints should continue to be made initially to MPW, as the procuring entity. However, in the interests of perceived independence and to create an integrated “one-stop shop” with consistency in handling all types of complaints, it is recommended that the second-tier Complaints Handling Unit currently within the Construction and Human Resources Agency be absorbed into the Office of the Inspectorate General. In addition, staff handling such complaints should remain independent and not become advisors in any proposed procurement support unit (see Chapter 7), due to potential conflicts of interest.

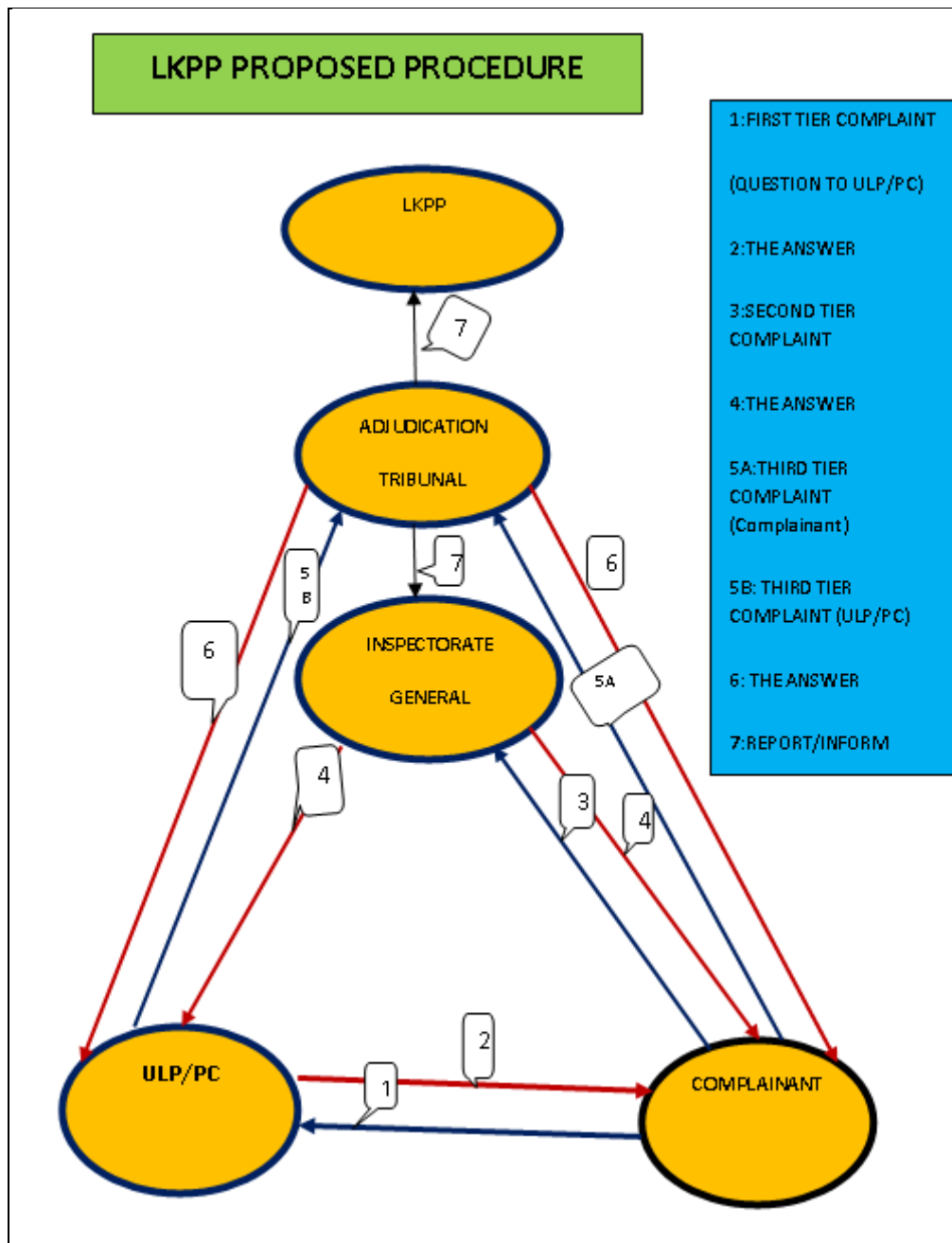
If a bidder feels the procurement process has been anti-competitive with other bidders colluding or creating cartels, then representation can also be made to the Commission for the Supervision of Business Competition (KPPU), which is Indonesia’s anti-competitive watchdog.

The failing of the current mechanism is that complaints can only be routed to the procuring entity (in this case MPW). There are potential conflicts of interest with the entity handling the complaint also being the procuring entity. In view of this potential conflict of interest, the current system cannot be considered to operate in a completely fair and balanced manner with due process. As a result, until now, the complainant often has no option, depending on the nature of the complaint, but to resort to either contacting an attorney or the police so that the complaint may eventually be ruled upon in a court of law.

After receipt of the Minister’s decision, should the complainant still feel that justice has not been done, the bidder now has the right to refer the matter to the newly created National Public Procurement Agency (LKPP). However, it is understood that LKPP, itself, will not become directly involved in handling complaints due to potential conflicts of interest, but is considering some form of an independent mechanism to handle complaints that have exhausted all avenues within the procuring line ministry. It is hoped such a mechanism will avoid complainants having to resort to lengthy and costly litigation through a court of law.

A flow chart showing a proposed “complaints/appeals mechanism”, that is currently under consideration, is shown in Figure 7 below.

Figure 7. Proposed Complaints/Appeals Mechanism



One proposal under consideration is that 1st tier complaints within procuring entities be directed to the Inspectorate General's Office and 2nd tier complaints be directed to LKPP which, in the interests of fairness/ equity, would set up "Adjudication Tribunals" in the appropriate region from which the complaint has been sourced. The constituents of each Tribunal would comprise procurement experts from:

- LKPP (as Chairman);
- GOI entity equivalent to, but NOT, the entity undertaking the procurement; and
- The Company Association representing the bidder.

Feedback from seminars/workshops held in both Jakarta and regions to discuss a more appropriate/ equitable mechanism have endorsed the use of "Adjudication Tribunals" as being the fairest

approach for both the procuring entity and the complainant. While supporting the proposed *Adjudication Tribunals* and their composition, it is recommended that the approach be a three-tier one rather than two-tier. It is vital that there should first be communication between the complainant and the PC handling the procurement before any formal second-tier complaint is made to the Inspector General. This may well resolve what may be simple misunderstandings thereby screening out unnecessary complaints from reaching either the Inspector General's Office or LKPP and the *Adjudication Tribunal*. Likewise, the adoption of a *Probity Audit system*, especially in the case of more complex procurement, will help screen out complaints alleging the process was not correctly followed. There is concern that:

- being Indonesia, the proposed *Adjudication Tribunals* may not be truly “independent”. If this is indeed a concern, then another alternative to *Adjudication Tribunals* could be to consider independent *Arbitrators* or *Arbitration Teams*, possibly sourced from reputable international firms. While arbitrators are normally used in respect of contractual disputes, they could also be used to adjudge third level appeals from complainants; and
- the proposed third level *Adjudication Tribunals*, being *independent* of the procuring entity, may be contrary to Law 17/2003 on state finances which stipulates the Line Minister, as the “Budget User”, to be *solely responsible for the utilization of funds under the Minister's control*. It is considered the need for a higher-level “appeals” process to an “independent” body rather than the procuring entity should outweigh this concern.

6.3 ETHICS, CODE OF CONDUCT, ANTI-CORRUPTION MEASURES

Provisions addressing corruption, fraud, conflicts of interest and unethical behaviour are addressed in the current procurement regulatory framework viz. Keppres 80/2003 and its proposed revised/ consolidated Perpres. While the current Keppres 80/2003 addresses these issues, it is not a high-level law and, in the main, currently relies on other general anti-corruption legislation to deal with the matter and the consequences.

Collusion between (i) bidders and (ii) bidders and members of the PC, continues to be a problem in Indonesia. It is on account of this that some donors now prefer that pre-bid conferences at site do not take place, so as to avoid potential bidders both colluding among themselves and with members of the PC or PPK. While the reason for precluding such pre-bid conferences is understandable, this needs to be weighed against possible poor implementation subsequently due to the lack of potentially important information at the tender stage. While site visits have obvious benefits, one way to partially overcome this problem is to encourage bidders to submit questions to the PC in writing by a certain date prior to bids closing. The PC would then provide all questions and answers in writing to all bidders.

If competition is controlled by the entities that would stand to gain from such collusion (SBU Certification), where complaints are handled by the procuring entity, and no strong sanctions are applied when evidence of collusion is found, then collusive rings will continue to abound.

In accordance with the current Keppres 80/2003 and its proposed revised/ consolidated Perpres, *Integrity Pacts* are required to be signed, not only by all members of the PC, but also by all prospective bidders. A practice of producing only one Integrity Pact, which is first signed by all the members of the PC and then by all bidders may incongruously be contributing to collusion. This is, in effect, advising any bidder not only the names of all procurement members in advance, but also of all other bidders. It is recommended that a separate Integrity Pact be signed by each bidder to avoid this.

In addition to Keppres 80/2003, other GOI and MPW regulations that impact on integrity are shown in Table 2 below.

Table 2. GOI Code of Ethics and MPW Regulation on Corruption-Free Operations

1.	<p>Government of Indonesia</p> <p>GOI Regulation on Code of Ethics and Enhancing the Spirit of the Civil Service</p>	<p>No.42/2004</p> <p>October 18,2004</p>	<p>This code of ethics is based on values that are to adopted by the civil service, consisting of :</p> <ol style="list-style-type: none"> 1. In God should trustworthiness be made. 2. Pancasila is the only one way of life and the basic law of independence of 1945 should be adopted. 3. Nationalism. 4. Attitude toward the nation's prime needs is the first priority. 5. Law and regulation are to be adopted fully. 6. Adopt human rights. 7. Non- discrimination. 8. Civil servants should be professional, neutral, and prime in morality. 9. Civil servants should stay within the corps. By having all of these values, the civil servant will <ol style="list-style-type: none"> a. Adopt all laws and regulation based on pancasila and basic law 45. b. Support the Nation. c. Act as the national " glue" . d. Be accountable. e. Adopt good governance in all aspects of work f. Work efficiently,effectively and have regard to economy in decision making g. Always be regarded in a good maner and never give false information or fake data. <p>This same code should also be adopted, not only in GOI organisations,but also in social life where there might be conflicts of interest as a GOI official.</p> <p>This Code of Ethics should be adopted in the same manner as stipulated in other institutional entities and professional bodies.</p> <p>Sanctions and possible administrative punishments can be applied for officials disobeying this Code of Ethics.</p>
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2.	Ministry of Public Works Ministrial Regulation providing guidance on ensuring operations within all entities of MPW are corruption free	No.21/prt/m/2008	<p>In order to promote good governance within MPW</p> <ol style="list-style-type: none"> 1. The regulation is to be used for guidance within all departments. 2. The aim of WBK(wilayah bebas korupsi) is to eliminate budget "leakage" during implementation, unnecessary consumption, control quality of works in accordance with the specification as stipulated in the contract, and avoid any possible deviation that might occur, which, in turn might cause financial losses to the Government. 3. The operational target of WBK is to build an "island of integrity" within MPW, 4. The activities where WBK should be applied are as follows: <ol style="list-style-type: none"> a. Program planning and budget allocation. b. Implementation and supervision on procurement of goods and services. 5. WBK should be applied in operations as follows: <ol style="list-style-type: none"> a. To proceed and implement agreed works consistently in accordance with agreed signed contracts and minutes. b. To adopt values of integrity within the working atmosphere. c. To be efficient in budget allocation and controlling the disbursement of funds. d. Implement thoroughly the procurement guidelines and procedure as stipulated within Keppres 80/2003. e. To provide prime services to the public. f. To promote to subordinates the implementation of integrity in all works. g. To monitor and to evaluate whether the concept of the "island of integrity" is growing. 6. This guideline follows other complementary administrative orders so as to push and realize the growth of "island of integrity" as stipulated in Inpres 5/2004.
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There is a misconception that *e-Procurement* will automatically reduce corruption. E-Procurement, in itself, is not the panacea to correct all ills. Governance reforms are not generated by the technology, but rather by the institutional changes that arise out of them. However, e-Procurement can offer transparency and substantial improvement in process efficiencies and, by enabling truly competitive markets, can reduce prices.

Eradication of corruption is a complex and long-term task requiring fundamental changes. Numerous studies have been carried out and reports written on the subject of corruption and its prevention in public sector procurement in Indonesia. While Indonesia does have a wider anti-corruption strategy in place, aspects relating to public procurement that are either already being addressed, are being proposed, or may be recommended are as follows:

- to incorporate appropriate controls, it is necessary to understand the opportunities where corruption can occur at the various stages of the procurement process,
- ensure that the procurement process is transparent,
- empower procurement users and communities to assist in the control process,

- strengthen the capacity of all stakeholders, including users, providers, auditors and the community,
- build a partnership with civil society and the media in monitoring procurement processes,
- establish policies that will mitigate against collusive rings such as transparency, good complaints mechanisms, and good enforcement, and
- ensure that credible and enforceable sanctions are in place

Table 3 below, while not necessarily all inclusive, provides a good summary of opportunities where corruption can occur during the various stages of the procurement process. Engagement in such activities not only results in the misuse and leakage of public funds but, in many instances, may also result in implementation delays.

Table 3. Opportunities for Corruption During the Procurement Process

STAGE	PROCUREMENT CYCLE	POTENTIAL IRREGULARITIES OR FRAUD/ CORRUPTION THAT COULD OCCUR AT EACH STAGE
1	PLANNING	<ul style="list-style-type: none"> • BUDGET “Mark up” • Procurement PLAN to suit “Special Outcome” • Procurement PACKAGING to suit “Special Outcome” • UNREALISTIC TIME SCHEDULE
2	ESTABLISHMENT OF PROCUREMENT / TENDER COMMITTEE	<ul style="list-style-type: none"> • Lack of Committee TRANSPARENCY • Lack of Committee INTEGRITY • Lack of Committee OBJECTIVITY • Lack of Committee INDEPENDENCE
3	PRE-QUALIFICATION (WHERE APPLICABLE)	<ul style="list-style-type: none"> • Pre-Qualification Documentation INADEQUATE • Documentation FALSIFIED • Evaluation either INADEQUATE or NOT TRANSPARENT
4	PREPARATION OF BIDDING DOCUMENTS	<ul style="list-style-type: none"> • Use of NON-STANDARD Bidding Documents • INCOMPLETE Bidding Documents • BIAS TOWARD PARTICULAR BRAND or PRODUCT • Inclusion of SUBJECTIVE EVALUATION CRITERIA
5	ADVERTISING	<ul style="list-style-type: none"> • “FALSE” Announcement • INCOMPLETE INFORMATION provided • INSUFFICIENT TIME provided
6	DISTRIBUTION OF BIDDING DOCUMENTS	<ul style="list-style-type: none"> • Submission of DIFFERENT DOCUMENTS to different potential bidders • SHORTENED TIME for distribution • “HIDE” Place of Distribution from certain potential bidders
7	PREPARATION OF OWNER’S ESTIMATE	<ul style="list-style-type: none"> • Intentionally “MARKED UP” • “NON STANDARD” Unit Prices used • NOT IN ACCORDANCE with GOI Guidelines
8	PRE-BID MEETINGS	<ul style="list-style-type: none"> • RESTRICT ATTENDANCE at meeting • INCOMPLETE DISCLOSURE of information • Provision of MIS-LEADING information

STAGE	PROCUREMENT CYCLE	POTENTIAL IRREGULARITIES OR FRAUD/ CORRUPTION THAT COULD OCCUR AT EACH STAGE
9	SUBMISSION OF BIDS & PUBLIC BID OPENING	<ul style="list-style-type: none"> • Sudden "RELOCATION" of Place of Submission without notifying all bidders • SUBMISSION TIME changed intentionally without notifying all bidders • Submission of FICTITIOUS BIDS • INTIMIDATION of some wishing to submit bids
10	BID EVALUATION	<ul style="list-style-type: none"> • EVALUATION CRITERIA do NOT meet requirements • EVALUATION CRITERIA changed intentionally • Indication of COLLUSION among bidders
11	ANNOUNCEMENT OF RECOMMENDATION TO AWARD CONTRACT	<ul style="list-style-type: none"> • Announcement of RESULT Restricted • Announcement of RESULT intentionally POSTPONED • Incomplete announcement
12	BIDDER'S COMPLAINTS	<ul style="list-style-type: none"> • Response NOT SUBSTANTIVE • Response INCOMPLETE • "QUASI" Response to fulfil requirement
13	AWARD TO "LOWEST RESPONSIVE BIDDER"	<ul style="list-style-type: none"> • Appointment Letter issued without VALID LEGAL GROUNDS • Appointment Letter deliberately INSUFFICIENT • Appointment Letter delayed INTENTIONALLY
14	CONTRACT SIGNING	<ul style="list-style-type: none"> • Existence of COLLUSION in contract signing • Signing NOT TRANSPARENT • Signing by UNAUTHORIZED Person without POA • Postponement of signing for PROFIT GAINS
15	CONTRACT ADMINISTRATION/ HANDOVER	<p>GOODS</p> <ul style="list-style-type: none"> • QUANTITY & QUALITY NOT in accordance with Technical Specification • BIASED Criteria for ACCEPTANCE • FAKE After Sales WARRANTIES <p>WORKS</p> <ul style="list-style-type: none"> • VOLUME & QUALITY NOT in accordance with Technical Specification • BIASED Criteria for ACCEPTANCE of Contract Completion • COLLUSION in respect of Contract CHANGE ORDERS <p>CONSULTING SERVICES</p> <ul style="list-style-type: none"> • Services NOT EVER CARRIED OUT • FALSE or MANIPULATED Field DATA • FAKE OUTPUT/ RECOMMENDATIONS based on false/ fake data • BIASED Criteria for ACCEPTANCE of Services

Source: ADB TA 3068-INO: Public Relations Activities in Support of the Government's Anticorruption Efforts

CHAPTER 7: ADDITIONAL PROCUREMENT SUPPORT WITHIN MPW AND DGH

7.1 DGH DECREE ESTABLISHING PROCUREMENT ADVISORY TEAM

As a result of the number of infrastructure loans being utilized by MPW, and DGH in particular, the World Bank introduced a series of policy triggers to be achieved in 2009 to allow release of a tranche of its Infrastructure Development Policy Loan (IDPL), of which the following four relate to MPW:

Trigger 3: Definition of revised program structure, objectives, and outputs for DGH

Trigger 4: Formulation of a strategy to improve piped water services through outcome-based incentives in the intergovernmental fiscal framework

Trigger 11: Establishment of a Procurement Task Force in DGH staffed, funded and mandated to provide support to procurement committees in terms of advice, capacity building, review and problem resolution."

Trigger 12: Commence implementation of the IG's action plan, including completion of (a) an audit plan for 2010 based on systemic risk assessment and appropriate reallocation of resources; (b) a training needs analysis for IG staff; and (c) a stock-taking of current audit manuals and identification of areas where additional guidance is required.

Based on these triggers, AusAid, through its IND II Facility, has funded a series of four studies to address each of these policy issues. This report relates to Trigger 11.

Coincident with this study, and in order to meet the requirement of Trigger 11, the DG Highways issued a Circular Decree (SK) No. 36/KPTS/Db/2009 establishing an "Advisory Team for the Procurement of Goods, Works and Services" within the Directorate General of Highways under DGH budget. The proposed *Advisory Team* would be made up of three tiers as follows:

- a) A *Steering Team* that will provide the *Technical Team* with directions about the procurement of goods, works and services; facilitate implementation with related parties; and report outputs to DGH;
- b) A *Technical Team* that will provide guidance and recommendations to the Procurement Committee, in relation to various aspects of procurement procedures, techniques and contract law; recommend institutional improvements for procurement within DGH; make recommendations related to problematic procurement procedures and their rectification according to prevailing regulations in coordination with all related parties to enable their resolution; promote the use of MPW Standard Documents for procurement of Goods, Works and Services; and report outputs to Steering Team; and
- c) An *Expert/Practitioner Team* that will provide recommendations, opinions and advice to the *Technical Team* in relation to the procurement of goods, works and services; facilitate the *Technical Team* when problems in the procurement of goods, works and services require immediate action; and report outputs to Steering Team.

It is not clear from the SK whether the three-tier Advisory Team will conduct its work solely in DGH Headquarters in Jakarta or whether its Technical Team will provide support at Satker level. It is presumed that at least the Steering Team and probably the Expert Team would most likely be based in Headquarters. As indicated in Figure 2, there are currently about 200 Satkers and > 1000 PPK units

within DGH. While the exact number of PCs is unknown and is dependent on implementation and procurement plans, procurement in DGH, as in the other MPW operational directorates general, is very much dispersed and undertaken at Satker level i.e. at the operational “front line” in the regions. Even if the number of Satkers within DGH are consolidated into, say, one per province, procurement would still be dispersed and continue to be undertaken at provincial level. Despite the commendable requirement that members serving on PCs must hold a basic-level proficiency certificate, there is still an apparent lack of capacity across all PCs that may be brought about, in part, by the current disincentives (as discussed in Section 4.4 of this report). Consequently, if support is to be provided to PCs, then it should be provided close to where the procurement takes place rather than be available only remotely from Headquarters.

Should MPW adopt the recommendations in respect of a Procurement Service Unit for MPW as a whole, then procurement support would be available to DGH at the regional level where procurement is carried out and the proposed *DGH Advisory Team* would, in effect, become redundant and not required. It should be noted that the proposed higher level (first-tier) Steering Team is, in fact, more like a *DGH Management Coordination Board*, and should be set up accordingly in that role as recommended in the recent World Bank report assessing Financial Management within DGH.

7.2 PROCUREMENT SERVICE UNITS

Perpres 8/2006 amending Keppres 80/2003 refers, among other items, to the establishment of *Procurement Service Units (Unit(s) Layanan Pengadaan or ULPs)* within all Government entities that use APBN/APBD to procure goods, works and services such as central government line ministries and sub-national provincial, city (kota) and district (kabupaten) governments as well as other Government agencies, commissions, military and police etc. Subsequently, LKPP has issued a Regulation No. 002/PRT/KA/VII/2009 providing guidelines on the formation of such ULPs.

The purpose of establishing ULPs within Government entities is to (i) make the process of procuring goods, works and services more integrated, efficient and effective; (ii) improve the effectiveness of Echelon I DGs and Managers in performing their main duties and functions; (iii) ensure that all suppliers of goods, works and services have the opportunity to access to market and bid with equal opportunity in order to create fair business competition; and (iv) ensure the procurement process is carried out in a professional manner.

It is proposed that a ULP would perform the following broad tasks/ functions:

- implement the procurement of goods, works and services from finalization of bidding documents and calculation of the OE through the tender/selection process until contract signing by the *PPK* Commitment Officer (i.e the ULP will perform the procurement functions currently being carried out by Satkers);
- prepare reports on the procurement process, evaluation and result for the *PPK* Commitment Officer and also report on the implementation of the *ULP's* other duties to the official that has appointed the ULP;
- implement the procurement of goods, works and services using e-procurement technology whenever possible, bearing in mind constraints in the form of lack of telecommunications infrastructure and inability to access the internet that may occur in remote regions;
- disseminate strategies, policies, standards, systems and procedures of procurement using APBN/APBD funds;
- carryout technical counselling and advocacy in the area of procurement;

- monitor and evaluate the performance of all procurement undertaken by the Government entity;
- develop human resources within the Government entity in the area of procurement;
- develop facilities and structures that support the efficient implementation of procurement within the Government entity;
- determine whether providers involved in bidding for goods, works and services for the Government entity have been involved in unethical and corrupt practices or have committed fraud / forgery or other crimes as stated in Keppres 80/2003, and, if so, include them on a “blacklist” and report to *LKPP*.

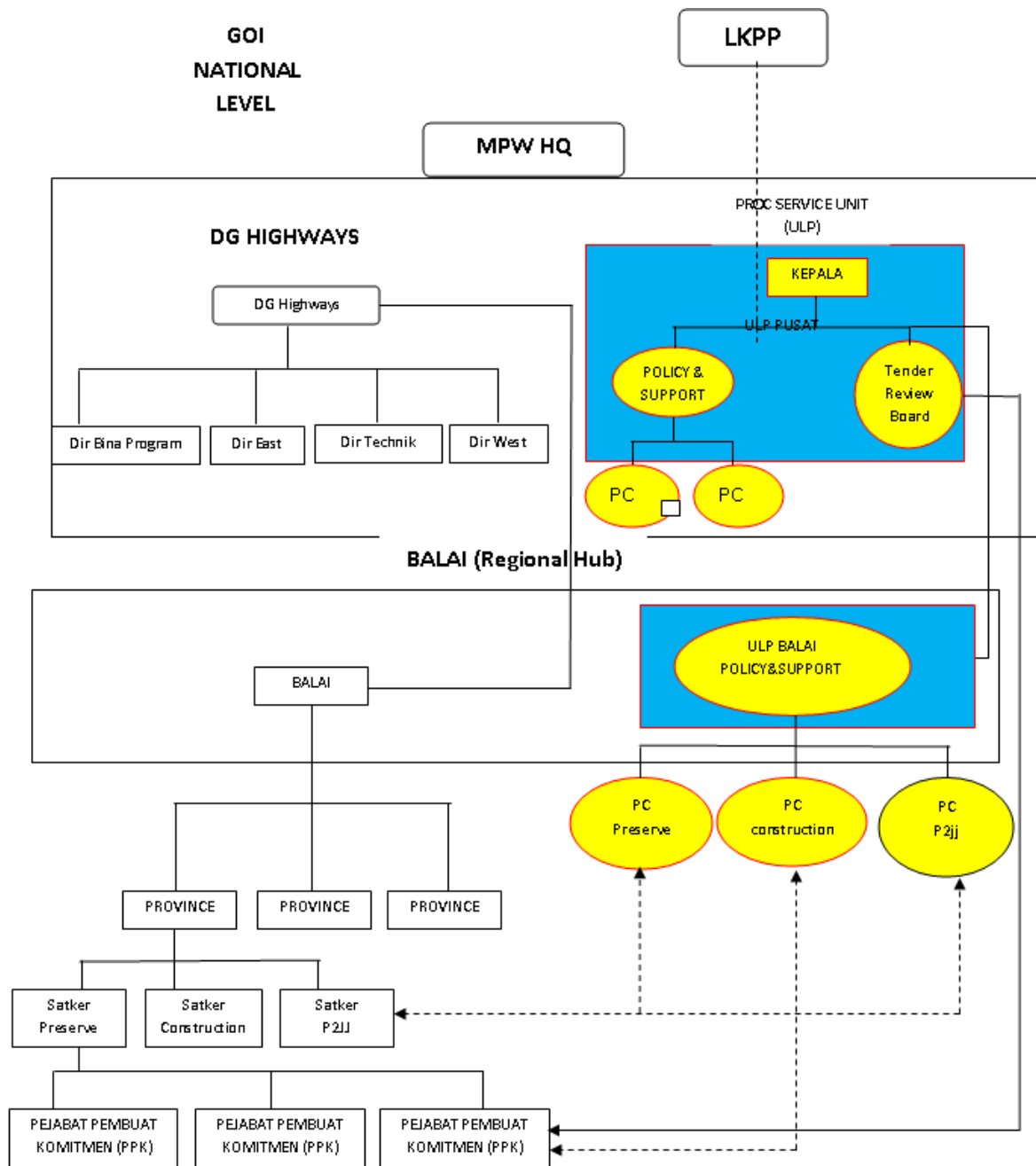
Bearing in mind ULPs are required to be established in all government entities, which can vary in size (e.g. the size and structure of MPW is much greater than that of a kabupaten), flexibility is provided as to whether the ULP should be a smaller non-structural unit or structural in nature.

7.3 PROCUREMENT SUPPORT WITHIN MPW AND DGH

While the DGH Decree establishing a Procurement Advisory Team within DGH was issued in order to meet the World Bank requirement in respect of Trigger 11 of its IDPL, it is specific to DGH, whereas the concept of the ULP is that such a Procurement Service Unit should become responsible for procurement within MPW as a whole and not just provide support for DGH alone. Having regard to MPW diverse responsibilities, it is recommended that any ULP established within MPW be of a *structural nature* that can operate effectively in conjunction with MPW’s existing structure (see Chapter 4).

Any proposed structure should be such that it would improve the efficiency of procurement operations, provide procurement support where it is actually needed and provide the necessary checks and balances for accountability, while not being too complex. Figure 8 shows a recommended ULP structure for MPW and how it would operate within DGH. It is expected that similar ULP regional offices could be applied to other operational directorates general as well as DGH. The term ULP is used, but the envisaged structure is sufficiently large that it could become either a Directorate General or Badan at Echelon 1 level. While it is recommended that MPW adopt the proposed structure as a whole for the reasons given below, it would be possible, as alternatives, although NOT recommended, for MPW to consider adopting solely ULP Headquarters or solely ULP regional offices. It should be noted the former may not satisfy the requirements of World Bank’s IDPL Trigger 11 relating to DGH.

Figure 8. Proposed ULP Structure within MPW



7.3.1 MPW Headquarters

It is envisaged that the ULP Headquarters would consist of:

- *Office of the Kepala* (Director General?) with associated Secretarial support;
- *A Policy and Support Directorate*; and
- *MPW Tender Review Board* with an associated Secretariat

The Headquarters *Policy and Support Directorate* would be responsible for the following:

- Ensuring both National (LKPP) and internal (MPW) policies, standards, systems and procedures of procurement using APBN/APBD funds are maintained;
- Developing facilities and structures to improve procurement within MPW and issuing internal MPW guidelines, manuals etc. relating to procurement, as and when needed;
- Liaising with the MPW Data Center to ensure that e-Procurement systems within MPW are developed to their full potential, within the constraints imposed by telecommunications infrastructure within remote regions, including promoting and advancing the use of e-Procurement;
- Monitoring and evaluating the performance of all MPW procurement, applying national compliance performance indicators developed by LKPP and providing requisite annual reports on the performance of procurement within MPW, as required by LKPP;
- In conjunction with MPW data centre, maintaining a database of bidders for the supply of goods, works and services for MPW with details of their company registrations and financial statements that they submit to the Indonesian tax department. It should be stressed that this is simply a database of those companies that have bid for MPW work and would NOT restrict other companies from bidding. Such a database would become a useful reference tool for ULP PCs when undertaking either pre- or post qualification and in determining whether a firm has provided a false financial statement to boost its capability when bidding;
- As part of the above monitoring, in liaison with the Inspectorate General, maintaining records, including a “blacklist” of providers that have been proven to be involved in unethical and corrupt practices or have committed fraud / forgery or other crimes as stated in Keppres 80/2003 and report this to LKPP. When blacklisting a firm, it is also essential to “blacklist” the directors of that offending company because otherwise they can simply create and register a new company;
- Providing a pool of procurement experts, not only to provide support to Procurement Committees under the Directorate’s direct control, but also to provide expert advice on complex problematic procurement issues arising across any of MPW Procurement Committees; and
- Establishing and supporting Procurement Committees required centrally that are not under the jurisdiction of respective ULP Balai Offices. The responsibilities relating to PCs stipulated below for ULP Balai offices would also apply to the Headquarters Policy and Support Directorate for those PCs that it is responsible for establishing.

The Headquarters *Tender Review Board (TRB)*, when formally sitting, would consist of the following three voting members, or their designated nominees:

- Kepala ULP, as Chairman;
- DG of the concerned/ involved operational directorate general; and
- The Inspector General

It would be mandatory for the *Tender Review Board* to sit and vote on recommendations for award of contracts *equal to, or greater than, IDR 50 billion* for the supply of goods, works and services. The decision of the TRB would then be conveyed to the Minister to enable the Minister to sign the contract. The Tender Review Board may also sit, at the discretion of the Chairman, to consider any issues arising out of award of contracts *greater than IDR 25 Billion and less than IDR 50 billion*. In such cases, the decision of the TRB would be considered final, with the result conveyed to the PC for forwarding onto the PPK Commitment Officer.

The *Tender Review Board* would be assisted by a *Secretariat*, members of which may attend formal sittings of the Tender Review Board as non-voting observers in order to both report, and provide expert advice, to the Board. The TRB Secretariat would have the following responsibilities:

- Review Bid Evaluation Reports submitted by all PCs within MPW that are *greater than IDR 25 Billion and less than IDR 50 billion* related to procurement of goods, works and services and, once satisfied with the recommendations made, issue a No Objection Letter (NOL) to the PC, thereby allowing that PC to submit the result, with the accompanying NOL, to the PPK Commitment Officer, in order for formal contract award and signing to proceed. Regular reports on the status of NOL submissions are to be made to the Kepala, ULP
- For the procurement of goods, works and services that are *equal to, or greater than, IDR 50 billion*, PCs must submit a copy of all documents relating to the bid immediately after bid closing (viz. the bidding documents and tenders received) to the Secretariat. While the concerned PC is required to carry out its own evaluation and make a recommendation to the TRB Secretariat accordingly for submission to the Tender Review Board, the Secretariat will carry out its own independent evaluation in parallel to the PC. At the sitting of the Tender Review Board, the TRB Secretariat will report both on the findings and recommendation of the PC as well as its own.

7.3.2 MPW Regions

As mentioned in Sections 4.4 and 5.1 of this Report, procurement is currently the responsibility of Satkers at provincial level and, with the current DGH organization comprising approximately 200 Satkers, is very widely dispersed and lacks capacity.

It is recommended that procurement, which will become the responsibility of the ULP, be *raised from Satker to Balai level* (in the case of DGH there are 10 Balai) where procurement support would be provided on hand (i.e where it is needed) in the form of *ULP Balai Policy and Support Offices*, herein after referred to as the *ULP Balai Offices*. It is envisaged that there be ULP Balai Offices across all directorates general within MPW. By raising procurement to Balai level it is envisaged there could be a lesser number of PCs with more capable members. The establishment of permanent PCs is not advocated because of the need to periodically rotate staff for integrity reasons. However, because work load may be higher, alternatives need to be considered as to how the PCs could be established.

- The PCs could become “*standing PCs*” for a fixed period. Members serving on such PCs would be seconded for period of several months on their existing remuneration and with the guarantee of being able to return to their old jobs at the conclusion of their term. However this may be difficult to achieve. While serving on the PCs, members would also be entitled to the additional honoraria and bonuses that such service would entail. While such an approach would enable members to accumulate some experience while serving on the PC for a few months, there is the possibility such experience may be “lost or forgotten” when members return to their old jobs. Therefore, to some extent, the adoption of “standing committees” for a few months may be no different to the establishment of “ad hoc” committees.
- Develop a “*pool*” of *trained MPW procurement specialists to serve on PCs* established on an “ad hoc” basis by ULP Balai Offices throughout the country. Such specialists could be located in either the ULP Headquarters or ULP Balai Policy and Support Offices, or both. Eventually, as expertise develops, it would be mandatory for at least one of these ULP procurement specialists to serve on every PC in conjunction with other appointed members, including those with technical expertise relevant to the procurement package. Such procurement experts would serve on PCs on a rotational basis. By continuing to establish PCs on an “ad hoc” basis overcomes the inherent problems and integrity issues of establishing permanent PCs, while having a pool of

experts whose full-time job is to sit on PCs means that experience will be accumulated and, hopefully in time, there will be consistency in approach.

The structure shown in Figure 8 envisages a separate ULP Balai office associated with each of the operational directorates general (DGH, Water Resources and Human Settlements) Balai offices and that the supporting expertise would not only be in procurement, but also in the technical requirements of the concerned directorate general. The reasons for separating the ULP offices is not only because of the different technical requirements, but also because the Balai offices for different directorates general may be in different locations (e.g. Balai offices for Water Resources are associated with water catchments). However, should the Balai offices for two, or all three, directorates general be located in the same city, it may be appropriate to consolidate the ULP Balai in that city into one office servicing all the operational directorate general Balai offices in that city. In such circumstances, it would be necessary to ensure that the procurement expertise in the ULP Balai office also had the technical expertise required for the various directorate general offices it is servicing.

It should be stressed that the roles/ functions of Satkers and PPK units would continue to be the same with them continuing to be the productive units executing the MPW budget in accordance with Law 17/2003 on state finances with the designated PPK Commitment Officer executing and administering procurement contracts and the Satker Treasury Officer arranging payments. The only difference is that instead of the Satker establishing the PC to undertake the procurement process, this work would, in future, be outsourced to the ULP and the ULP would be establishing such PCs at Balai level where the ULP would have procurement expertise available to support each PC. Even though it is recommended that procurement be raised from *Satker* to *Balai* level, it is important that ULP Balai Offices ensure there continues to be good liaison between the PCs established by the ULP Balai and the Satkers/ PPK units and that those who are responsible for the design are consulted, should the need arise, during the evaluation process.

The *ULP Balai Office* would have the following responsibilities:

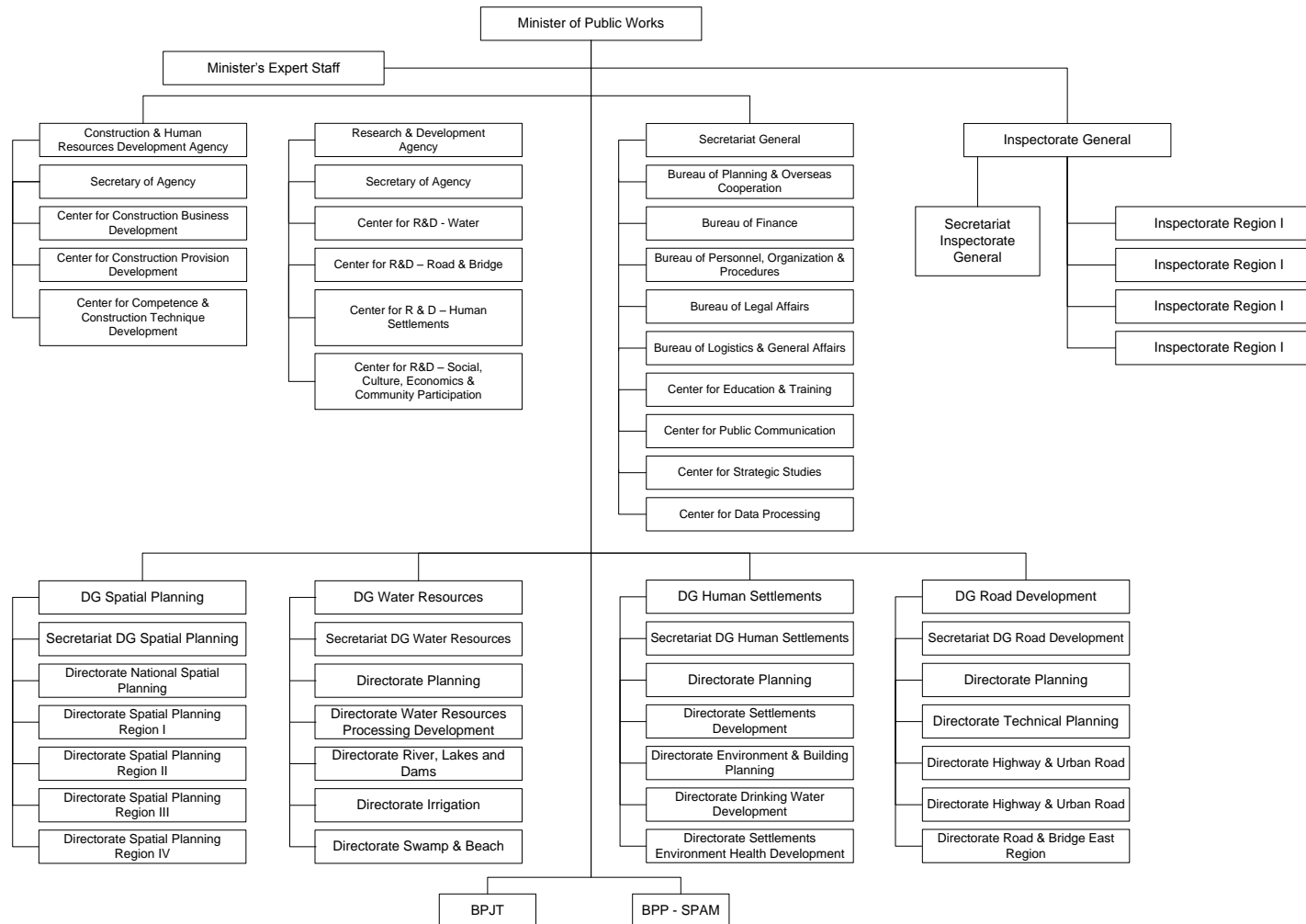
- Establish Procurement Committees at Balai level to serve the requirements of the various Satkers under the Balai. In the specific case of DGH, even if it consolidates the number of Satkers into approximately one per province, it may still be appropriate for the ULP Balai Offices to establish separate PCs to handle procurement for each of (i) Road Maintenance, (ii) New Construction (which may involve multi-year contracts) and (iii) Consulting Services;
- Review each Bid Evaluation Report and recommendation for contract award of its established PCs for packages of goods, works and services up to the value of IDR 25 billion and, subject to endorsement by the ULP Balai Kepala, submit to the PPK Commitment Officer for formal notification of award and contract signing;
- Ensure that its established PCs submit the Bid Evaluation Report and recommendation for contract award for packages of goods, works and services over the value of IDR 25 billion and up to the value of IDR 50 billion to the TRB Secretariat in order to obtain its No Objection Letter prior to submission to the PPK Commitment Officer for formal notification of award and contract signing;
- For packages of goods, works and services over the value of IDR 50 billion, ensure its established PCs submit one set of bidding documents and all tenders to the TRB Secretariat immediately after bid closing to enable the TRB Secretariat to carry out an independent evaluation in parallel to the PC. Upon completion of its own evaluation, ensure the PC submits its Bid Evaluation Report and recommendation for contract award to the TRB Secretariat. Should the TRB Secretariat require, the ULP Balai Office should arrange for a representative of the PC to attend the formal sitting of the Tender Review Board and make a submission on behalf of the PC;

- Include procurement experts within its organization who, while not serving as members on any of the PCs established by the ULP Balai Office, will be directly on hand to provide advice and support to members of those PCs. Should the procurement experts in the ULP Balai Office be unable to resolve any issues or problems arising from the PCs established by its Office, then such issues/problems should be raised to the ULP Headquarters Policy and Support Office;
- Report regularly to the Kepala, ULP, on the activities of the Balai Office including relevant statistics relating to the number of packages handled, the type or nature of the package, number of bidders per package, number rejected during post-qualification, whether the procurement was carried out on schedule and whether there were any complaints from bidders etc.

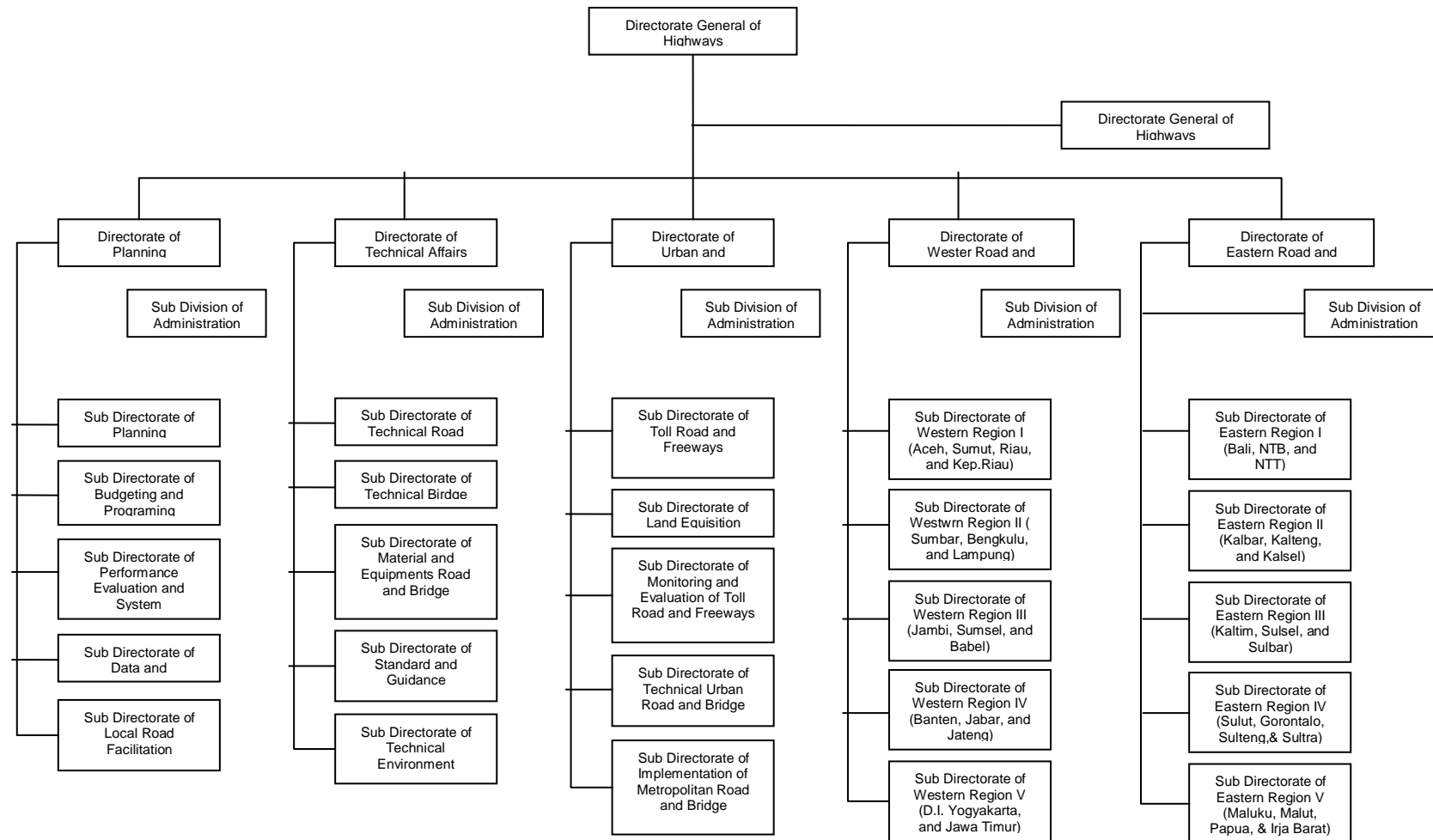
Suggested Terms of Reference for support both in setting up MPW's new ULP and during its first year of operations are shown in ANNEX 5.

ANNEXES

ANNEX 1: MPW ORGANIZATION



ORGANIZATION STRUCTURE OF DIRECTORATE GENERAL OF HIGWAYS



ANNEX 2: SUMMARY OF SURVEY OF SELECTED SATKERS WITHIN DGH

Due to time constraints, nine questions relating to the procurement process using public (APBN/APBD) funds were put to 30 Satkers from within DGH selected at random and spread throughout Indonesia. Of these, 18 or 60 percent responded. The Study Team expresses it's thanks to DGH staff for arranging for the questionnaire to be distributed and for collecting the responses.

The following Satkers responded to the questionnaire:

No	Satker Name	Email Address	Satker Head
1	SNVTP P2JJ Sulsel	P2jjsulsel@yahoo.com	Ir ign Wing Kusbimanto
2	SNVT P2JJ Bengkulu	P2jj_bengkulu@yahoo.com	Aswar Beorhan Msc.
3	Satker Pembangunan jj/jbt,Jawa tengah	Pjj_jateng@yahoo.co.id	Ir Heman Suroyo.
4	Satker Preservasi JJ/JBTBali	nusakti@yahoo.com	Nusakti Yasa Wedha St
5	SNVTP2JJ DIY	P3jjdiy@yahoo.com P2jjdiy@gmail.com	Ir Salamun.st
6	SNVT Pembangunan JJ/JBT Kalteng	Agus_ym09@yahoo.co.id	Ir Agus Yusuf Muharam
7	SNVT Pembangunan JJ/JBT Kaltim	--	--
8	SNVT PEMBANGUNAN jj/jbt jAMBI	Bangnas_jbl@yahoo.com	Ir Erwin H Pakpahan.
9	SNVT Pembangunan JJ/JBT Sultra	Ting_sultra@yahoo.com	Ir H Ronny Mt
10	SNVT Preservasi JJ/JBT BaBel	Preservasi_babel@yahoo.com	Ir Maximilian Abubakar.
11	SNVT preservasi JJ/JBT Metro Dki	pemelmetrodk@yahoo.com	Drs Winarto Hadi St
12	SNVT Preservasi NAD	pemeljjbt@yahoo.com	Ir Ahmad Faisal
13	SNVT Preservasi JL/JBT Sulteng.	Rehab_sulteng@plaza.com	Amjad Sapri St,Mt
14	SNVT P2JJ Lampung	P2jl_lampung @go.id	Subagio St,Mt
15	SNVT Pembangunan Jalan Kaltim	-	-
16	SNVT Pembangunan JL/JBT papua.	-	Ir Osman Harianto M Mt
17	SNVT P2JJ,Riau.	usiwdt@yahoo.com	Ir Manipol Sebayang
18	Satker Pembangunan jl/jbt Papua Barat	Bang_induk@yahoo.co.id	Ir Jon Sudirman Damanik MM.

No.	SUMMARY OF QUESTION	SUMMARY OF RESPONSES
1	<p>Presidential Regulation No. 8/2006 and Circular Letter of Ministry of Public Works No. se 12.1/se/M/2006 dated 29 September 2006 refers to undertaking advance procurement actions on condition that formal announcement of contract award (tender winner) can only occur after issuance of DIPA.</p> <p>Do you find it difficult or constraining in undertaking advance procurement actions as prescribed by the Presidential Regulation and Circular Letter of MPW?</p> <p>If so, please specify the constraint and advise whether this delayed either the procurement process or subsequent project implementation.</p>	<p><i>Most respondents felt there were not any difficulties in implementing advance procurement actions up to recommendation for contract award prior to issuance of the DIPA.</i></p>
2	<p>To order to expedite procurement of contractor(s) for either consulting or other support services, or new construction or maintenance works did the Satker/ PPK working unit prepare detailed engineering design in conjunction with HQ Directorates one year in advance in order to avoid implementation delays?</p> <p>If there was a delay, please mention the cause, and how you addressed the problem.</p>	<p><i>Most Satkers confirm they experience no difficulty in obtaining documentation. However, when it is necessary to recruit engineering services (consultants) through P2JJ, for the implementation of special construction works they prefer to use simplified designs rather than use complete DED.</i></p> <p><i>In the case of P2JJ Satkers, they confirmed the main problem they experience is where consultants fail to fulfil their contractual obligations by using the actual personnel listed in the contract. i.e. the personnel team on which they were evaluated and awarded contract.</i></p>
3	<p>In accordance with the principles of fair and open competition, do you provide opportunities for companies from other regions or provinces to bid for work offered by your PPK units?</p> <p>If so, do you think it has a positive impact in respect of the tender process and its outcome or do you think it causes problems?</p>	<p><i>There is no restriction in respect of kabupaten, region or even province. It was felt such open tendering generally has a positive impact with transfer of skills and knowledge among technical and management staff. However some Satkers have experienced situations where successful contractors from outside the province have not had plant and equipment available on site, thereby delaying commencement of the works.</i></p>

No.	SUMMARY OF QUESTION	SUMMARY OF RESPONSES
4	<p>Pursuant to GOL's current budgeting system, the appointment of key Satker staff, PPK Commitment Officers and Procurement Committee (PC) members (if a "standing" PC) must be confirmed annually. Do Satkers find this requirement inhibits either procurement or project implementation? Do they think it is necessary to issue such a letter annually or simply when staff moves to a new position? Is there any constraint that causes postponement of work implementation?</p> <p>What about advance procurement actions prior to issuance of DIPA? Who determines membership of the committee?</p> <p>Please explain.</p>	<p><i>Most respondents advise that it is usually not necessary to change the team, but, under the current system, they regard the annual letter of appointment as being necessary for accountability reasons. Usually it does not cause delays.</i></p> <p><i>NB. The responding Satkers may be unaware of the fact MOF is considering changing the system so that MOF regional Treasury Offices need only be informed when an actual change in staff occurs, rather than the need to issue an annual appointment letter.</i></p> <p><i>It is common in DGH, to undertake advance procurement of works up to recommendation for award of contract prior to issuance of the DIPA.</i></p> <p><i>All PC members are appointed by the existing satker. However, should a new Satker team be appointed for the next FY and be so defined in the DIPA, it would be necessary for all PC members working prior DIPA issuance to be reappointed by the new Satker official. If the Satker official decides to change either the Satker/ PPK team or PC members this will have an impact and cause delays.</i></p>
5	<p>Give your opinion on the stipulation that the Owner's Price Estimate should be calculated according to local market prices. When undertaking procurement, has it proven necessary to rebid due to the OE being valued too low? If appropriate, give your alternative suggestion as to how the OE should be calculated so as to provide more meaningful figures for the tender process.</p>	<p><i>Satkers generally agreed that the OE should be calculated based on local market prices.</i></p> <p><i>Where all bids are above the OE but still below the DIPA budget allocation, there is no need to rebid. However, if all the bids are also above the DIPA budget allocation then it would be necessary to either rebid or reduce the project scope. The latter approach is usually preferred.</i></p> <p><i>Based on experience, almost all OEs calculated based on MPW established guidelines, are found to be acceptable.</i></p>
6	<p>It is hoped with the application of e-Procurement that any "deviations" from normal practices (i.e. unacceptable practices such as collusion) will be kept to a minimum. Do you think the application of MPW e-procurement, whether semi-e-procurement or e-procurement plus is helping to improve procurement?</p> <p>Do you have any data such as time taken to bid, number of bidders, bid value when compared to that procured using conventional hardcopy (non electronic) to indicate that e-Procurement improves the process? Do you find the use of e-Procurement compatible with the various types of procurement being goods, construction works, consultancy and other types of services?</p>	<p><i>Most respondents that have experienced e-Procurement consider it has helped reduce collusion among bidders because participants never know who else is bidding and never meet each other</i></p>

No.	SUMMARY OF QUESTION	SUMMARY OF RESPONSES
7	<p>In the event that the PC faces a problem during the procurement process or the PPK working unit faces a problem when implementing a contract,</p> <ol style="list-style-type: none"> 1. Can either the PC or the PPK working unit easily get support from Headquarters i.e. the national level? 2. Do they experience difficulty in getting such support? 3. Would the inclusion of a Procurement Services Unit providing support on procurement and contract administration in the regions for where these are carried out be useful? 	<ol style="list-style-type: none"> 1. <i>Most Satker advise they have found it relatively easy to obtain assistance from Headquarters</i> 2. <i>Most respondents advise they have not experienced any difficulties</i> 3. <i>Most consider the establishment of a Procurement Services Unit will make their job easier</i>
8	<p>While Keppres 80/2003 only requires companies to be registered with GOI License (IUJK), regulations under the Construction Law require companies to obtain a competency certificate SBU as well as individuals within the company to obtain either managerial or technical competency certificates (SKA, SKT) before obtaining the IUJK. The fact that it is the company associations that issue the SBU could create cartels due to vested interests. Do Satkers perceive this as impeding procurement by segmentation of the market?</p>	<p><i>Most respondents expressed the view that company (SBU) and individual (SKA & SKT) competency certificates are a formal requirement by law to ensure contractors have the capacity and capability to implement contracts they bid for. However, they advise in reality, when awarding contracts, it is difficult to find competent firms with professional management and technical staff.</i></p> <p><i>Even if they are aware that the issuance of SBUs by company associations could create cartels and segment the market, most respondents ignore this issue because it is currently a legal requirement and they proceed to procure accordingly</i></p>
9	<p>Having regard to (i) the present structure within DGH with each Balai being responsible for three provinces and all Satkers within those provinces, and (ii) the fact that DGH is considering providing a Procurement Support Unit, where and how do you consider such support should be provided?</p>	<p><i>Most respondents do not know what DGH is proposing in the form of a Procurement Support Unit, where it will be located or what services it will provide.</i></p> <p><i>Several Satkers would like to have a procurement expert located permanently at Balai level in order to provide instant assistance when needed. Others suggested that assistance could best be provided in the form of a “flying squad” that could come to the Satker location, as and when needed</i></p>

ANNEX 3: SUGGESTED PUBLIC PROCUREMENT INDICATORS TO BE APPLIED TO EITHER INDONESIAN LINE MINISTRIES OVERALL OR TO SELECTED DGs WITHIN THOSE MINISTRIES

DIAGNOSTIC			PERFORMANCE (In previous FY)	Related Base-line Indicator/ sub-Indicator
PUBLIC PROCUREMENT LEGISLATIVE & REGULATORY FRAMEWORK				BLI 1
1	Is the bulk of Procurement carried out through OPEN COMPETITIVE TENDER?	1(a)	PERCENTAGE (%) carried out through OPEN COMPETITIVE TENDER?	1(b) Procurement Methods
2	Is the Bulk of Procurement PUBLICLY ADVERTISED?	2(a) 2(b)	PERCENTAGE (%) Invitations for Open Tender PUBLICLY ADVERTISED? Average No. DAYS from ADVERTISING to BID OPENING?	1(c) Advertising Rules and Time Limits
3	Is PARTICIPATION in bidding ever LIMITED?	3(a)	PERCENTAGE (%) of Bidding Documents with Provisions LIMITING PARTICIPATION?	1(d) Rules on Participation and Qualitative Selection
4	Do BIDDING DOCUMENTS (especially SPECIFICATIONS) ever result in RESTRICTIONS to bidding?	4(a)	PERCENTAGE (%) of BIDS REJECTED as being NON-RESPONSIVE?	1(e) Tender documentation and technical specifications
5	Are BIDS OPENED PUBLICLY and RECORDED?	5(a)	PERCENTAGE (%) of Procurement Packages OPENED PUBLICLY and RECORDED?	1(g) Submission, receipt and opening of bids
6	Does a suitable COMPLAINTS HANDLING mechanism exist?	6(a)	PERCENTAGE (%) of COMPLAINTS cases resolved?	1(h) Complaints system, structure and sequence
IMPLEMENTING REGULATIONS & DOCUMENTATION				BLI 2
7	Are MODEL BIDDING DOCUMENTS or CLAUSES used?	7(a)	PERCENTAGE (%) of Procurement Packages that use MODEL BIDDING DOCUMENTS or CLAUSES?	2(b) Model tender documents for goods, works, and services
8	Is PRE-QUALIFICATION used appropriately, as prescribed?	8(a)	PERCENTAGE (%) of cases where PRE-QUALIFICATION was applied?	2(c) Procedures for Pre-qualification
9	Are STANDARD GENERAL CONDITIONS OF CONTRACT (GCC) used?	9(a)	PERCENTAGE (%) of procurement contracts that use standard GCC?	2(f) Existence and coverage of General Conditions of contract
INTEGRATION & MAINSTREAMING INTO GOVERNANCE SYSTEM				BLI 3
10	Can LATE PAYMENTS that exceed the agreed Payment Schedule occur and, if so, what are key reasons?	10 (a)	PERCENTAGE (%) of PAYMENTS made LATE (i.e. in excess of payment schedule)?	3(b) Budget Law and financial procedures support timely execution
EXISTENCE OF INSTITUTIONAL DEVELOPMENT CAPACITY				BLI 5
11	Are there disseminated QUALITY CONTROL STANDARDS used to evaluate staff performance and address capacity development issues?	11(a) 11(b)	PERCENTAGE (%) of Satker staff issued with national procurement practitioner's proficiency certificate? PERCENTAGE (%) of Procurement Committee members issued with national procurement practitioner's proficiency certificate?	

DIAGNOSTIC		PERFORMANCE (In previous FY)		Related Base-line Indicator/ sub-Indicator
EFFICIENCY OF PROCUREMENT OPERATIONS & PRACTICES				BLI 6
12	What is the expected Standard TIME SPAN in No. of days for PROCUREMENT cycle (from advertisement to award)?	12(a) 12(b)	Actual overall annual AVERAGE TIME SPAN in no. of days (from advertisement to award)? PERCENTAGE (%) of cases that exceeded expected standard time span?	
13	Do contracts have regard to output performance?	13(a)	PERCENTAGE (%) of procurement contracts that are performance- (output-) based?	
FUNCTIONALITY OF PUBLIC PROCUREMENT MARKET				BLI 7
14	Do regulations prescribe the MINIMUM NUMBER of BIDS required?	14(a)	AVERAGE NUMBER of BIDS SUBMITTED across all packages?	7(b) Private sector Institutions organized and able to access market
EXISTENCE OF PROVISIONS FOR CONTRACT ADMINISTRATION & DISPUTE RESOLUTION				BLI 8
15	Do regulations require provision of clauses in contract documents on how to go about RESOLVING CONTRACT DISPUTES?	15(a) 15(b)	PERCENTAGE (%) of Contracts containing provisions on how to RESOLVE CONTRACT DISPUTES? AVERAGE TIME TAKEN to resolve CONTRACT DISPUTES	8(b) Contracts include adequate dispute resolution procedures
EFFICIENCY OF APPEALS MECHANISM				BLI 10
16	Is there a TIME LIMIT prescribed in which to handle COMPLAINTS and are DECISIONS ENFORCED?	16(a) 16(b)	PERCENTAGE (%) of COMPLAINTS that was resolved within the prescribed TIME LIMITS? Of the decisions made, what PERCENTAGE (%) was actually enforced?	10(b) Capacity of the system for handling complaints and enforcing decisions

16 Indicators and 21 performance-related measurements

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1. INTRODUCTION AND PURPOSE

1.1 Why ‘Probity’?

Webster’s New World Dictionary defines ‘probity’ as *‘uprightness in one’s dealings; integrity’*. In the context of this project, probity is a term used to encapsulate the concept of procedural fairness through transparent and accountable tendering processes. It derives from the accepted principle that in its commercial transactions, government’s actions must be fair and equitable to all and be capable of withstanding independent “probing” enquiry on behalf of the public.

Probity assists government to ensure there is efficient utilisation of its limited public resources, and gives competitors within industry the confidence that they are being judged on their merits in an open and transparent environment. The independence and impartiality of the personnel involved in the transaction process is paramount.

For a government transaction to achieve fully accountable procedural fairness, it is essential that the various elements of that transaction process are capable of successfully withstanding probative examination through each phase of the transaction. The elements of a commercial transaction that need to be considered from a probity perspective include:

- **Project Personnel** – requiring independence and impartiality of all persons involved in shaping the transaction and influencing the final outcomes.
- **Project Communications** – requiring that communication protocols are effective in establishing equitable and respectful dialogue between parties.
- **Project Information** – requiring that all government and industry project documents be managed in an equitable and respectful basis.

Recent legal decisions in Australia have determined that in many government transactions a ‘process contract’ can be deemed to exist, where Tenderers commit their limited resources in preparing Tender Submissions in consideration for equitable treatment in the assessment of their submissions. In the transaction process for the Ballarat North Water Reclamation Project (the ‘Project’), Tenderers are likely to invest considerable time and money in the preparation of their proposals, perhaps upwards of \$500,000. In this environment, the possibility of a legal challenge on the validity of the Authority’s procurement process by an unsuccessful and disgruntled Tenderer is always present.

1.2 When Probity Fails . . .

A ‘Probity Event’ occurs when a specific action/inaction by either a government employee or consultant, or by an EOI Registrant or Tenderer, places the transaction process at risk of being adjudged as lacking in procedural fairness.

It is important to understand that in matters of probity, the public perception of inappropriate transaction processes or outcomes can be more damaging to the integrity of the transaction than the actual facts associated with any specific Probity Event.

The consequences of a Probity Event can often be quite catastrophic, for example:

- The necessity to abort and then recommence the entire transaction process
- Wastage of substantial government funds and the bid costs of all Tenderers
- Significant slippages in government’s project schedule

- Adverse publicity and damage to the government's reputation
- Embarrassment to individual government employees or Project Team members
- Possible legal action by disgruntled Tenderers seeking to recover bid costs
- Potential disqualification of otherwise attractive and competent Tenderers
- Raising concern within industry as to government capability
- The possibility of political or bureaucratic step-in or other 'interference'

Rather than exposing government to these potential adverse outcomes, a well-conducted transaction process focussing on procedural fairness will allow any probity challenge to be efficiently and fairly considered and addressed, and importantly, with minimal interruption to the project. Such processes also provide greater assurance to government and to industry that the transaction outcomes are unlikely to be subjected to procedural challenge, adding to the certainty of the final outcome.

Government needs to be particularly alert to ensure that its transactions are not subjected to lengthy administrative or legal challenges, as this will usually place the affected project in legal 'limbo', unable to proceed, but also unable to retreat.

1.3 The Project Probity Plan

It is of the utmost importance that the entire transaction for this Project be conducted in such a way that there can be no valid criticism of the essential veracity of the processes or of the participants in that process.

This Probity Plan has been prepared to establish the broad protocols that should be instituted by the Project Team for the transaction process. It is implemented under the direction of the Board of Central Highlands Water.

Amendment or addition to this document will only be undertaken with consent of the Chief Executive of the Authority after careful consideration as to the perception this will have by an independent observer, and only when it is obvious that a perverse result may occur without the proposed amendment or addition.

2. SCOPE AND APPLICATION

The purpose of this Probity Plan is to describe procedures to be implemented during the Project transaction. It is intended that these procedures should ensure that CHW, its Project Team and other involved government parties all fully understand and observe *procedural fairness* in the selection of the contractor for this Project.

2.1 Probity Plan Objectives

The objective of this Probity Plan is to describe protocols and procedures that will:

- Develop and communicate a robust transaction process for the Project that is capable of successfully withstanding external scrutiny
- Provide CHW with a process audit trail for the transaction

- Ensure that probity and transaction processes are agreed and understood by all
- Instigate clear external and internal communication protocols that are agreed by all
- Provide all Tenderers with an equal opportunity to contest for the contract
- Respect and protect the confidentiality of Tenderers' Submissions
- Respect and protect any intellectual property within Tenderers' Submissions
- Ensure transparency of the Authority's selection processes
- Protect both the Authority and Tenderers from the expense and delays associated with abortive processes
- Minimise the potential for legitimate legal challenges by unsuccessful Tenderers

2.2 Project Transaction Phases

The entire transaction process for this Project is subject to the procedures and protocols described in this Probity Plan. That is, all activities spanning from release of Expression of Interest (EOI) documents until signing of the contract. Even then, the continuing confidentiality of information or commercial-in-confidence documents needs to be properly maintained, e.g. whilst debriefing of unsuccessful Tenderers.

This Probity Plan applies to the complete transaction process for the selection of the contractor for the project, including the following phases:

- Calling for and receipt of Expressions of Interest
- Tenderer shortlisting
- Calling for and receipt of tenders
- Evaluation of tenders
- Contract negotiations and documentation

2.3 Application of the Probity Plan

It only requires one serious Probity Event to occur to undermine the entire transaction process. Accordingly the Probity Plan will apply to the following personnel:

- Directors and Officers of CHW
- Officers of DTF and DSE involved in providing project-specific advice to CHW
- Members of the **CHW Project Team**, viz.:
 - Officers of CHW directly involved in the project
 - All appointed project consultants and advisers
 - All members of the EOI Evaluation Panel, including appointed advisers
 - All members of the Tender Evaluation Panel, including appointed advisers
 - All members of the Negotiation and Documentation Team

3. PROJECT DESCRIPTION AND TIMETABLE

3.1 The Project

CHW is seeking to form a long term relationship under a Design, Build and Operate (DBO) contract with a private sector entity (Promoter) who will become responsible initially for the operation of the existing Ballarat North Wastewater Treatment Plant and for the development and operation of the Ballarat North Water Reclamation Plant in accordance with licence conditions set by the Environment Protection Authority for the Plant. At the direction of CHW, the Promoter will subsequently become responsible for the further upgrade of the Ballarat North Water Reclamation Plant to provide higher standards of Reclaimed Water, and for the development and operation of the reuse scheme infrastructure servicing CHW's Reclaimed Water customers.

CHW has received approval from the Minister for Water and from the Treasurer to proceed with the Project and to develop a DBO contract under the provision of the State Government's *Partnerships Victoria* Policy. This approval is subject to Tenderers bettering CHW's Project PSC.

The key objective of the Project is to provide outcomes in accordance with the strategy objectives outlined above.

In addition, the Project must achieve the following specific objectives:

- the Ballarat North Water Reclamation Plant is fully operational by 30 June 2007;
- the Ballarat North Water Reclamation Plant is developed and operated to ensure a continuous and reliable supply of reclaimed water is available to CHW to supply to its reuse customers;
- the Ballarat North Water Reclamation Plant is developed and operated to provide flexibility for expansion and adoption of improved technology in terms of wastewater treatment to cater for future requirements, especially in relation to increased reclaimed water quality standards (eg more stringent nutrient and/or pathogen removal) and trade waste growth; and
- the Project outcomes fully meet community and CHW expectations throughout the contract period.

3.2 Proposed Transaction Timetable

The following transaction timetable is proposed for award of the DBO contract:

Task	Date
EOI Period	Mid May – Mid June 2005
Announcement of Tenderer Shortlist	Mid July 2005
Tender period	Mid July – Mid October 2005
Evaluation of tenders	Mid October – December 2005
Announcement of preferred Tenderer	December 2005
Execute DBO contract	February 2006
Commencement of operations of existing WWTP	April 2006
Design & Construction phase	February 2006 – May 2007
Commissioning and Technical Completion	June 2007
Commercial Acceptance	Not later than March 2008 (Tenderers to advise)

4. PERSONNEL – INDEPENDENCE AND CONFIDENTIALITY

The independence of all CHW personnel and their advisors from those parties contesting the Expression of Interest and tendering processes is paramount, and central to the concept of probity and procedural fairness.

Industry perceptions that all Tenderers can expect to receive fair and equal treatment in transaction processes is founded on appointing Project Team members who can withstand investigation into the independence of their other commercial relationships. It is difficult to preclude innuendo and unfair comment as to the probity of the Project transaction process if a person appointed to the Project purportedly to act in the best interests of CHW is found to also have existent or imminent commercial relationships with any of the tendering parties. This situation is exacerbated particularly if such relationships are not disclosed to CHW and are instead “discovered” by one or more of the industry participants.

4.1 Project Team Members

Each member of the CHW Project Team will be required to personally complete a ***‘Declaration of Independence and Confidentiality’***. A pro-forma *Declaration of Independence and Confidentiality* is provided in Attachment 2.

- The requirement that all Project Team members sign personal declarations of their ***independence*** at the commencement of the transaction is to allow all personnel involved in the project to disclose any commercial interests or other information that might have an adverse impact on the perceived fairness and independence of that person. Where potential conflicts of interest are identified or are perceived to exist, CHW in conjunction with its Probity Auditor will give consideration to the disclosures and their likely impact on the transparency and independence of the transaction process. Where necessary, consideration to be given to whether it is appropriate for the person(s) concerned to discontinue their involvement as part of the Project Team or whether appropriate procedures or remedies can be implemented to preserve the integrity of the transaction process.
- All persons with access to sensitive project or tender information must maintain the highest standard of ***confidentiality*** in respect of that information, as the confidential nature of the commercial aspects of bids and the intellectual property contained in innovative project solutions is fundamental to the competitive process. The signing of a confidentiality declaration ensures that all Project Team members are aware of the importance of this confidentiality and is a personal undertaking intended to protect the interests of CHW as well as the Tenderers.

General Probity Guidelines:

- If Project Team members have legitimate commercial dealings not relating to this project with organisations likely or known to be submitting an EOI or tender, they must refrain from discussing the project or procurement process with that party.
- Members of the Project Team should avoid socialising with industry participants likely to be or known to be part of an Expression of Interest or tender team during the entire transaction process.
- Members of the Project Team should not communicate directly with EOI respondents or Tenderers in respect of this project. All such communications will be undertaken through the Authority’s ***Nominated Contact***, David Clements. Any Team Member approached by EOI

respondents or Tenderers should advise that party that the Project probity protocols require all communications to be through CHW's Nominated Contacts.

- In the event that such an approach persists, then the Project Team member should seek to terminate the discussion as quickly as possible, immediately complete a Probity Report Form (See Attachment 4) and forward it to David Clements.
- The above are basic *guidelines* for the benefit of Project team members. Clearly, Project Team members should always be aware of how their actions may be perceived by outside parties and they must not knowingly jeopardise the transaction process through inappropriate communication, liaison or conduct. If a Project Team member feels uncertain as to the proper course of action in any particular circumstance, then advice should be sought from CHW's Nominated Contacts or CHW's Probity Auditor.

4.2 Evaluation Panel Members

The EOI Evaluation Panel (EEP) and the Tender Evaluation Panel (TEP) will be responsible for the evaluation and ranking of submissions, and reporting their findings to the Board of CHW. Given the obvious sensitivity of this Panel work, there is a higher duty of care expected of Panel members.

Evaluation Plans will be provided for each Panel, providing detailed procedures for Panel procedures. These Plans will be developed prior to the closing dates for submissions and distributed to Panel Members at an appropriate time.

Evaluation Panels shall be separately constituted for the evaluation of Expression of Interest submissions and for the evaluation of Tenders. It is not a requirement that both Panels constitute identical membership.

In the event that a Panel member can no longer fulfil his/her function due to absence, illness or changed responsibilities, the Panel will continue on with a reduced number of members unless the Panel believes that it is necessary to replace the retiring member. There shall however never be less than four Panel members.

General Panel Guidelines:

- The Panel will be required to comply with the Evaluation Plan agreed between the Panel and the Authority prior to the opening of submissions.
- The Panel may request reports from other Project Team members or advisers when such reports may assist the Panel in its deliberations.
- The Panel will meet at the direction of the Panel Chairperson and should be attended by all members of the Panel if possible. A Panel meeting cannot proceed without at least four members being present.
- The Panel may invite Project advisers to be present during its meetings.
- Although informal discussion between Panel members will occur outside of formal meetings, Panel decisions should be made in the context of a properly convened meeting. Panel members should be mindful as to where such informal discussions are held and refrain from "talking in corridors".
- Minutes of formal meetings and decisions taken at those meetings should be recorded. It is not necessary that all of the deliberations at meetings be documented, however the processes leading to the decisions, the basis of the decisions and the actual decisions made should be minuted.

- The Panel may delegate certain parts of its administrative and information gathering functions to members of the Project Team. On instructions from the Panel, additional information may be sought by meeting with Tenderers through the nomination of a Clarification Team, consisting of the Panel Chairperson and appropriate personnel from the Project Team. Minutes of all such meetings shall be kept and distributed to all Panel members.
- At the conclusion of deliberations, the Panel will prepare a written report summarising the processes undertaken, the results of those processes and the recommendations arising therefrom. All members of the Panel will sign this Panel Report to evidence their concurrence with its contents. If any Panel member holds a dissenting opinion it shall be documented and appended to the Panel Report.

4.3 Other Project Participants

Section 3.2 identifies a number of other respondents to this Probity Plan, viz.: *'Directors and other officers of CHW, and those officers of DTF and DSE involved in providing project-specific advice to CHW'*.

All such personnel, although not members of the Project Team, may have access to confidential project information, and will be required to sign a **Confidentiality Declaration** so that they are aware of the importance of maintaining the confidentiality of documents/information provided to them.

A pro-forma *Declaration of Confidentiality* is provided in Attachment 3.

In addition:

- Persons in this category must not communicate directly with EOI respondents or Tenderers in respect of this project. (From a probity perspective there is a very real likelihood that any comments made in respect of this Project could easily be misleading or inaccurate). All communications must be undertaken through the Authority's **Nominated Contact**, David Clements.
- Any person in this category approached by EOI respondents or Tenderers should advise that party that Project probity protocols require all communications to be through CHW's Nominated Contact.
- In the event that such an approach persists, then that person should seek to terminate the discussion as quickly as possible, immediately complete a Probity Report Form (See Attachment 4) and forward it to David Clements.
- The above are basic *guidelines* for the benefit of those persons involved in the Project. Clearly, you should always be aware of how your actions may be perceived by outside parties and you should not knowingly jeopardise the transaction process through inappropriate communication, liaison or conduct. If you feel uncertain as to the proper course of action in any particular circumstance, then advice should be sought from CHW's Nominated Contact or CHW's Probity Auditor.

5. COMMUNICATIONS

5.1 General

Procedural fairness demands that all Tenderers receive the same “messages” from the Authority in relation to its requirements, data and documents. To enable the preparation of competitive and comparable bids it is important that the basis of all bids is identical and that to the maximum extent practicable no particular Tenderer should have different degrees of access to significant Project information. This is equally important during post-submission periods, where all submissions still remain under active consideration.

The objective of establishing clear communication protocols is to minimise the possibility that CHW is perceived to favour one party over another by providing preferential treatment or information that may give a competitive advantage to a Tenderer or by divulging commercially sensitive information.

Communication protocols require discipline from Project Team members, and it could be embarrassing and unfortunate if an otherwise competent Tenderer was disqualified due to inappropriate communication with a team member. It is also important that industry understand to whom and how they should communicate their queries.

Security of CHW and industry documentation is an important aspect of probity. It is impracticable to lay down guidelines to meet every conceivable security issue that may arise, particularly on a large project continuing for a lengthy period of time. Project Team members should seek to understand the broad intent of these protocols and honour them to the best of their ability.

5.2 Communication with EOI / Tender Respondents

Generally, communication with EOI registrants or Tenderers should be in writing by letter, facsimile or e-mail as either a “Notice to Intending Registrants” or a “Notice to Tenderers”. There will however be circumstances where telephone or personal contact is the only reasonable response to a particular circumstance or event. In these situations CHW’s Nominated Contact shall determine the method of contact and if personal contact is to be made then at least two members of the Project Team shall attend, and file notes taken as to the nature of the discussion.

Additional information to be acquired from registrants or Tenderers should be by a written ‘question and answer’ format where practicable. Meetings may accompany this process where the Panel considers this to be efficient or necessary for clarification. At least two Project Team members should be present during such meetings, and meetings should be minuted.

Project Team members should note that both the EOI and Tender Documents will prohibit industry from making contact with CHW directors or officers, DTF or DSE project representatives or any other Project Team members in relation to the project without the prior approval of CHW’s Nominated Contact. Failure to adhere to this above requirement may result in CHW disqualifying the errant EOI Registrant or Tenderer from further consideration for the Project.

6. INFORMATION

6.1 General

The transaction process is reliant on an effective exchange of information between CHW and the competing Tenderers. CHW will indicate its requirements and objectives through EOI and Tender Briefs and industry will respond with proposed solutions and commercial terms in their bid proposals. Secondary information in the form of project data and 'answers to questions' serves to supplement and clarify CHW's project requirements.

To achieve probity objectives particularly in relation to the competitive nature of this transaction it is necessary to ensure the information provided by Tenderers is strictly controlled. This is achieved through:

- **Confidentiality**, and
- **Security**.
- Information about the contents of any EOI or Tender should only be available to the Panel and its advisers prior to completion of the evaluation process, and the contents of any EOI or Tender must not be divulged to other parties.
- Consistent information must always be provided to all parties. Only CHW's Nominated Contact has authority to direct the release of information. Project Team members should under no circumstances give personal opinions to Tenderers.
- As explained earlier in this Plan, Project Team members are required to complete a '*Declaration of Independence and Confidentiality*'. Protocols are also required for the secure storage and distribution of EOIs and Tenders by Project Team members so that a history of document movements can be established (see Section 7). A Document Control Procedure will be documented and distributed to Project Team and Panel members.

6.2 EOI and Tender Briefs

The Project Team shall review CHW's standard tendering procedures and if necessary advise as to potential procedural issues that may be encountered.

The Expression of Interest Brief and Tender Documents will be approved by the Board of CHW and by the CHW Project Manager prior to release.

The EOI and Tender Briefs will, among other things, include the following details:

- 'Nominated Contact' person and communication procedures,
- Closing time for lodgement of submissions/offers,
- Where and how the submission/offer is to be lodged,
- The number of copies to be provided,
- Information required to be provided,
- The Tender validity period,
- Details of any briefings that may be held,
- Mandatory conformance issues,
- Evaluation criteria,
- Details of any disclaimers by the Authority.

In the event that it is necessary to provide further information to industry prior to the closing date of EOIs or Tenders, this information should be provided to all parties by way of numbered Notices, which will require acknowledgment of receipt by the recipients. Meetings may be held in conjunction with release of such notices.

6.3 Expression of Interest and Tender Proposals

EOI's and Tenders usually contain sensitive commercial and technical information (eg. proposed methodology, pricing structures, etc.). On initial receipt and registration, each EOI or Tender should be given a distinctive identification code so that it can be referred to by that code instead of by name. All copies of each EOI or Tender will be numbered and controlled by a register and securely maintained when not in use.

No part of the EOI or Tender Proposals may be photocopied without the approval of the CHW Project Manager.

It is desirable that no part of the EOI or Tender Proposals be removed from CHW premises without the prior approval of the CHW Project Manager and the Probity Auditor. Where removal of such documents is approved they must be kept in a secure location at all times when not in use. All movement of documents must be registered on both their removal and return.

6.4 Evaluation Panel Working Papers

Members of Evaluation Panels should observe the discipline of maintaining appropriate working papers to document their work and in particular the basis of decision making. Each Panel member should maintain an appropriate personal filing system to efficiently and securely file documentation while in the course of evaluation.

A central filing system should also be established within which correspondence, working papers and other documentation arising out of the evaluation and assessment process can be efficiently and securely filed.

A critical aspect of probity is the proper support of decision-making. Accordingly all decisions should be supported by working papers and an auditable trail.

6.5 Project Data

To the maximum extent possible all Tenderers should have equal access opportunities to Project data.

Project data is to be collected and made available in the Project Data Room and on CD-Rom to assist Tenderers in the preparation of their bids. The data should be kept in a secure location with access restricted to persons who have a legitimate intention or are preparing a tender. A specific procedure to regulate access to, and use of, the Data Room will be documented by the Project Team.

6.6 Information Required By Tenderers

As has been indicated earlier in this document, information provided to one Tenderer by the Authority should also be provided to all Tenderers. On this basis, responses to Tenderers' questions will also be provided to all Tenderers, except as later discussed.

Tenderers' questions to the Project Team will need to be in writing and the answer will be provided to the Tenderer in writing. If the Project Team is unable or is unwilling to provide an answer this will be stated and communicated.

'Questions and answers' will be controlled and copies of all 'questions and answers' will be distributed to all Tenderers without identification of the Tenderer who asked the question. In the event of any Tenderer wishing to obtain an answer to a question in confidence, i.e. without distribution to other Tenderers (eg because it may cause an innovative or intellectual property aspect of their bid to be revealed to other Tenderers) the provision of a confidential answer will need to be approved by the CHW Project Manager and a separate register kept of these questions and answers. In the event that approval for a confidential question and answer is not given, the Tenderer will be given the opportunity to withdraw or reword its question.

6.7 Reporting of Security Breaches or Probity Events

Members of the Project Team must report all project communications with industry, especially any actual or suspected breaches of security or Probity Events to the Project Manager. A pro-forma Probity Report is attached to this document for use by all Project Team members.

Notes are to be made of the final action taken in regard to all actual or suspected breaches of security or Probity Events.

7. RECEIPT OF PROPOSALS

This part of the transaction process applies to both EOI and Tender Submissions

7.1 Receipt by Advertised Times

The EOI and Tender Briefs will stipulate the Closing Time for lodgement of submissions. Arrangements should be made for adequate receiving facilities to cope with the expected number and size of the documents.

EOIs or tenders received after the Closing Time will be handled according to the protocol established in the documented Evaluation Plan.

7.2 Recording and Registration

All EOIs and tenders received by the designated closing time will be registered in an appropriate register that will be signed off by the Project Team member opening the submissions and by the Probity Auditor.

7.3 ‘Original’ to be Held In Safe Keeping

The EOI and Tender Documents will require that one copy be marked “Original”.

The Probity Auditor will take custody of the original copy of each submission and hold it in a secure remote location. In the event of any later discrepancy or disagreement about the contents of the submission, the original copy will prevail.

8. EVALUATION METHODOLOGY

To maintain the defensibility and accountability of the transaction process it is necessary to set the evaluation criteria and method of assessment prior to receipt of Expressions of Interest or tenders. By doing this it cannot be said that CHW tailored the evaluation to suit any particular organisation.

Evaluation criteria and the basis of assessment of all submissions will be set out in the EOI and Tender Briefs. It is essential that there is no change in the criteria or the basis of assessment from that which is included in the Briefs.

Detailed Evaluation Plans for EOIs and tenders, including methodologies and the use of financial models and evaluation spreadsheets, will also be documented and deposited in the Tender Box prior to the Closing Time for receipt of EOIs or tenders and these methodologies will not be changed during the course of the evaluation.

9. INDEPENDENT PROBITY AUDITOR

The Authority has appointed Pitcher Partners as the independent Probity Auditor for the project to overview the transaction process.

The role of the Probity Auditor is to overview CHW’s procurement process, the development of tender documentation, Data Room procedures, the work of Evaluation Panels, to provide advice in relation to probity issues on a timely and ongoing basis, to be available to Tenderers with respect to probity issues and to report to the Board of CHW at the conclusion of the transaction process.

The Probity Auditor will take no part in the decision making process of the Panels but will be available to provide advice on an ongoing basis and will assist the Panels on all matters pertaining to probity. The Probity Auditor will attend all formal meetings of the Panel where final scoring is determined as well as key events eg. opening of Tenders, briefing meetings, etc.

10. ACKNOWLEDGMENT

All Project Team members, Panel members and other government participants will be provided with a copy of this Probity Plan and will acknowledge by return of the form contained in Attachment 1 to this Plan that they have read the document and will comply with its requirements.

ATTACHMENT 1 CONFIRMATION OF RECEIPT OF PROBITY PLAN

Central Highlands Region Water Authority
Ballarat North Water Reclamation Project
Acknowledgment of Receipt of Probity Plan

PROJECT TEAM and

**PERSONNEL WHO MAY BE AWARE OF, OR HAVE ACCESS TO, CONFIDENTIAL PROJECT
INFORMATION**

This is to acknowledge receipt by me of a Controlled Copy of the Probity Plan for the Ballarat North Water Reclamation Project.

I agree to promptly read this Probity Plan, and to the extent that the provisions of the Probity Plan apply to my role on the Project, I further agree to abide by and implement its provisions in the discharge of my responsibilities.

Where, after having read the document, I no longer agree to abide by its provisions, I will return the Probity Plan to the Chief Executive Officer of Central Highlands Water and advise him of that decision. I understand that in those circumstances Central Highlands Water is prohibited from disclosing any confidential Project information to me.

Dated: _____ Signed: _____

Name: _____

ATTACHMENT 2 DECLARATION OF CONFIDENTIALITY AND INDEPENDENCE - BY PROJECT TEAM MEMBER

Central Highlands Region Water Authority

Ballarat North Water Reclamation Project

Declaration Of Independence, Confidentiality and Undertaking to Report All Discussions and Forward Correspondence to CHW Project Manager

PROJECT TEAM

As a member of the Project Team (see Section 2.3 of the Probity Plan), with respect to the above Project, I confirm:

1. I have considered the attached Schedule A which identifies the parties who are likely to lodge or have lodged an Expression of Interest or Tender.
2. I understand the Authority's requirement that all members of the Project Team and CHW's other advisers involved in the project, be independent and are free from conflict of interest in providing services to the Authority.
3. To the best of my knowledge, except as disclosed on Schedule B attached, I am independent of the parties listed in Schedule A in that;
 - a) Neither I, nor my immediate relatives, hold any equity stake in any of the parties or owe or are owed money by the parties.
 - b) Neither I, nor my immediate relatives, are employed by any of the parties nor have any of these persons acted as consultants or been engaged in commercial pursuits to the parties in the past year.
 - c) In the event that I, or my immediate relatives, obtain an equity stake in any of the parties, or owe or are owed money by any of the parties, I shall immediately make such disclosure on Schedule B attached.
 - d) If I, or my immediate relatives, are employed by any of the parties, or have any of these persons acting as consultants to the parties, I shall immediately make such disclosure on Schedule B attached.
 - e) Except as disclosed on Schedule B attached, neither I nor an immediate relative are presently engaged with parties, their owners, directors or senior officers in a business or other activity which could be considered to constitute a conflict of interest if any such association was to become public knowledge.
4. If I, or an immediate relative enters into an arrangement with the parties, their Owners, Directors or senior officers in a business, or other activity that could be considered to constitute a conflict of interest if any such association was to become public knowledge, I shall immediately make a disclosure on Schedule B attached.

5. I additionally and separately undertake to detail all discussions with those who are actual or potential respondents or their associated team members, in the manner prescribed on the attached Probity Report. I shall immediately forward the completed Probity Report to the CHW Project Manager, even where those discussions are of a non-specific nature. I further undertake to forward copies of any minutes of meetings or copies of any correspondence from potential or actual respondents to the CHW Project Manager.
6. I understand the Authority's requirement that all parties interested in competing for this contract be given equitable access to Project information and for the availability of project information to be regulated through the Authority's Project Manager.
7. I acknowledge that the requirement to disclose and report shall cease immediately after the signing of a contract between CHW and the successful Tenderer, or cancellation of the transaction process as advised by the CHW Project Manager.
8. Finally, I confirm that I will maintain strict confidentiality with respect to all knowledge or information (written and verbal) concerning the EOI or Tender Submission or the transaction process, and in particular that I will maintain strict security over all documents or information coming into my possession during the transaction process.

Name: _____ Position: _____

Signature: _____

Date: _____

Enclosure: Schedule A – Schedule of Parties who may lodge Expression of Interest or tenders.

Schedule B – Declaration of potential conflicts of interest.

Note: The term "immediate relative" embraces spouse, children, parents, brother, sister

ATTACHMENT 3 DECLARATION OF CONFIDENTIALITY - BY PERSONNEL NOT IN THE PROJECT TEAM

Central Highlands Region Water Authority

Ballarat North Water Reclamation Project

Declaration of Confidentiality

PERSONNEL (other than Project Team members) WHO MAY BE AWARE OF, OR HAVE ACCESS TO, CONFIDENTIAL PROJECT INFORMATION

1. I am an Officer or employee of [.....].
2. The Central Highlands Region Water Authority or the Project Team may provide, or allow me to have access to, information/documents relating to the above project which may be confidential.
3. I understand the Authority's requirement that all parties interested in competing for this contract be given equitable access to Project information and for the availability of all Project information to be regulated through the CHW Project Manager.
4. I also understand that certain information must be kept confidential to ensure all parties are treated equitably and have access to the same information.
5. I undertake to hold in strict confidence all Project information and I will not divulge the confidential information to any person without the express approval in writing of the CHW Project Manager.
6. I undertake not to use the confidential information except as required to fulfil my functions and duties in regard to the project as directed by CHW or its Project Manager.
7. I have considered the attached Schedule A and undertake to report all discussions with those organisations listed in Schedule A or their team members, in the manner prescribed in the attached Probity Report Form (Attachment 4). I shall immediately forward the completed Probity Report to the CHW Project Manager, even where those discussions are of a non-specific nature. I further undertake to forward copies of any minutes of meetings or correspondence from respondents to the CHW Project Manager.
8. Finally, I am not aware of any circumstance or event that may give rise to any actual or perceived conflict of interest or would otherwise preclude my access to confidential project information and undertake that, if any such circumstance or event should occur I will immediately report the matter to the CHW Project Manager.
9. I acknowledge that the requirements of this Declaration will continue whether or not I remain as an Officer or employee of [.....].

Name: _____ Position: _____

Signature: _____

Date: _____

Enclosure: Schedule A – Schedule of Parties who may lodge Expression of Interest or Tenders

ATTACHMENT 4 PROBITY REPORT FORM

Central Highlands Region Water Authority
Ballarat North Water Reclamation Project
PROBITY REPORT FORM

Team Member: _____ Company: _____

Contact: _____ Company: _____

Date: _____

Report on nature of contact:-

Note: Forward completed Probity Report Forms to CHW Project Manager immediately.

ATTACHMENT 5 SCHEDULE A

Central Highlands Region Water Authority

Ballarat North Water Reclamation Project

Parties Who Have Lodged or are Likely to Lodge an Expression of Interest

Schedule A

LIST OF POTENTIAL EXPRESSION OF INTEREST OR TENDERING PARTIES

The Great Southern Plantations Group	Abigroup Asset Services
Rellney - Consultants	Tenix
ArupWater	Earth Tech
Water Resource Recovery Pty Ltd	Connell Wagner
Land Energy Pty	Haulton Construction
Environmental Solutions International.	Sinclair Knight Merz
United Utilities Australia	Bovis Lend Lease
Transfield	Origin Energy
Montgomery Watson	CH2MHill
VA Tech Australia	GHD
Vivendi Water Australia	Tyco
Anglian Water	Thames Water
Purac	John Wilson & Partners
Australian Water Services	Halliburton KBR
Bluestream Asset Management	Pricewaterhouse Coopers
Simon Engineering (Australia)	Water ECOscience
Kilpatrick Green (United KG)	Thompson Partners

ATTACHMENT 6 SCHEDULE B

Central Highlands Region Water Authority

Ballarat North Water Reclamation Project

Declaration Of Independence, Confidentiality and Undertaking to Report All Discussions and Forward Correspondence to CHW Project Manager

Schedule B

In connection with the accompanying *Declaration of Confidentiality and Independence and Undertaking* to report all discussions and forward correspondence to CHW Project Manager signed by me, I declare the following associations.

1. Section 3 of Declaration – Independence

*

2. Section 4 of Declaration – Engagement

*

Notes:

a) *In my capacity as an employee of ** and by dealings with numerous parties concerning a range of other commercial issues, I have ongoing business associations with the following parties who may lodge tenders.*

None of these other commercial arrangements are considered to impact directly on the Procurement processes for the provision of project services. In addition, matters associated with the process have not been discussed and will not be discussed in the course of other commercial dealings with the parties who may lodge tenders.

Signature: _____

Dated: _____

* If no such associations exist please write NIL.

** Insert name of employer

*** Insert names of parties (if any). If none please write NIL.

ANNEX 5: STRENGTHENING AND SUPPORTING THE PROCUREMENT SERVICES UNIT (UNIT LAYANAN PENGADAAN OR ULP) WITHIN THE MINISTRY OF PUBLIC WORKS (PEKERJAAN UMUM OR PU)

TERMS OF REFERENCE

BACKGROUND

Presidential Decree 80/2003 was issued as a national standard regulation for the procurement of goods, works and services using public funds either from the national budget (Anggaran Pendapatan Belanja Negara or APBN) or local government budgets (Anggaran Pendapatan Belanja Daerah or APBD). Over the intervening years since the promulgation of Presidential Decree 80/2003, the National Development Planning Agency (BAPPENAS) established within its organization an interim “Center for Development of Public Procurement Policy”. This Center not only focused on the future establishment of a National Public Procurement Office (NPPO), but also became both GOI’s central focal point and driver for ongoing public procurement reform initiatives.

Presidential Decree (Keppres) 106/2007 was signed in December establishing an independent (i.e. non-departmental) agency, the Lembaga Kebijakan Pengadaan Pemerintah (LKPP) or the National Public Procurement Agency (Indonesia’s NPPO equivalent), which is responsible for sustainable, integrated, focused and coordinated planning and development of strategies/ policies/ regulations associated with the procurement of Goods/Works/ Services using public funds. This institution reports directly to the President of the Republic of Indonesia.

As a result of the number of infrastructure loans being utilized by the Ministry of Public Works (MPW), and the Directorate General of Highways (DGH) in particular, the World Bank introduced a series of policy triggers to be achieved in 2009 to allow release of a tranche of its Infrastructure Development Policy Loan (IDPL), of which Trigger 11 required MPW to establish a Procurement Task Force within DGH.

Perpres 8/2006 amending Keppres 80/2003 refers, among other items, to the establishment of *Procurement Service Units (Unit(s) Layanan Pengadaan or ULPs)* within all Government entities that use APBN/APBD to procure goods, works and services such as central government line ministries and sub-national provincial, city (kota) and district (kabupaten) governments as well as other Government agencies, commissions, military and police etc. Subsequently, LKPP has issued a Regulation No. 002/PRT/KA/VII/2009 providing guidelines on the formation of such ULPs. A study entitled “*Assessment of the Need for Procurement Improvement/ Support within MPW*”, funded by AusAID through its Indonesia Infrastructure Initiative (IND II) Facility was undertaken in August 2009 and recommended among others, a proposed structure when establishing a ULP in MPW that had regard to (i) the efficiency of procurement operations, (ii) the provision of procurement support where it is actually needed and (iii) the provision of necessary checks and balances for accountability.

OBJECTIVES

MPW is the third largest budget spender in Indonesia with disbursements of IDR32.0 Trillion in FY2008. MPW has a wide-ranging responsibility in respect of infrastructure across several sectors. In addition to its strategy and policy role, MPW is both an infrastructure provider and a client for services provided by contractors. With respect to the latter, as a procuring entity utilising public funds, MPW is required to set up a procurement services unit (Unit Layanan Pengadaan or ULP) within its organization.

There are TWO main objectives. Having regard to the size of MPW, its existing organization structure and organizational responsibilities, the *first objective* is to provide short-term institutional support to MPW in establishing/ setting up the Procurement Services Unit (ULP) within MPW with a progressive seamless transfer of all procurement responsibilities to it. The *second objective* is to ensure that once the ULP becomes operational, procurement expertise is provided over the long-term where it is actually needed in order to support both the ULP and the various Procurement Committees established by it, in carrying out procurement in a more efficient manner.

SCOPE OF WORK

Component 1: Short-term Institutional Support

(a) Tasks

The size of MPW and its broad and diverse responsibilities are reflected in its overall organizational structure, which is broken down into a series of directorates general, each responsible for its own sector program and activities. As a consequence, the recent AusAID-funded study assessing the need for procurement improvement/ support within MPW, recommended that the new ULP be *structural* in nature. In addition to its Headquarters offices, the ULP would have regional offices at Balai level, across all operational directorates general in order to provide procurement support where it is needed i.e. alongside the Procurement Committees (PCs) established by those ULP Balai offices. Therefore, the size of the ULP in terms of the number of regional offices will be quite large justifying the ULP becoming an Echelon 1 Badan within MPW. However, the term ULP will continue to be used throughout this document.

The proposed consulting Team (the Team) will:

- Develop, in consultation with MPW staff, a strategy/ approach together with a planned schedule for the staged establishment of the ULP and the transfer of procurement responsibilities to it, both within Headquarters, and regionally, with the latter being possibly staged within each operational directorate general in turn;
- Produce an internal Operations Manual in both English and Indonesian languages that describes in detail the role, functions, tasks, responsibilities and procedures for each of the following:

ULP Headquarters

- (1) Office of the Kepala and associated secretarial support;
- (2) Policy and Support Directorate;
- (3) Tender Review Board (TRB) and TRB Secretariat; and

Regions

- (4) ULP Balai Offices

It is envisaged the proposed functions and responsibilities recommended in the recent AusAID-funded study assessing the need for procurement improvement/ support within MPW will form the basis for the development of the respective Operations Manuals, subject to MPW agreement in consultation with LKPP.

Even though there will be ULP Balai Offices associated with each of the operational directorate general Balai offices, it is envisaged the Operations Manual will be the same for all ULP Balai Offices, despite each directorate general operating in different sectors with different technical requirements.

This is because the procurement processes should be the same, despite different technical requirements, thereby ensuring consistency in procurement across all regions within MPW.

(b) Implementation Arrangements

It is envisaged that Component 1 would be funded by a donor such as AusAID. A suitably qualified and experienced Team comprising at least one International Expert and one Indonesian Expert will be sought, either through a consulting firm (organization/ institute or joint venture), or as Individuals, following the prescribed Donor procurement procedures, with

Indonesian Expert(s)

Local expertise/ knowledge in (i) MPW existing operations and organizational structure; (ii) Indonesian national, and MPW internal, procurement regulations, procedures, processes; and (iii) good reading and writing ability in both Indonesian and English languages; and

International Expert(s)

International institutional expertise in (i) setting up/ establishing organizations; (ii) determining organizational responsibilities, accountabilities and efficient procedures; (iii) knowledge of procurement; and (iv) good writing skills in English and, if possible, in Indonesian languages

(c) Deliverables

The consulting team shall provide in both MS WORD/ EXCEL format and hardcopy:

- A document describing the planned strategy and time schedule for the staged establishment of the ULP and transfer of procurement operations within MPW to it, with copies in both Bahasa Indonesia and English language
- Four Operations Manuals, being one for each of the three ULP Headquarters Offices and one for all ULP Balai Offices, with copies in both Bahasa Indonesia and English language

It is expected the assignment duration for Component 1 would be two months with inputs of two person months for each of the Indonesian and International experts.

Component 2: Long-term Procurement Support

(a) Tasks

(1) ULP Headquarters

An *international procurement expert* shall be immersed in ULP Headquarters to provide expert advice and guidance to all the ULP HQ Offices being (i) the Kepala, ULP, (ii) the Policy and Support Directorate, and (iii) the Tender Review Board Secretariat during at least the first year of operation of the ULP. The *international procurement expert* will:

- Provide expert advice to both the Kepala, ULP and Director, Policy and Support Unit on (a) issues within MPW with respect to procurement policy, decrees, guidelines, and standard documents, which shall not contravene national requirements, (b) the development within MPW of measures/ protocols to avoid fraud and collusion in tender processes, (c) the setting up of a

database of bidders for the supply of goods, works and services for MPW with details of their company registrations and the financial statements that they submit to the Indonesian tax department, (d) the development of e-Procurement within MPW, (e) systems for monitoring and evaluating procurement within MPW using national compliance and performance indicators in accordance with LKPP requirements, and (d) issues raised by donors in respect of donor-assisted procurement within MPW;

- Provide expert advice to the Tender Review Board Secretariat in respect of the TRB Secretariat's independent evaluations of packages greater than IDR 50 billion or reviews of Bid Evaluation Reports from each PC for packages over the value of IDR 25 billion and up to the value of IDR 50 billion;
- Although immersed in the ULP Office, with the permission of the Kepala, ULP, liaise with planning and technical directorates of the various operational directorates general in respect of procurement issues, development of Engineer's and Owner's Estimates etc.; and
- Although immersed in the ULP Office, with the permission of the Kepala, ULP, provide expert advice, if required, to the Inspector General's Office in respect of procurement complaints, and issues pertaining to unethical behaviour in procurement processes. Such discussions would be required to be kept confidential.

It is envisaged that because of the expected expertise already available within the Headquarters Policy and Support Unit and the input provided by the International Procurement Expert, no further local Indonesian consulting expertise would be needed to support that Directorate or the PCs established under its jurisdiction. However, should such local expertise be required, the Terms of Reference would be more or less the same as those shown below for ULP Balai Offices.

(2) ULP Balai Offices

Depending on the quantity of procurement packages being handled by each ULP Balai Office, *at least one, or more, local Indonesian procurement experts* will provide ongoing support (initially for one year, but this could be extended) to each ULP Balai Office and the respective Procurement Committees (PCs) established by that ULP Office to help ensure the efficient and timely award of all contracts, based on fair competition and free from the influence of collusive and fraudulent practices. The Indonesian procurement experts will work closely with ULP Balai staff to ensure transfer of knowledge and will provide the following services:

- Although all procurement for *Satker and PPK units in the region controlled by the Balai* will become the responsibility of the ULP Balai office, liaise with *concerned Satker and PPK units*, and review all arrangements made by them to support procurement in the various projects being implemented by those Satker units responsible to the Balai, including coordinating (a) overall project procurement plan(s); (b) proposed advance procurement actions once the RKA-KL for the next year is approved, (c) procurement schedules and documents prepared for each package by the concerned PPK unit; (d) processes to monitor the schedule and avoid delays, and (e) Satker and PPK contract administration arrangements;
- Support the *ULP Balai Office* in:
 - Applying and overseeing the implementation of measures/ protocols to avoid fraud and collusion in tender processes that have been produced by ULP Headquarters Policy and Support Unit;
 - Implementing a monitoring system to identify potential collusive trends within the region for which the Balai is responsible, including monitoring the execution of the integrity pact for each procurement package. A blank Integrity Pact (without names of the PPK

Commitment Officer or PC members) shall be included in the bidding documents and must be signed by the Bidder and included with his Bid or Proposal;

- Providing assistance with the progressive implementation of e-procurement in the region for which the Balai is responsible including preparing a report from ULP Balai to Kepala, ULP, advising constraints in telecommunication infrastructure and inability to access the internet within the region
- Reviewing the composition, competency and readiness of PCs being established by the ULP Balai Office (in terms of experience, training and certification);
- Assisting the respective PCs in understanding the bidding documents including the technical specifications, procurement processes and developing clarification questions for the ULP Balai Office, if requested by the PC;
- Attending bid opening for all procurement packages being handled by PCs under the jurisdiction of the ULP Balai PCs, providing expert advice on behalf of the ULP Balai Office to the PC during the bid opening exercise, should it be required, including clarification of bids and certifying the Minutes of Bid Opening as independent expert(s). For packages greater than IDR 50 billion, ensuring the PC sends one copy of the bidding documents and one copy of each tender after bid opening to the Tender Review Board Secretariat for independent evaluation;
- Assisting each PC in determining the correctness of qualification information. This could include travelling to inspect resources claimed by Bidders;
- Monitoring each PC's progress in evaluation of bids, including post-qualification and award, and providing expert advice to each PC during the evaluation process, while keeping such information confidential;
- Ensuring that Bid Evaluation Reports from each PC for packages over the value of IDR 25 billion and up to the value of IDR 50 billion are sent to the TRB Secretariat in order to obtain it's No Objection Letter prior to submission to the PPK Commitment Officer for formal notification of award and contract signing;
- Reviewing Bid Evaluation Reports from each PC for packages up to the value of IDR 25 billion and confirm they may be endorsed by the ULP Balai Kepala, prior to submission to the PPK Commitment Officer for formal notification of award and contract signing; and
- Provide procurement training and capacity building to regional stakeholders such as ULP Balai staff, members of PCs and providers of goods, works and services.

(b) Implementation Arrangements

It is envisaged that Component 2 would be funded by a donor such as AusAID.

For *ULP Headquarters*, a suitably qualified and experienced *International Procurement Expert*, who will report to the *Kepala, ULP*, will be sourced by the Headquarters Policy and Support Directorate either individually, or through a consulting firm (organization/ institute or joint venture), following the prescribed donor procurement procedures. The *International Procurement Expert* should have the following expertise:

- A good general knowledge of public sector procurement, standards, practices, processes and procedures both internationally and within Indonesia;
- ability to speak, read and write in both English and Indonesian languages preferred.

For each *ULP Balai Office* (it is estimated there are around about 100 Balais across MPW as a whole), one or more (depending on the quantity of procurement packages) *Local Indonesian Procurement*

Expert(s), who will report to the Kepala, ULP Balai, will be sourced by the ULP Balai Office, either individually (MPW retirees located in the concerned regions may provide a large untapped technical resource) or through a consulting firm (organization/ institute or joint venture), following the prescribed Donor procurement procedures. Alternatively, should it be felt that individual ULP Balai Offices could experience difficulty in recruiting local Indonesian Procurement Experts of sufficient calibre, the Headquarters ULP Policy and Support Office could proceed to recruit a national pool of such experts (possibly MPW retirees from Jakarta) through an Indonesian Consulting firm following the prescribed donor procurement procedures. The firm could then prepare a program to enable such experts to work in various ULP Balai Offices on a rotational basis having regard to their needs and priorities. The Local Indonesian Procurement Experts should have the following expertise:

A good general knowledge and previous experience of (i) Indonesian national, and MPW internal, procurement regulations, procedures, processes; and (ii) technical expertise relating to the specific Balai Office (either Highways, Water Resources or Human Settlements) in which the ULP Balai Office would be located.

(c) Deliverables

As long-term in-situ consultants, the main deliverable would be improved, more efficient procurement within MPW Headquarters and regions. In order to assess performance, both the International Expert in ULP Headquarters, and local Indonesian Consultants in ULP Balai Offices, would be required to produce monthly reports detailing their monthly activities and achievements. These should be submitted to the Kepala, ULP, in the case of the *International Procurement Expert*, and, in the case of the *Local Indonesian Procurement Experts*, the Kepala, of each respective ULP Balai Office.

It is expected the assignment duration for Component 2 would be one year with inputs of twelve person months for each of the International Procurement Expert and the Local Indonesian Procurement Experts. It is anticipated that the support provided to ULP Headquarters by the International Procurement Expert would only be needed for the ULP's first year of operations. However, in the case of the ULP Balai offices, it is essential to ensure that procurement expertise is available to support the PCs in their duties. While it is hoped there will be sufficient knowledge transfer during the first year of operations from the Indonesian Procurement Experts to the respective ULP Balai Office staff, the Kepala, ULP, should assess the capability and competency of the staff in each ULP Balai Office at year end and decide whether to continue further the support being provided by the Indonesian Procurement Experts on an office by office basis.