

REVIEW OF GOVERNMENT OF THE COOK ISLANDS PROCUREMENT SYSTEM
REPORT

Matthew Fehre
Director, Working in Partner Systems
J G Rawden
Procurement Diagnostics Adviser
Australian Agency for International Development
May 2012

REVIEW OF GOVERNMENT OF THE COOK ISLANDS PROCUREMENT SYSTEM CONTENTS

	Acknowledgment
	Executive Summary
SECTION 1	Introduction and Background
SECTION 2	Findings
SECTION 3	Phase 2 and Beyond Implementation Plan
 <i>Annexes</i>	
Annex A	People Consulted during the Review, including Preparation and Reporting Stages
Annex B	List of all <i>Recommendations</i> contained in the Report
Annex C	Terms of Reference - Review of Government of Cook Islands Procurement System
Annex D	Review of Ministry of Finance and Economic Management (MFEM) Act 1995-96 and the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM), Part D, Sections 2 and 3, and Part B, Sections 1 and 14
Annex E	Examples of Questionable and Bad Practice Noted During Review of Tender Evaluation and Other Files
Annex F	Options for Centralising Public Procurement in the Cook Islands
Annex G	Procedure for Appointing an Independent Third Party Procurement Agent
Annex H.1	Terms of Reference – Revision of the Procurement Sections of the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM), and Provision of Initial Training in their Use
Annex H.2	Budget – Revision of the Procurement Sections of the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM), and Provision of Initial Training in their Use
Annex I	Documents Consulted During the Review

ACKNOWLEDGMENT

A list of the people consulted by Mr Fehre and Mr Rawden during the Review is attached at Annex A. We are grateful to everybody that gave freely of their time, and who offered insights into the Cook Islands' public procurement system. Without these contributions neither the Review nor this report would have been possible. The authors particularly would like to acknowledge the efforts of Mr Ngatokorua Elikana and colleagues at the Ministry of Finance and Economic Management who facilitated the meeting program and mission arrangements.

EXECUTIVE SUMMARY

1. Procurement - the purchasing of goods, works and services by governments to implement public projects or provide public services such as infrastructure, health and education - is an important share of economic activity in any country; it is the main component of government spending besides wages. Public procurement is said to account for anything between 10% and 30% of GDP, although in small economies it is certain that the figures will be even higher. Procurement should be seen by public policy makers as a tool to help achieve economic and social policy objectives, especially during times of deficit reduction and cuts to social budgets.
2. The Cook Islands public procurement system has some major weaknesses. The Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM) contains sections relating to procurement, but it has gaps as well as some bad practice provisions, and is in need of a major overhaul. Standard procurement documents do not exist. Ministries and State Owned Enterprises (SOEs) develop their own. The quality of documents is variable and generally they are in need of substantial improvement.
3. Procurement planning is poor to non-existent. This has a number of negative impacts including contributing to budget underspends, inability to undertake bulk procurements and unrealistic timeframes for submission of tenders. Ministries and SOEs do not produce and publish annual procurement plans.
4. The quality of procurement performance in practice is an area of major weakness. Every file reviewed showed examples of poor procurement practice, including use of inappropriate evaluation criteria, changing evaluation criteria mid-stream in the evaluation process, allowing an evaluation team member with a conflict of interest to serve on the evaluation committee, no debriefings for unsuccessful tenderers etc. The private sector expressed concerns about the competence and choice of evaluation panel members.
5. Ministries and SOEs do not have dedicated procurement staff. Purchasing is undertaken by non-specialist staff alongside their other duties. Procurement is not seen as a profession, there is no career path, procurement training is not carried out regularly and is not readily available.
6. Compliance with procedures or lack thereof is a problem, including splitting of procurements to avoid open tender thresholds and the use of non-competitive procurement methods. The exact extent to which these are occurring is unknown due to a lack of reliable data.
7. The Ministry of Finance and Economic Management (MFEM) does not have the necessary resources, either in number, skills, knowledge or experience, to carry out all the functions required of a procurement regulatory body. Accordingly it is not doing so.
8. The Cook Islands, like many other small island states, has insufficient human resources to be able to staff effective procurement units in all ministries and SOEs. This should not be attempted.
9. It is *recommended* (**Recommendation #s 2 and 3**) that all public procurement worth more than NZD 3,000 should be centralised and outsourced to an independent third party procurement agent. This should encompass procurement for all Ministries, Departments, Island Administrations, Crown Funded Agencies and all SOEs. Centralisation in this manner will ensure that appropriate levels of skills, competence and experience are brought to bear on Cook Islands procurement. At the same time, proper aggregation of procurement through a professional procurement operation will enable far greater value for money to be achieved, thus resulting in major cost savings for Government.
10. There are many examples where governments have successfully outsourced their procurement in the manner *recommended*. By way of illustration, in recent years more than 20 countries have used procurement agents to implement over USD 8 billion in Millennium Challenge Corporation funding. To give a point of comparison for the Cook Islands, these include the small islands states of Vanuatu and the Cape Verde Islands. Other small island countries that make use of procurement agents include the Bahamas, St Helena and Timor-Leste.

11. The CIGFPPM should be overhauled (**Recommendation # 11**), including the development of standard procurement documents. Initial training in the use of the Manual should be provided to Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs by a consultant international procurement specialist (**Recommendation # 17**).
13. Attempts hitherto at bulk procurement of common user goods (eg tyres, office machines) have been sporadic. It is *recommended* (**Recommendation # 7**) that a program of bulk procurement should be undertaken by the procurement agent.
14. Recognising the contribution public procurement can make to supporting the development of the private sector, a more workable system of domestic preference should be devised (**Recommendation # 11.5**) (for example, awarding up to a 10% preference margin during tender evaluation).
15. A move to outsource the conduct of procurement does not diminish the need to strengthen procurement expertise in MFEM, which will still have an important role to play as the procurement regulatory body. One of the key tasks will be to manage the relationship with the independent third party procurement agent, as well as to monitor procurements undertaken by Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs below the NZD 3,000 threshold.
16. Looking further ahead into the medium and longer term, the Cook Islands should endeavour to build up its own expertise in the procurement arena. Under the recommended approach of centralisation and outsourcing, personnel in Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs will still be responsible for procurements under NZD 3,000 as well as for preparing specifications and terms of reference for procurements undertaken by the procurement agent above the threshold. They also will have responsibilities in the contract management and supervision areas. It is *recommended* (**Recommendation # 18**) that a program of initial capacity establishment and subsequent development should be embarked upon. This should make use of the procurement agent as one of the vehicles for building abilities in the procurement field.
17. A complete list of all the *recommendations* contained in this report is included at Annex B.

SECTION 1 INTRODUCTION AND BACKGROUND

- 1.1 A Public Expenditure and Financial Assessment (PEFA) conducted in 2011¹ awarded a low score (Overall Rating D) to Performance Indicator PI-19, Competition, Value for Money and Controls in Procurement. The PEFA Report also noted, inter alia:
- 1.1.1 “weaknesses in the implementation of procurement procedures, as well as in the procedures themselves, leading to the frequent award of non-competitive tenders whose justification often appears unclear”,
 - 1.1.2 “Weaknesses in the procurement process, particularly the extent of competitive exemptions, are likely to affect negatively the efficient implementation of spending programmes”, and
 - 1.1.3 “no independent tender review process for handling procurement complaints by participants before contracts are awarded”.
- 1.2 The PEFA Report records that public procurement in the Cook Islands is governed by:
- 1.2.1 “Section 63 of the Ministry of Finance and Economic Management (MFEM) Act 1995-96, which empowers MFEM to issue instructions to ministries and line agencies to ensure compliance with financial disciplines”, and
 - 1.2.2 “the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM – where the process for procurement is set out in Part D sections 2 and 3), which documents such instructions”.
- 1.3 In response to the PEFA Report the Cook Islands Government published, on 25 October 2011, its Roadmap to improve the Public Financial Management Systems by June 2015. In respect of procurement, this proposes:
- 1.3.1 “the establishment of a centralised database of approved public tenders and approved tender waivers,
 - 1.3.2 review of the CIGFPPM to improve tender procedures by incorporating good practice including the publication of successful tender awards in the local media as well as on the MFEM website for a specific timeframe,
 - 1.3.3 that the Office of the Ombudsman will address all public complaints”, and that
 - 1.3.4 “a review of the entire procurement system and formal procedures for complaints and dispute resolution will be explored further”.
- 1.4 The wide ranging review referred to in Section 1.3.4 above is the most important element of the envisaged program of improvements to the public procurement system. In addition to the areas identified in Sections 1.3.1 to 1.3.3 above this will also need to consider the existing legislative and regulatory framework. These elements alone though (ie as identified in Sections 1.3.1 to 1.3.4 above) will not guarantee effective public procurement. Other components of the procurement system also require consideration, including the present organisational structure(s) for procurement, staffing levels, competencies, qualifications and experience, operational policies, manuals, guidelines, instructions and procedures, internal and external controls and performance in practice.

1

1.3.5 Accordingly, Government has decided to embark upon Phase 1 of a program aimed at achieving the desired improvements in all aspects of public procurement in the Cook Islands. AusAID fully supports Government's goal of achieving the envisaged improvements. At the request of the Government of the Cook Islands, as Phase 1 of the program AusAID has provided technical support in the form of its Director for Working in Partner Systems, Mr Matthew Fehre, and its Procurement Diagnostics Adviser, Mr John G Rawden MCIPS. Mr Fehre and Mr Rawden visited Rarotonga from 28 April to 08 May 2012. This document comprises their report and *recommendations*. The Review Terms of Reference are attached at Annex C.

SECTION 2 FINDINGS

2.1 Mr Fehre and Mr Rawden reviewed the 8 areas of public procurement identified in the Phase 1 Terms of Reference. The findings of the Review are contained in the remainder of this Section 2. Associated *recommendations* may be found in Section 3.

2.2 The Terms of Reference also call for preparation of a Phase 2 and beyond Implementation Plan for Across the Board Improvements to the Government of Cook Islands Procurement Operations. This Plan is contained in Section 3 following.

2.3 EXISTING LEGISLATIVE AND REGULATORY FRAMEWORK

2.3.1 Public procurement in the Cook Islands is governed by:

- (a) Section 63 of the Ministry of Finance and Economic Management (MFEM) Act 1995-96, which empowers MFEM to issue instructions to ministries and line agencies to ensure compliance with financial disciplines, and
- (b) the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM – where the process for procurement largely is set out in Part D, Sections 2 and 3, and is also referred to in Part B, Sections 1 and 14), which documents such instructions.

2.3.2 As required by the ToRs, this legislative and regulatory framework has been reviewed. The report of the review is contained at Annex D.

2.4 PRESENT ORGANISATIONAL STRUCTURE(S) FOR PROCUREMENT

2.4.1 The Cook Islands currently operates a decentralised procurement system, with Government ministries and SOEs having responsibility for executing their own procurements. Most ministries and SOEs do not have any organisational structure catering for procurement. There are not procurement units nor in most cases, if any at all, are there dedicated procurement staff. The normal approach seems to be that procurement is allocated to personnel, often referred to as project officers or managers, on an ad hoc basis alongside their other duties.

2.4.2 MFEM currently performs the function of procurement regulatory body in the Cook Islands. It is responsible for the development and upkeep of the CIGFPPM and provides secretariat support to the Tender Committee. MFEM is seriously under resourced when it comes to the functions a regulatory body would normally undertake. In addition to those outlined above it would usually include providing advice to procuring entities, collating and publishing procurement related information, developing standard procurement documentation, developing or coordinating training etc. The Review Team understands these functions are not currently being performed by MFEM or only to a very limited extent.

2.4.3 The other key body involved in procurement is the Tender Committee, which comprises the Financial Secretary, Solicitor General and other technical advisers as required. The role of the Tender Committee is to approve requests for the award of contracts over NZD 30,000. The Tender Committee is supported by a Committee Secretariat (one person) who prepares meeting documentation and reviews tender documentation prior to advertising. The Review Team was made aware of concerns about requests for awards being held up by the Tender Committee. Without a more detailed review it is difficult to know whether these criticisms were warranted in all cases.

2.4.4 In any event the Review Team does not support continuing with the current arrangements. The value added from the process is questionable. Delays are being incurred (which is perhaps not surprising when one considers the various other demands upon the time of the Financial Secretary and the Solicitor General) and

some entities are apparently not complying with the requirement to seek Tender Committee approval.

2.5 PROCUREMENT STAFFING LEVELS

- 2.5.1 Levels of staffing dedicated to the procurement function are inadequate. Most, if not all, ministries and state owned enterprises, have no such dedicated staff. As noted in Section 2.4.1 above procurement within them is handled by non-specialist staff. The Ministry of Infrastructure and Planning reported that it hopes to have a dedicated procurement position from 1 July 2012.
- 2.5.2 Likewise the level of staffing dedicated to procurement in MFEM is insufficient. Having one officer allocated to the role of Tender Committee Secretariat is not enough to perform the range of functions required of the procurement regulatory authority outlined above in Section 2.4.2.
- 2.5.3 While the general lack of procurement staff within Government is concern in itself, arguably of equal or greater concern is the calibre of these personnel – see Section 2.6 below.

2.6 COMPETENCIES, QUALIFICATIONS AND EXPERIENCE OF PROCUREMENT PERSONNEL

- 2.6.1 The procurement knowledge of Ministerial and SOE personnel appears to be poor. In one or two areas there was a better understanding of the subject, but most interviewees had only a sketchy knowledge, at levels inadequate to offer any comfort that they were capable of conducting procurement - and particularly some of the more complex donor funded procurements now being seen - to high standards without specialist support.
- 2.6.2 This finding is completely consistent with the findings of procurement reviews conducted in other small island states in the Pacific. It is also not surprising, as across Government procurement is not regarded as a profession. There is no career path for procurement. Training is not carried out regularly, nor is it readily available. There is no national training management plan, apparently no national training institute covering procurement, and no certification scheme for procurement professionals.
- 2.6.3 On the positive side, some ministries and SOEs have acknowledged technical shortcomings and engaged the services of advisers and consulting firms to assist with the technical (eg engineering) aspects of some of their projects. The Port Authority and the Office of the Prime Minister (with regard to renewable energy) are two such examples. However, from documentation and files reviewed the Review Team considers that, while they may be receiving good technical advice, the procurement advice also provided was inadequate in at least one instance. It is clear that ministries and SOEs would also benefit from access to specialist procurement advice.

2.7 OPERATIONAL POLICIES, MANUALS, GUIDELINES, INSTRUCTIONS AND PROCEDURES

- 2.7.1 As noted in Section 2.3.1 above, the regulatory framework comprises the CIGFPPM Part D, Sections 2 and 3, and Part B, Sections 1 and 14. A review of these Sections of the CIGFPPM therefore was undertaken. The findings and *recommendations* of this review are contained in Annex D hereto.
- 2.7.2 While the review notes some positive features that can be built upon, the procurement sections of the CIGFPPM are incomplete, repetitive in parts and in need of a substantive re-write. For example the CIGFPPM does not recognise that there are major differences in both approach and the documentation needed to procure

goods, works and services. Further, lack of guidance on how to procure consultancy services is creating difficulties for the Cook Islands Technical Assistance Facility (CITAF). A related issue is the need for greater clarity in guidance on the difference between *recruitment processes* that lead to the engagement of advisers as employees versus the *procurement processes* that see advisers engaged on consultancy services contracts. These are different processes, and officers need to have available the documentation to support both.

- 2.7.3 SOEs reported the CIGFPPM as being a guide for them, adhering to the provisions for some projects and not others, devising their own thresholds for soliciting quotations and going to tender etc. However it is not clear to the Review Team that SOEs have their own complete procurement procedures manuals in place of the CIGFPPM. The Ports Authority, for example, reported it has procedures being drafted. Te Aponga Uira reported it had policies and procedures related to procurement, but these were not seen by the Review Team. It would appear that currently the Cook Islands Investment Corporation, which has an oversight role for SOEs, does not have the authority to mandate procurement procedures to be followed by SOEs.

2.8 STANDARD PROCUREMENT DOCUMENTS, IF ANY

- 2.8.1 There are no standard procurement documents (eg bidding and contract documents) that all ministries and SOEs are obliged to utilise. Rather, each Ministry and SOE develops its own documentation, sometimes obtaining private legal advice or support from the Crown Law Office. This is not a resource efficient or effective approach.
- 2.8.2 Several examples were seen of template documents used by ministries and SOEs in their procurement activities. The quality of this documentation was highly variable and generally in need of substantive improvement. Some of the deficiencies noted in the template documents are highlighted in Annex E and include issues such as:
- (a) provision for late tenders to be accepted and evaluated,
 - (b) inappropriate evaluation criteria being used for the procurement of both goods and services,
 - (c) significant advance payments, sometimes in the order of 50-80%, being made without being guaranteed by appropriate securities, etc, and
 - (d) defects liability periods of only 6 months for major construction works.
- 2.8.3 Omissions and deficiencies of these types in procurement documents leave Government procurement at risk. They afford no protection against unscrupulous suppliers, consultants or contractors, nor do they provide any basis for recourse in the event of non-supply, short supply, incorrect, substandard or damaged supply.

2.9 PROCUREMENT PERFORMANCE IN PRACTICE

- 2.9.1 Government procurement in the Cook Islands falls short of reasonable international standards, and exposes Government and donors alike to substantive risks.
- 2.9.2 The CIGFPPM is incomplete and sub-standard in so far as it relates to procurement, and in parts it is repetitive. It requires a comprehensive up-date. There are no standard procurement documents and, as noted previously, the quality of documentation that does exist is generally in need of substantive improvement. These deficiencies mean there is an incomplete foundation on which to base effective procurement. In turn they are compounded by the staffing issues identified in previous sections.
- 2.9.3 With some limited exceptions, including the Ministry of Education which appears to plan for an annual tender to cover stationery and consumables, there is little evidence of any planning of procurement. The Review Team could not find any evidence of ministries or SOEs preparing and publishing annual procurement plans, which would

not only benefit procuring entities but would also provide the private sector with information to allow it in turn to plan. Discussions with private sector representatives confirmed the value of such plans.

- 2.9.4 Rather, most purchases seem to come about in a casual, almost ad hoc, manner. This is a real weakness in any public sector purchasing environment. Lack of proper procurement planning results in many negative outcomes, including unnecessarily expensive emergency purchases, inability to combine procurement of like items into larger lots in order to achieve benefits of scale in procurement, contributing to the failure to spend allocated budgets (as is apparently the case in the Cook Islands) and thus to deliver intended services to the people. All Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs should be required to prepare and publicise annual procurement plans and this requirement should be monitored for compliance by appropriate authorities.
- 2.9.5 Open tendering is the default procurement method for capital and operating projects worth more than NZD 30,000. The CIGPPM also makes provision for ministries to submit application to the Tender Committee for what are termed Closed Tenders. As noted in the 2011 PEFA, and confirmed during discussions held as part of this review mission, “weaknesses in the implementation of procurement procedures, as well as in the procedures themselves, is apparently leading to the frequent award of contracts through non-competitive processes whose justification often appears unclear”. No reliable data was available to calculate the volume of use of non-competitive methods. The Review Team also noted that while MFEM is beginning to gather data on major contracts awarded, the facility to publish this information does not yet exist.
- 2.9.6 The splitting of procurements to avoid the open tender threshold, specifically prohibited under Part D, Section 3, Article 2.3 of the CIGFPPM, is also apparent. The extent to which this is occurring cannot be easily determined. The fact that one Ministry openly admitted to such practices, and indeed that it conducted no open tenders last year, suggests this practice may be widespread. Not only does such an approach result in less competitive procurement practices, and potentially sub-optimal value for money outcomes, it also seems highly inefficient to have resources engaged in conducting multiple request for quotation processes throughout the year.
- 2.9.7 Attempts at bulk procurement of common user items have been sporadic at best. Opportunities are being missed here to achieve real savings in procurement costs by undertaking cooperative procurement processes for items such as office machinery, furniture and fittings, computers, paper supplies, vehicles etc. Adopting more cooperative procurement practices would however require a body, whether MFEM or otherwise, to take the lead in coordinating the process. Likewise properly established panel or standing offer arrangements could also be utilised. In this regard, the Review Team understands that the Ministry of Infrastructure and Planning is currently in the process of establishing a panel of two providers for the installation of upgraded sanitation units.
- 2.9.8 As noted in Annex D, the CIGFPPM envisages a situation where procurement from Cook Islands sources is the default, with sourcing from overseas only being undertaken if supply is not available domestically. This is not a sensible approach, since it implies a “buy domestically regardless of cost” position. In fact it does not appear that procurement operates in this way. Certainly the private sector does not believe it does. It is possible to devise workable domestic preference provisions (for example, awarding up to a 10% preference margin during tender evaluation) which would be a useful step to take.
- 2.9.9 Under the CIGFPPM, tenderers are not automatically afforded the right to request and receive a debriefing on their tender proposal, and in practice debriefs are not provided. Indeed, private sector representatives noted that in many instances they are not even advised whether their tender was successful, despite the provisions of Part D, Section 3, Article 4.10.1 of the CIGFPPM. This is fundamentally bad procurement practice. Tenderers should have the right to request and be provided with a debriefing as to why their tender was unsuccessful. Debriefs are a key part of

ensuring transparency and accountability in Government procurement. They also assist the private sector to improve the quality of future tenders.

- 2.9.10 The 2011 PEFA report noted there is “no independent tender review process for handling procurement complaints by participants before contracts are awarded”. From discussions held the Review Team concluded it is not clear which, if any, body has been formally assigned responsibility for handling complaints. At the time of the review the Audit Office was investigating two complaints, the Office of the Ombudsman advised it had previously dealt with one complaint and one enquiry (resolving both informally) and other bodies (eg the Public Expenditure Review Committee – PERC) were mentioned as having responsibilities in this area. The Roadmap to improve the Public Financial Management Systems by June 2015 indicates the Office of the Ombudsman will handle all such complaints. The Review Team has some concerns about the practicalities of this approach given the current resourcing of the Office of the Ombudsman.
- 2.9.11 The private sector finds Government procurement processes to be tedious and time consuming, with periods allowed for submission of tenders being too short. The legitimate request from private sector is that when Government approaches the market it should be clear on what it wants, when it wants it, and that it has the budget to pay for it. They would also like to be confident people with appropriate expertise, and free from any undue influence, will undertake the tender evaluation function. Currently all too often they perceive this not to be the situation. Private sector representatives also noted that much greater scope exists to utilise private sector expertise to provide project design, management and supervision functions – a sentiment the Review Team shares.
- 2.9.12 The foregoing sections 2.9.1 to 2.9.11, along with Annex E of the report (which identifies questionable and bad procurement practices), are illustrations of just some of the performance deficiencies inherent in Cook Islands public sector purchasing. More examples could be cited. It is also instructive to note that the Audit Office has conducted a number (8) of special reviews into specific tenders over the last three years. The findings from the overwhelming majority (more than three-quarters) of these reviews have been that the tender procedures were not followed. Also alarming are the PEFA finding and comments in Audit Office reports which suggest there is little evidence of follow up to audit recommendations.
- 2.9.13 Government should not permit this situation to perpetuate. If it does, it will continue to underutilise scarce resources through inefficient and ineffective procurement. The review report has outlined the challenges and shortcomings associated with operating a decentralised procurement system in a small island state setting. To continue with a decentralised approach and at the same time make demonstrable improvements would require the raft of issues identified in this report to be addressed. Two things in particular stand out. First would be the need to place specialist procurement advisers into each of the larger procuring entities, as well as to arrange similar shared resources across the smaller ones. Second would be a substantially better resourced procurement unit in MFEM that was able to perform the full range of functions required of a procurement regulatory body.
- 2.9.14 The view of the Review Team is that instead of maintaining the status quo, a major overhaul of the current approach to procurement is needed. This will require unequivocal commitment from Government to turn away from the past and present inefficiencies, and to embark upon a new approach. Support from donors will also be needed to assist in the many reforms that are called for.
- 2.9.15 A new approach to procurement will involve multiple steps. Some are easily and quickly achievable. Others are less straightforward and will take time to achieve, in some cases substantial time. What is clear though is that if this new approach is not taken, Government procurement in the Cook Islands will continue to underperform and fail to provide the services that the people of the Cook Islands need.

- 2.9.16 Section 3 following contains a Phase 2 and Beyond Implementation Plan that will enable the Government of Cook Islands to achieve this new approach to procurement and in so doing succeed in making across the board improvements to its procurement operations.

2.10 PROCUREMENT ARRANGEMENTS ENVISAGED FOR THE DEVELOPMENT AND IMPLEMENTATION OF THE PROPOSED WATER AND SANITATION MASTER PLAN FOR RAROTONGA

- 2.10.1 Arrangements for program implementation are still being determined. This includes the rules and processes that will apply for the conduct of procurement. The Review Team was informed that all donors with the probable exception of China have already agreed to use Cook Islands systems. The situation with regard to the Chinese financing element of the project is less clear, although it seems highly likely that China will insist on its own procurement procedures being followed.

SECTION 3
PHASE 2 AND BEYOND IMPLEMENTATION PLAN

- 3.1 The Review Terms of Reference envisage the Phase 2 and Beyond Implementation Plan for across the board improvements to the Government of the Cook Islands' procurement operations to include *recommendations* for any or all of the following, as necessary:
- 3.1.1 Any legislative and/or regulatory reform that might be considered beneficial
 - 3.1.2 More detailed examination of existing procurement manuals (including the procurement sections of the CIGFPPM), guidelines, instructions, procedures and policy documents
 - 3.1.3 Presentation of revised draft documents incorporating improvements to existing procurement manuals, guidelines, instructions, procedures and policy documents
 - 3.1.4 Where any such documents do not exist, recommendations for their preparation
 - 3.1.5 Improvements in the publication of procurement information, including approved public tenders, approved tender waivers, and successful tender awards
 - 3.1.6 More detailed examination of existing standard procurement documents, if any
 - 3.1.7 Presentation of revised draft documents incorporating improvements to existing standard procurement documents, if any
 - 3.1.8 Alternatively, if no such documents exist, recommendations for their preparation
 - 3.1.9 Establishment of an independent complaints and dispute resolution system
 - 3.1.10 Development of a capacity development plan, including training options
 - 3.1.11 Possible reorganisation of the existing procurement organisational structure
 - 3.1.12 Possible strengthening of effectiveness of internal and external controls
 - 3.1.13 Procurement arrangements for the development and implementation of the proposed Water and Sanitation Master Plan for Rarotonga
- 3.2 For the avoidance of doubt, the Review Terms of Reference do not require the Implementation Plan to include revised guidelines, manuals, instructions or procurement documents. Instead, building on the Phase 1 Scoping Review Report, it is to provide an Implementation Plan including, as appropriate, *recommendations* covering Terms of Reference, timetables and costs for realisation of the steps necessary to achieve widespread improvements in the Cook Islands' public procurement framework and operations.
- 3.3 The Phase 2 and beyond Implementation Plan encompasses all of the areas envisaged by Sections 3.1.1 to 3.1.13 above. However, it is presented in a different order, dealing with the most important and time sensitive reforms first, before continuing into supporting *recommendations*. The Plan is defined in Sections 3.4 to 3.24 following.
- 3.4 **Recommendation # 1** (please also see Section 2.9.14 above)
- The present inadequate system of decentralised public procurement should be abandoned.**
- 3.5 **Recommendation # 2** (please see also Executive Summary, 9 above)
- A centralised system of public sector procurement should be established.**

This can be achieved in a number of ways. To provide Government with the background necessary to inform its decision making, a range of options is provided in Annex F, together with details of the respective advantages and disadvantages of each of them. The Review Report's *recommendation* as to which one of these options should be selected is contained in **Recommendation # 3** in Section 3.6 hereunder.

3.6 **Recommendation # 3** (please see also Executive Summary, 9 above and Annex F, 2.1.4)

The centralised system should be implemented by appointing an independent third party procurement agent to carry out all public sector procurement (ie for Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises) above NZD 3,000. In addition to executing procurement, the procurement agent will also include assisting Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs with procurement planning, preparing technical specifications and terms of reference, supervising constructions and deliveries.

3.7 **Recommendation # 4**

The conditions under which this appointment should be made include, but are not necessarily limited to:

Recommendation # 4.1 The procurement agent should operate from a base in Rarotonga.

Recommendation # 4.2 (please also see Sections 1.3.1 and 1.3.2 above) The procurement agent should establish a dedicated Cook Islands Public Procurement website on which it should publish all tenders above NZD 30,000 as well as details of all procurements above NZD 30,000 undertaken by other than open tender procedures, and all subsequent contract awards.

Recommendation # 4.3 In order to negate any potential payment difficulties:

Recommendation # 4.3.1 Government (and SOEs, as appropriate) should prefund the procurement agent. This will require Government (and SOEs, as appropriate) to lodge funds with the procurement agent at regular intervals, in due time to enable the procurement agent to meet all contractual payment deadlines as they fall due.

Recommendation # 4.3.2 The procurement agent should account to Government (and SOEs, as appropriate) on a monthly basis. This regular accounting will provide Government (and SOEs, as appropriate) with details of funding tranches received, payments made, account balances, and details of the next amounts of funding needed.

3.8 **Recommendation # 5** (please also see Annex G)

Appointment of a third party procurement agent should be achieved by undertaking a transparent tender process during which specialist procurement services firms are invited to submit proposals, these are professionally evaluated, and a subsequent contract award is made.

A *recommended* procedure for achieving this is contained in Annex G.

3.9 **Recommendation # 6**

Recommendation # 6.1 The tender process recommended in Recommendation # 5 should be led by an experienced international procurement specialist, appointed to assist Government for this specific purpose. This consultant ideally could be the same one recommended in Recommendation # 12 below (please also see Section 3.15 below),

Recommendation # 6.2 Government should request donor assistance for this initiative through the provision of financing for the international expertise needed to manage the tender process recommended in Recommendation # 5, and

3.10 **Recommendation # 7** (please also see Executive Summary, 13 and Section 2.9.7 above)

Government should maximise its bulk procurement of common user items, and in the process achieve major value for money savings. Specifically:

Recommendation # 7.1 The procurement agent should draw up, and update on a regular basis, a list of common user items (eg paper, tyres, etc, etc) with estimated annual usage figures.

Recommendation # 7.2 Based on these lists, the procurement agent should issue annual tenders for the items thereon, placing contracts for the estimated annual usage quantities. The procurement arrangement should arrange appropriately phased deliveries for these items, as well as warehousing for storage and subsequent issue to departments and SOEs.

3.11 **Recommendation # 8**

Pursuant to Section 63 of the Ministry of Finance and Economic Management Act 1995-96, MFEM should issue instructions prohibiting Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs from undertaking any procurements above NZD 3,000 and instead requiring them only to arrange these through the procurement agent.

3.12 **Recommendation # 9**

At this time no further legislative or regulatory reform is necessary, unless specific SOE enactments are necessary to give life to the instructions (see **Recommendation # 8** in Section 3.11 above) that all SOEs should undertake all their procurements above NZD 3,000 through the procurement agent.

3.13 **Recommendation # 10**

The Tender Committee should be disbanded immediately the procurement agent has been appointed and is operational.

3.14 **Recommendation # 11** (please see also Executive Summary, 2 and 11, and Sections 1.3.2, 2.7.2, 2.8 and 2.9.2 above, and Annexes D and H)

The procurement sections of the CIGFPPM (notably Part D, Sections 2 and 3, as well as other areas that relate to procurement, such as Part B, Sections 1 and 14) should be reviewed and revised into a substantially improved version. Improvements that should be incorporated include, but are not limited to:

Recommendation # 11.1: (please also see Executive Summary, 2 and Sections 2.9.3 and 2.9.4 above) A requirement for all Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises to prepare and publicise annual procurement plans, and for these to be published on the dedicated Cook Islands Public Procurement website *recommended* at Recommendation # 4.2 above.

Recommendation # 11.2: Separate sections must be included guiding Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises through the different procedures and documents to be followed in the procurement of goods, works and services.

Recommendation # 11.3: Instructions, including template forms, describing how to requisition procurements through the procurement agent.

Recommendation # 11.4: Simple Request for Quotation (RFQ) and Purchase Order (PO) type template documents (including Quotation Conditions and Conditions of Purchase respectively) for those low value procurements below the NZD 3,000 threshold that ministries and SOEs will continue to manage themselves.

Recommendation # 11.5: (please see also Executive Summary, 14 and Section 2.9.8 above)
An improved domestic preference system; eg permitting up to a 10% margin to be permissible, for the purposes of tender evaluation only, in the case of genuine local added value such as domestic production, local provision of services, etc.

Recommendation # 11.6: The revised sections of the CIGFPPM should govern all Government of the Cook Islands and SOE procurement regardless of funding source.

Recommendation #11.7: (please see also Sections 1.1.3, 1.3.3, 1.3.4 and 2.9.10 above)
Complaints via the independent resolution mechanism may only be made to the Office of the Ombudsman, and will not be handled by any other agency.

- 3.15 **Recommendation # 12:** (please also see Annex H) **A consultant International Procurement Specialist should be contracted to undertake the revision of the procurement sections of the CIGFPPM recommended in Recommendation # 11.** This ideally could be the same specialist as is *recommended* in **Recommendation # 6.1** above (please also see Section 3.9 above).

A set of Terms of Reference for the task of revising the procurement sections of the CIGFPPM and undertaking initial training in its use is contained at Annex H.1. A budget for this work is included at Annex H.2.

- 3.16 **Recommendation # 13** Government should request donor assistance for this work through the provision of financing for the international expertise needed to revise the procurement sections of the CIGFPPM.

- 3.17 **Recommendation # 14** (please also see Annex D)

MFEM should issue the revised sections of the CIGFPPM as instructions pursuant to Section 63 of the MFEM Act 1995-96.

- 3.18 **Recommendation # 15**

With regard to the system for independent resolution of complaints and disputes, the Office of the Ombudsman should be resourced appropriately to enable it to handle such complaints and disputes effectively.

- 3.19 **Recommendation # 16**

With regard to procurement audits:

Recommendation # 16.1: The capacity of the Audit Office should be strengthened to enable it to monitor, inter alia:

- (a) performance of Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises in their procurements below NZD 3,000 and
- (b) that Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises are not artificially splitting their requirements into packages below NZD 3,000 in value as a means of avoiding the procurement agent while continuing to handle procurements themselves.

- 3.20 **Recommendation # 17** (please also see Executive Summary, 11 above and Annexes D and H)

The consultant International Procurement Specialist engaged to revise the procurement sections of the CIGFPPM should conduct initial training of Ministerial, Departmental, Island Administrations, Crown Funded Agencies and State Owned Enterprises staff in how to use these, including requisitioning their requirements through the procurement agent.

- 3.21 **Recommendation # 18** (please also see Executive Summary, 16)

A medium to long term program should be embarked upon, based around the procurement agent, to establish initial procurement capacity in the Cook Islands and enhance this in succeeding years to gradually increasing levels of competence and experience.

- 3.22 **Recommendation # 19**

An appropriately qualified, experienced and skilled procurement resource should be established within MFEM to:

Recommendation # 19.1 monitor and assist as necessary with Ministerial, Departmental, Island Administrations, Crown Funded Agencies and State Owned Enterprises procurements under the NZD 3,000 threshold,

Recommendation # 19.2 manage the relationship with the procurement agent, and

Recommendation # 19.3 review and update the CIGPPM at appropriate intervals.

- 3.23 **Recommendation # 20**

Government should instil greater discipline into Ministerial, Departmental, Island Administrations, Crown Funded Agencies and State Owned Enterprises payments performance on procurements below the NZD 3,000 threshold. Specifically:

Recommendation # 20.1 MFEM should issue a circular instructing all Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs to make every effort to resist requests from suppliers, consultants and contractors for advance payments, and only to pay upon satisfactory receipt of goods, works or services.

Recommendation # 20.2 Ministries and SOEs should make every effort to resist requests from suppliers, consultants and contractors for advance payments, and only pay upon satisfactory receipt of goods, works or services. Where it is not possible to persuade suppliers, consultants or contractors to accept payment upon delivery, ministries and SOEs should strive to ensure that:

- (a) advance payments are kept to minimum amount possible (eg 10% to 20%, *not* 50% to 100%), and
- (b) all such advances are secured by bank guarantees provided by the supplier, consultant or contractor.

- 3.24 **Recommendation # 21**

Unless any donor requires otherwise (and, for example, insists upon its own procurement procedures being followed) all procurement for the proposed Water and Sanitation Master Plan for Rarotonga above the NZD 3,000 threshold should be carried out by the procurement agent.

ANNEXES

ANNEX A

PEOPLE CONSULTED DURING THE REVIEW, INCLUDING PREPARATION AND REPORTING STAGES

People Consulted during the Review, including Preparation and Reporting Stages

GOVERNMENT OF COOK ISLANDS

Ministry of Finance and Economic Management

Mr Richard Neves – Secretary of Finance
Mr Jim Armistead – Head of Development Cooperation Division
Mr Teu Teulilo – Manager, Treasury Division
Mr Steve Barrett – Development Cooperation Division
Mr Ngatokorua Elikana – Senior Internal Auditor
Mr Edward Parker – Tender Committee and CFC Secretariat
Ms Lavinia Tama – Budget and Policy Division Manager
Mr Peter Tierney – Senior Policy and Research Officer, Development Cooperation Division

Audit Office

Mr Allen Parker – Director of Audit

Cook Islands Investment Corporation

Mr Tamari'i Tutangata – Chief Executive Officer
Ms Annie Goodwin – Administration Manager
Ms Tapaeru Kokaua Hagai – Finance Officer
Ms Anne Taoro – Property Manager

Cook Islands Tourism Corporation

Mr Halatoa Fua – Finance Director
Ms Catherine Healy – Administration and Finance

Crown Law Office

Ms Kim Saunders – Solicitor General

Ministry of Education

Mr Anthony Turua – Financial Management Chief Executive
Mr Aman Khan – Financial Accountant

Ministry of Health

Mr Tupou Faireha – Secretary of Health
Ms Ana Silatolu-Mataitini – Director of Funding and Planning
Mr Biribo Tekanene - Pharmacist

Ministry of Infrastructure and Planning

Ms Donye Numa – Secretary
Mr Joseph Akaruru – A/g Director Policy, Planning and Asset Management
Mr Ken MacDonald – WMI Program Manager
Ms Tangi Taoro – Program Assistant WATSAN Unit
Ms Ani Wood – A/g Director Funding and Planning

National Environment Service

Ms Ina Kamana – Director Finance and Administration
Ms Elizabeth Munro – Project Coordinator (Biodiversity Division)

Office of the Ombudsman

Ms Jeannine Daniel – Assistant (and Acting) Ombudsman
Ms Shona Lynch – Senior Investigator

Office of the Prime Minister

Mr Mac Mokoroa – Chief of Staff
Mt Tangi Tereapii – Director, Renewable Energy Development Division

Office of the Public Service Commission

Ms Taimata Spooner – CITAF Program Officer

STATE OWNED ENTERPRISES

Ports Authority

Mr Nooroa (Bim) Tou – General Manager

Te Aponga Uira

Mr Api Timoti – Chief Executive Officer
Ms Yamanika Cooray – Manager, Financial Services

DONORS

New Zealand High Commission

Ms Joanna Kempkers – Deputy High Commissioner
Ms Patricia Demmke – NZ Aid Program Coordinator

New Zealand Aid Programme, Wellington

Ms Vicki Poole – Deputy Director, Central Pacific
Mr John Egan – Deputy Director, Aid Effectiveness, Development Strategy and Effectiveness Division
Ms Sarah Cotgreave – Deputy Director, Procurement
Mr Sean Torbit – Development Manager, Cook Islands, Bilateral Pacific Division
Ms Kathleen Pearce – Development Manager, Aid Effectiveness Development, Strategy & Effectiveness
Ms Maria Reynen Clayton – Development Officer, Cook Islands, Pacific Bilateral Division

New Zealand Ministry of Foreign Affairs and Trade

Mr Craig Bennett – Internal Audit Manager, Internal Audit

PRIVATE SECTOR

Mr Steve Anderson – Director, Andersons
Mr Romani Katoa – Director, Romanis Design Ltd
Mr Te Tuhi Kelly – Sales Manager, Motor Centre
Ms Diane McFarlane – General Manager, Motor Centre
Mr Grant Priest – Director, Cook Islands Steel
Mr Mike Pynenburg – Vice-President, Cook Islands Chamber of Commerce
Ms Jessie Sword – Senior Manager, CI General Transport
Mr Arama Wichman – Director, Cook Islands Building Supplies
Ms Vaine Wichman – Director, Arama and Associates
Mr Keta Williams – Director, RVK Contractors Ltd

ANNEX B

LIST OF ALL RECOMMENDATIONS CONTAINED IN THE REPORT

List of all Recommendations Contained in the Report

Recommendation # 1 (please also see Sections 2.9.14 and 3.4 above)

The present inadequate system of decentralised public procurement should be abandoned.

Recommendation # 2 (please see also Executive Summary, 9 and Section 3.5 above)

A centralised system of public sector procurement should be established.

Recommendation # 3 (please see also Executive Summary, 9 and Section 3.6 above, and Annex F, 2.1.4)

The centralised system should be implemented by appointing an independent third party procurement agent to carry out all public sector procurement (ie for Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises) above NZD 3,000. In addition to executing procurement, the procurement agent will also include assisting Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs with procurement planning, preparing technical specifications and terms of reference, supervising constructions and deliveries.

Recommendation # 4:

Recommendation # 4.1 The procurement agent should operate from a base in Rarotonga.

Recommendation # 4.2 (please also see Sections 1.3.1 and 1.3.2 above) The procurement agent should establish a dedicated Cook Islands Public Procurement website on which it should publish all tenders above NZD 30,000 as well as details of all procurements above NZD 30,000 undertaken by other than open tender procedures, and all subsequent contract awards.

Recommendation # 4.3.1 Government (and SOEs, as appropriate) should prefund the procurement agent.

Recommendation # 4.3.2 The procurement agent should account to Government (and SOEs, as appropriate) on a monthly basis.

Recommendation # 5 (please see also Section 3.8 above and Annex G)

Appointment of a third party procurement agent should be achieved by undertaking a transparent tender process during which specialist procurement services firms are invited to submit proposals, these are professionally evaluated, and a subsequent contract award is made.

Recommendation # 6.1 The tender process recommended in Recommendation # 5 should be led by an experienced international procurement specialist, appointed to assist Government for this specific purpose.

Recommendation # 6.2 Government should request donor assistance for this initiative through the provision of financing for the international expertise needed to manage the tender process recommended in Recommendation # 5, and

Recommendation # 7 (please also see Executive Summary, 13 and Sections 2.9.7 and 3.10 above)

Government should maximise its bulk procurement of common user items, and in the process achieve major value for money savings. Specifically:

Recommendation # 7.1 The procurement agent should draw up, and update on a regular basis, a list of common user items (eg paper, tyres, etc, etc) with estimated annual usage figures.

Recommendation # 7.2 Based on these lists, the procurement agent should issue annual tenders for the items thereon, placing contracts for the estimated annual usage quantities. The procurement arrangement should arrange appropriately phased deliveries for these items, as well as warehousing for storage and subsequent issue to departments and SOEs.

Recommendation # 8 (please also see Section 3.11 above)

Pursuant to Section 63 of the Ministry of Finance and Economic Management Act 1995-96, MFEM should issue instructions prohibiting Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs from undertaking any procurements above NZD 3,000 and instead requiring them only to arrange these through the procurement agent.

Recommendation # 9 (please see also Section 3.12 above)

At this time no further legislative or regulatory reform is necessary.

Recommendation # 10 (please also see Section 3.13 above)

The Tender Committee should be disbanded immediately the procurement agent has been appointed and is operational.

Recommendation # 11 (please see also Executive Summary, 2 and 11, and Sections 1.3.2, 2.7.2, 2.8, 2.9.2 and 3.14 above, and Annexes D and H)

The procurement sections of the CIGFPPM (notably Part D, Sections 2 and 3, as well as other areas that relate to procurement, such as Part B, Sections 1 and 14) should be reviewed and revised into a substantially improved version. Improvements that should be incorporated include, but are not limited to:

Recommendation # 11.1: (please also see Executive Summary, 2 and Sections 2.9.3 and 2.9.4 above) A requirement for all Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises to prepare and publicise annual procurement plans, and for these to be published on the dedicated Cook Islands Public Procurement website *recommended at Recommendation # 4.2 above.*

Recommendation # 11.2: Separate sections must be included guiding Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises through the different procedures and documents to be followed in the procurement of goods, works and services.

Recommendation # 11.3: Instructions, including template forms, describing how to requisition procurements through the procurement agent.

Recommendation # 11.4: Simple Request for Quotation (RFQ) and Purchase Order (PO) type template documents (including Quotation Conditions and Conditions of Purchase respectively) for those low value procurements below the NZD 3,000 threshold that ministries and SOEs will continue to manage themselves.

Recommendation # 11.5: (please see also Executive Summary, 14 and Sections 2.9.8 and 3.14 above) An improved domestic preference system; eg permitting up to a 10% margin to be permissible, for the purposes of tender evaluation only, in the case of genuine local added value such as domestic production, local provision of services, etc.

Recommendation # 11.6: The revised sections of the CIGFPPM should govern all Government of the Cook Islands and SOE procurement regardless of funding source.

Recommendation # 11.7: (please also see Sections 1.1.3, 1.3.3, 1.3.4 and 2.9.10 above) Complaints via the independent resolution mechanism may only be made to the Office of the Ombudsman, and will not be handled by any other agency.

Recommendation # 12: (please also see Section 3.15 above and Annexes D and H) **A consultant International Procurement Specialist should be contracted to undertake the revision of the procurement sections of the CIGFPPM *recommended* in Recommendation # 11.**

Recommendation # 13 (please also see Section 3.16 above) **Government should request donor assistance for this work through the provision of financing for the international expertise needed to revise the procurement sections of the CIGFPPM.**

Recommendation # 14 (please also see Section 3.17 above and Annex D)

MFEM should issue the revised sections of the CIGFPPM as instructions pursuant to Section 63 of the MFEM Act 1995-96.

Recommendation # 15 (please see also Section 3.18 above)

The Office of the Ombudsman should be resourced appropriately to enable it to handle such complaints and disputes effectively.

Recommendation # 16 (please also see Section 3.19 above)

Recommendation # 16.1: The capacity of the Audit Office should be strengthened to enable it to monitor, inter alia:

- (a) performance of Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises in their procurements below NZD 3,000 and
- (b) that Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises are not artificially splitting their requirements into packages below NZD 3,000 in value as a means of avoiding the procurement agent while continuing to handle procurements themselves.

Recommendation # 17 (please also see Executive Summary, 11 and Section 3.20 above, and Annexes D and H)

The consultant International Procurement Specialist engaged to revise the procurement sections of the CIGFPPM should conduct initial training of Ministerial, Departmental, Island Administrations, Crown Funded Agencies and State Owned Enterprises staff in how to use these, including requisitioning their requirements through the procurement agent.

Recommendation # 18 (please also see Executive Summary, 16 and Section 3.21 above)

A medium to long term program should be embarked upon, based around the procurement agent, to establish initial procurement capacity in the Cook Islands and enhance this in succeeding years to gradually increasing levels of competence and experience.

Recommendation # 19 (please also see Section 3.22 above)

An appropriately qualified, experienced and skilled procurement resource should be established within MFEM to:

Recommendation # 19.1 monitor and assist as necessary with Ministerial, Departmental, Island Administrations, Crown Funded Agencies and State Owned Enterprises procurements under the NZD 3,000 threshold,

Recommendation # 19.2 manage the relationship with the procurement agent, and

Recommendation # 19.3 review and update the CIGPPM at appropriate intervals.

Recommendation # 20 (please also see Section 3.23 above)

For procurements below the NZD 3,000 threshold:

Recommendation # 20.1 MFEM should issue a circular instructing all Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs to make every effort to resist requests from suppliers, consultants and contractors for advance payments, and only to pay upon satisfactory receipt of goods, works or services.

Recommendation # 20.2 Ministries and SOEs should make every effort to resist requests from suppliers, consultants and contractors for advance payments, and only pay upon satisfactory receipt of goods, works or services. Where it is not possible to persuade suppliers, consultants or contractors to accept payment upon delivery, ministries and SOEs should strive to ensure that:

- (a) advance payments are kept to minimum amount possible (eg 10% to 20%, *not* 50% to 100%), and
- (b) all such advances are secured by bank guarantees provided by the supplier, consultant or contractor.

Recommendation # 21 (please also see Executive Summary, 13 and Section 3.24 above)

Unless any donor requires otherwise (and, for example, insists upon its own procurement procedures being followed) all procurement for the proposed Water and Sanitation Master Plan for Rarotonga above the NZD 3,000 threshold should be carried out by the procurement agent.

ANNEX C

TERMS OF REFERENCE

REVIEW OF GOVERNMENT OF THE COOK ISLANDS PROCUREMENT SYSTEM

Terms of Reference
Review of Government of the Cook Islands Procurement System

1. **Requesting Government:** Government of the Cook Islands
2. **Project Title:** Review of Government of the Cook Islands Procurement System
3. **Background:**
 - 3.1 A Public Expenditure and Financial Assessment (PEFA) conducted in 2011² awarded a low score (Overall Rating D) to Performance Indicator PI-19, Competition, Value for Money and Controls in Procurement. The PEFA Report also noted, inter alia:
 - 3.1.1 “weaknesses in the implementation of procurement procedures, as well as in the procedures themselves, leading to the frequent award of non-competitive tenders whose justification often appears unclear”,
 - 3.1.2 “Weaknesses in the procurement process, particularly the extent of competitive exemptions, are likely to affect negatively the efficient implementation of spending programmes”, and
 - 3.1.3 “no independent tender review process for handling procurement complaints by participants before contracts are awarded”.
 - 3.2 The PEFA Report records that public procurement in the Cook Islands is governed by:
 - 3.2.1 Section 63 of the Ministry of Finance and Economic Management (MFEM) Act 1995-96, which empowers MFEM to issue instructions to ministries and line agencies to ensure compliance with financial disciplines, and
 - 3.2.2 the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM – where the process for procurement is set out in Part D sections 2 and 3), which documents such instructions.
 - 3.3 In response to the PEFA Report the Cook Islands Government published, on 25 October 2011, its Roadmap to improve the Public Financial Management Systems by June 2015. In respect of procurement, this proposes:
 - 3.3.1 the establishment of a centralised database of approved public tenders and approved tender waivers,
 - 3.3.2 review of the CIGFPPM to improve tender procedures by incorporating good practice including the publication of successful tender awards in the local media as well as on the MFEM website for a specific timeframe,
 - 3.3.3 that the Office of the Ombudsman will address all public complaints, and that
 - 3.3.4 a review of the entire procurement system and formal procedures for complaints and dispute resolution will be explored further.
 - 3.4 The wide ranging review referred to in Section 3.3.4 above is the most important element of the envisaged program of improvements to the public procurement system. In addition to the areas identified in Sections 3.3.1 to 3.3.3 above this will also need to consider the existing legislative and regulatory framework. These elements alone though (ie as identified in Sections

3.3.1 to 3.3.4 above) will not guarantee effective public procurement. Other components of the procurement system also require consideration, including the present organisational structure(s) for procurement, staffing levels, competencies, qualifications and experience, operational policies, manuals, guidelines, instructions and procedures, internal and external controls and performance in practice.

- 3.5 Accordingly, Government has decided to embark upon Phase 1 of a program aimed at achieving the desired improvements in all aspects of public procurement in the Cook Islands. AusAID fully supports this goal, and will provide specialist procurement inputs to undertake Phase 1.
4. **Objective:**
- 4.1 Undertake a Phase 1 scoping review of public procurement in the Cook Islands, taking into account:
- 4.1.1 The existing legislative and regulatory framework
 - 4.1.2 The present organisational structure(s) for procurement
 - 4.1.3 Procurement staffing levels
 - 4.1.4 The competencies, qualifications and experience of procurement personnel
 - 4.1.5 Operational policies, manuals, guidelines, instructions and procedures, if any
 - 4.1.6 Standard procurement documents, if any
 - 4.1.7 Procurement performance in practice
 - 4.1.8 Specifically, but not exclusively, the procurement arrangements envisaged for the development and implementation of the proposed Water and Sanitation Master Plan for Rarotonga
- 4.2 Prepare a Phase 2 and beyond implementation plan for across the board improvements to the Government of the Cook Islands' procurement operations. This will include recommendations for any or all of the following, as necessary:
- 4.2.1 Any legislative and/or regulatory reform that might be considered beneficial
 - 4.2.2 More detailed examination of existing procurement manuals (including the procurement sections of the CIGFPPM), guidelines, instructions, procedures and policy documents
 - 4.2.3 Presentation of revised draft documents incorporating improvements to existing procurement manuals, guidelines, instructions, procedures and policy documents
 - 4.2.4 Where any such documents do not exist, recommendations for their preparation
 - 4.2.5 Improvements in the publication of procurement information, including approved public tenders, approved tender waivers, and successful tender awards
 - 4.2.6 More detailed examination of existing standard procurement documents, if any
 - 4.2.7 Presentation of revised draft documents incorporating improvements to existing standard procurement documents, if any
 - 4.2.8 Alternatively, if no such documents exist, recommendations for their preparation
 - 4.2.9 Establishment of an independent complaints and dispute resolution system
 - 4.2.10 Development of a capacity development plan, including training options

- 4.2.11 Possible reorganisation of the existing procurement organisational structure
- 4.2.12 Possible strengthening of effectiveness of internal and external controls
- 4.2.13 Procurement arrangements for the development and implementation of the proposed Water and Sanitation Master Plan for Rarotonga

5. Activities:

- 5.1 During the mission the review team will meet with as many as possible of the following as time permits:
 - 5.1.1 Financial Secretary
 - 5.1.2 Ministries and line agencies (eg Education, Health, Infrastructure and Planning, others)
 - 5.1.3 Audit Office
 - 5.1.4 Minister(s)
 - 5.1.5 Other relevant agencies, including State Owned Enterprises
 - 5.1.6 Donors, including NZAid

6. Documentation:

- 6.1 The Government will make available the following relevant documents and reports:
 - 6.1.1 Ministry of Finance and Economic Management (MFEM) Act 1995-96
 - 6.1.2 The Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM)
 - 6.1.3 Any supporting regulatory documents
 - 6.1.4 Existing procurement manuals, guidelines, instructions, procedures and policy documents, if any
 - 6.1.5 Existing standard procurement documents, if any

7. Outputs:

- 7.1 Phase 1 Scoping Review Report encompassing the issues outlined in Section 4.1 above.
- 7.2 Phase 2 and beyond Implementation Plan encompassing the issues outlined in Section 4.2 above.

For the avoidance of doubt, the Phase 2 and beyond Implementation Plan will not include revised draft legislation, regulations, instructions, guidelines, manuals or procurement documents. Instead, building on the Phase 1 Scoping Review Report, it will provide an Implementation Plan including, as appropriate, recommendations covering Terms of Reference, timetables and costs for realisation of the steps necessary to achieve widespread improvements in the Cook Islands' public procurement framework and operations.

Timing:

One working week, at a time convenient to the Government of the Cook Islands.

ANNEX D

**REVIEW OF MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT (MFEM) ACT 1995-96 AND
THE COOK ISLANDS GOVERNMENT FINANCIAL POLICIES AND PROCEDURES MANUAL
(CIGFPPM), PART D, SECTIONS 2 AND 3, AND PART B, SECTIONS 1 and 14**

Review of Ministry of Finance and Economic Management (MFEM) Act 1995-96 and the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM), Part D, Sections 2 and 3, and Part B, Sections 1 and 14

Public procurement in the Cook Islands is governed exclusively by the *Cook Islands Government Financial Policies and Procedures Manual* ('the CIGFPPM') adopted by the Financial Secretary under powers granted by section 63 of the Ministry of Finance and Economic Management Act 1995-96. There appear to be no other relevant legal provisions.

In broad terms, the CIGFPPM gives responsibility to Ministries, Island Administrations and Crown Funded Agencies to carry out procurement of goods and services to meet their requirements within the scope of their delegated authorities and requires them to follow the procedures of the CIGFPPM. It also sets up a Tender Committee made up of the Financial Secretary and Solicitor General (or their nominees) to oversee procurement in the sense of ensuring compliance with the process set up by the CIGFPPM, ie the Tender Committee will verify process compliance but will not substitute its own recommendation.

All procurement above NZD 30,000 is subject to an open tender procedure governed by CIGFPPM Part D, Section 3, although this may be subject to a deviation (seemingly a single source procedure) and to a 'closed' tender procedure under certain conditions. Below NZD 30,000 the CIGFPPM provides for a request for quotations (RFQ) procedure, governed by CIGFPPM Part D, Section 2, although the threshold triggering the RFQ procedure varies according to whether the procurement is a capital or operating project.

General Comments

The CIGFPPM appears to be drafted as a guideline on how to apply the relevant provisions. In that sense, it is helpful. The downside of this approach is it sometimes is very discursive and somewhat repetitive. In (rightly) emphasising the importance of certain issues such as record keeping or confidentiality, the repeated appearance of the same provisions makes the text a little clumsy. Similarly, the descriptive nature of text means that it is not always easy to identify the key provisions; eg in the case of the evaluation criteria. In some cases, describing what has to be done has the effect of virtually concealing what should be done; eg in the case of qualification/selection.

There are some good aspects to the CIGFPPM; eg the fact that it is properly based on principles such as transparency, accountability, probity, competition, fairness and value for money. This is, of course, positive. The reason for highlighting certain positive aspects is only to show where the CIGFPPM meets standards which are very often not found in equivalent provisions in the region or, indeed, in many countries which have undergone or are undergoing procurement reform. At the same time, perhaps partly because of the drafting style, there are many areas which require strengthening.

This review firstly highlights some of the positive aspects and secondly offers some comments on the weaker aspects which need attention. Where there is no comment on a given subject, this does not necessarily mean that the CIGFPPM is acceptable or that it meets the required standard. It merely reflects the fact that the time available for the review was limited, and did not permit an in depth assessment of the CIGFPPM. It is very likely that such a more detailed assessment would yield further examples of weakness, Accordingly:

Recommendation # 11:

The procurement sections of the CIGFPPM (notably Part D, Sections 2 and 3, as well as other areas that relate to procurement, such as Part B, Sections 1 and 14) should be reviewed, revised into a substantially improved version.

Recommendation # 14

The Ministry of Finance and Economic Management should issue the revised procurement sections of the CIGFPPM as instructions under Section 63 of the Ministry of Finance and Economic Management Act 1995-96.

Recommendation # 17

The consultant International Procurement Specialist should conduct initial training of public sector staff in how to use the revised procurement sections of the CIGFPPM.

Positive Aspects of the CIGFPPM

Some of the positive aspects of the CIGFPPM include provisions which:

- require funding to be available before procurement is commenced;
- prohibit the artificial fractioning of contracts to avoid the CIGFPPM (repeated several times);
- restrict RFQ to those 'genuinely interested' - whilst this may be formally unenforceable, it serves to attempt to prohibit the practice seen elsewhere of seeking non-genuine quotations, a custom that can be used to conceal favouritism;
- seek to ensure full disclosure to tenderers (transparency), even at RFQ level, by requiring the same instructions to be delivered to all and requiring sufficiently detailed quotes for comparison purposes;
- repeated prohibitions on conflicts of interest and opportunities to disclose any potential conflicts;
- prohibit corrupt practices;
- ensure record keeping at all stages of the process and availability of records for inspection, review and audit (repeated);
- require confidentiality at all stages of the process (repeated);
- prohibit the conclusion of a contract without a tender (above NZD 30,000);
- define urgency situations and include the critical elements of 'unforeseeability' and 'dilatatoriness' of the procuring entity (but see comment on Part D, Section 3, Article 3.0, below, on lack of clarity of the procedure to be used)
- envisage life cycle costing as part of the evaluation criteria; conversely, however, this can also be a weakness, since a life cycle costing approach is not always necessary, or even desirable;
- prohibit the application of award criteria not announced in the tender documents;
- require inclusion of technical expertise in evaluation committees as well as a member specifically responsible for probity issues;

Weak Aspects of the CIGFPPM

The weakest aspects include:

- The CIGFPPM distinguishes only between 'Sale of Asset' and 'Tender for Goods/Services'. It does not recognise that there are major differences in both approach and the documentation needed to procure goods, works and services. Instead, it deals with all three types of procurement under a general, goods-oriented approach.
- While a number of checklists and other template form documents are included, these do not in any way constitute acceptable Standard Procurement Documents (SPDs) that can be used to invite tenders, call for quotations or contract for goods, works or services.
- The manual does not make it mandatory that tenderers are able to request and receive a debriefing as to why their proposals were unsuccessful.

- It does not cover the concept of procurement preparation and planning in sufficient detail, including the need for procuring entities to prepare and publish a procurement plan for each fiscal year as well as to produce a specific procurement plan for individual procurements.
- Internationally accepted procurement methods such as panel or standing offer arrangements are not covered, although they are not prohibited either.
- Multiple repetitions of text that lengthen the CIGFPPM and contribute further to it being a document that is neither straightforward nor easy to read and understand.
- *Part D, Section 2, Article 3.2:* this states that transactions likely to be 'contestable' require a 'contestable' or 'competitive' process. This appears to be an (economic) term used to refer to when competitive processes apply but does not explain how such a likelihood will arise. It is curiously worded but, since competition is mandated according to the thresholds contained in Attachment 1, the odd wording may not be relevant.
- *Part D, Section 2, Article 3.4.2:* requires the receipt of 3 quotations. This may not always be possible. Instead, the requirement should be to require the seeking (invitation) of at least 3 quotations. Part B, Section 14, Article 3.2.2.1 (d), on the other hand, refers to only "an equivalent of at least 2".
- *Part D, Section 2, Article 3.4.5:* where else should sales be advertised in addition to "at the very least ... on the staff notice board(s) for one week before the closing of the quotes"? Are sales only advertised for one week? If so, this seems an unduly short period.
- *Part D, Section 3, Article 1.7:* it is curious to fix the evaluation period according to the bid validity periods offered by suppliers. It is the procuring entity that should decide on the bid validity period. In any event, 30 days may well be too short for complex procurements.
- *Part D, Section 3, Article 3.0:* this clause contains the 'deviations' and sets out the circumstances when open tendering may not be used. This effectively lists 3 situations which, in other systems, would allow for sole source procurement. The conditions appear to be equivalent and, therefore, acceptable, but they are all set out in one sentence as 'examples' of when the Financial Secretary might provide approval for deviations based on these grounds. It would be better simply to set these out as conditions for using single source (or other procedure) and describe more clearly what the procedure would be. Please also see, in respect of urgency, the point made above under positive aspects.
- *Part D, Section 3, Article 4.2:* here, and elsewhere in respect of technical specifications, there is no requirement for technical neutrality and no prohibition on the use of brand names, etc (with or without equivalence).
- *Part D, Section 3, Article 4.3:* whilst the 'appropriation details' are not unusual, obligations appear to be mixed up, referring both to procuring entities and bidders while not expressing the reality of which party will be obligated; eg it refers to procuring entity seeking approval of variation to contract without also referring to proposal for variation from bidder.
- *Part D, Section 3, Article 4.3.3:* This is confusingly written. Are cost estimates to be included in tender invitation documents? They should not be. What are envisaged in 'costs associated with the tender' and how do these relate to 'variances to the original tender price'?
- *Part D, Section 3, Article 4.5:* this sets out contents of tender documents but some of the issues referred to should rather form requirements/conditions of the CIGFPPM themselves and not merely be mentioned as part of the tender documents:
 - 4.5.1.2.2: this seems to reflect an entry in an advertisement since the tender documents are, it is assumed, what constitutes this 'information pack';
 - 4.5.1.2.8: this appears to allow for the use of lots (provided it does not constitute artificial fractioning) but is so short on explanation/detail that it is unworkable;
 - 4.5.1.2.11: this appears to prohibit any form of electronic tendering (reinforced by 4.5.1.2.12);

- 4.5.1.2.14: this prohibits negotiations during the advertising stage (which is not clear) but implies, as a result, that negotiations will be permitted at other times; please also see 4.5.1.2.20 below;
 - 4.5.1.2.16: bidders should normally be required to follow the standard form contract included as part of the tender documents; the text suggests that the contractual terms and conditions are fixed by the bidder! Apart from depriving the procuring entity of control over the contract, it also means that it will not be in a position to compare like for like. The standard form of contract should be mandatory, not optional;
 - 4.5.1.2.17: this suggests (and is confirmed elsewhere) that shortlisting is decided upon *ad hoc*, based on the response to an open tender, whereas the decision to shortlist (ie pre-qualify) should be taken in advance and based on the characteristics of the proposed procurement (eg complexity, likely number of bidders etc.);
 - 4.5.1.2.19: this refers to the possibility of allowing complaints but there does not appear to be any complaint mechanism referred to in the CIGFPPM; tenderers should always be able to appeal decisions (rather than merely having 'the option') where there are genuine grounds for doing so;
 - 4.5.1.2.20: this confirms that post-tender negotiations are possible but does not explain when, how or why they would be permitted. Such negotiations can be abused. If they are to be permitted, clear and precise rules governing the process need to be established;
 - 4.5.1.2.22: tenderers should not be permitted to see evaluation documents;
 - 4.5.1.5.4: in respect of contract terms, it is not clear whether this is merely a reference to alternative bids or to the possibility of providing an alternative 'brand' where such has been stated in the specification;
 - 4.5.1.6: this appears to relate to selection/qualification criteria but should really form part of the CIGFPPM itself as a section with sufficient precision and detail to allow for proper selection to take place, taking into account all relevant questions of bidder suitability, financial and economic capacity and technical capability, as appropriate for the contract in question.

- *Part D, Section 3, Article 4.5.2.4:* if all draft documents are reviewed by Crown Law or another legal professional it would seem that delays inevitably will result. If Standard Procurement Documents exist for all procurements, such a legal review should not be necessary.

- *Part D, Section 3, Article 4.5.3:* the use of the term 'expressions of interest' is confusing here - it appears to describe a process of market testing, but also has elements of a prequalification process. Further, it also suggests that international competition will only be permitted where there is no domestic supply - this in effect insulates the domestic market and is far more egregious a clause than mere domestic preference (which is also included elsewhere, up to an acceptable maximum of 10%). How often are Expression of Interest (EOI) processes entered into? How often are they merited?

- *Part D, Section 3, Article 4.5.3.1.9:* this confirms the *ad hoc* nature of shortlisting. If prequalification is used at all, it should be properly defined and subject to its own procedure, with time lines and based on objective selection/qualification criteria which are, in any event, missing from the CIGFPPM. Please also see 4.5.3 above.

- *Part D, Section 3, Article 4.5.3.3:* this is not clear but suggests that others will not be invited and yet those submitting EOIs have no need to prove anything, such as meeting qualification criteria. If all prospective tenderers that submit an EOI are invited to tender, what is the value of the EOI? It seems an unnecessary waste of time and money.

- *Part D, Section 3, Article 4.6.1.2:* a minimum of 10 days for the preparation and submission of bids is not 'reasonable' for anything other than the simplest of tenders, even at a domestic level. For overseas proposals it is unreasonable, especially since there is no possibility of using electronic means of bid submission (please see 4.5.1.2.11 above).

- *Part D, Section 3, Article 4.6.1.3:* it would be helpful to provide examples of where to advertise in the case of outer island and overseas tenders. It is very doubtful that 'distribution of flyers' has any benefit.

- *Part D, Section 3, Article 4.6.1.5:* this is a good provision apart from the fact that it does not contemplate any extension of the original time limit for bid submission in the event of amendment to tender documents.

- *Part D, Section 3, Article 4.6.1.8:* please also see earlier comments concerning negotiation.
- *Part D, Section 3, Article 4.7.1:* two days between the deadline for bid submission and bid opening provides ample time for manipulation. Bid opening should be immediately after the deadline for submission.
- *Part D, Section 3, Article 4.7.2:* there is no mention of bidders being present, which they should be. Also, there are few details on bid opening procedures or about what to do in the event of the late submission of bids. This should be added.
- *Part D, Section 3, Articles 4.7.2 & 4.7.3:* it is not clear why an auditor needs to be present to open tenders. The Tender Evaluation Committee should do this. The 'exceptional circumstances' in which an auditor appoints 'someone on their behalf to witness the opening of tenders' also is (a) inconsistent – compare 'open tenders' with 'witness the opening of tenders', and (b) undefined.
- *Part D, Section 3, Article 4.7.4:* this confuses opening the tender box and opening tenders. Only the Tender Evaluation Committee should open the tenders and publicly announce relevant information from them.
- *Part D, Section 3, Article 4.7.5:* the immediate screening is not objectionable. However, the clause is drafted so broadly that it is unclear exactly what this initial screening will consist of and how it is to be distinguished from evaluation.
- *Part D, Section 3, Article 4.7.6:* whilst this clause again foresees the possibility of complaint, the fact remains that there is no formal complaint mechanism, independent or otherwise.
- *Part D, Section 3, Article 4.8.1:* it is not clear how the 'groups of people ...involved in' the 'Evaluation Process' differ from the Tender Team referred to in Article 4.4.
- *Part D, Section 3, Article 4.8.2:* there is a confusing reference to '3.8.2', and similar references appear in Articles 4.5.1.2.15 and 17. These should be corrected/excised.
- *Part D, Section 3, Article 4.8.2:* this again appears to foresee shortlisting (prequalification) as an *ex post* decision (notably 4.8.2.3). This should be defined and chosen in advance based on the characteristics of the proposed procurement.
- *Part D, Section 3, Article 4.8.3:* this confuses qualification and award criteria, and is in itself confusing. It needs to be rewritten for greater accuracy and clarity. Please see, by way of examples, issues arising in 4.8.3.1.1, 4.8.3.1.2 and 4.8.3.1.12 below.
- *Part D, Section 3, Article 4.8.3.1.1 and 2:* these seem to allow local establishment and local origin to be used as evaluation criteria, which appears to go beyond providing a domestic preference (which is acceptable up to the 10% otherwise foreseen in 4.8.3.2).
- *Part D, Section 3, Article 4.8.3.1.12:* 'previous performance' is a qualification criterion not an award criterion. This is where the failure of the CIGFPPM to provide clear qualification criteria becomes an issue - it leads to inclusion in inappropriate places.
- *Part D, Section 3, Article 4.8.3.2:* the local preference weighting preference goes too far. It should not apply simply to a 'locally established company', but be applicable only when there is genuine local added value; eg local production or provision of services.
- *Part D, Section 3, Article 4.8.3.10 (incorrectly numbered 4.8.3.10):* this mandates 'weighting' and does not appear to permit monetary values to be applied in evaluation. The method of applying such weighting is unclear, arbitrary, unduly subjective and open to manipulation and abuse. (4.8.3.10.1-4). It is not recommended. A much more robust method of evaluation is needed.
- *Part D, Section 3, Article 4.8.5:* while the evaluation procedure is geared towards avoiding any corruption, it is open to question whether not allowing evaluation committee members to see the

tender invitation documents until only 24 hours before the meeting will provide for the best evaluation. In this case, concern with probity may overwhelm efficiency.

- *Part D, Section 3, Article 4.8.5.11:* Five days may on occasion be too short to complete the evaluation process, especially in the event of more complex procurements. At the same time, the evaluation report, including award recommendations, should be prepared immediately. Five days is excessively long for this task.
- *Part D, Section 3, Article 4.8.5.12:* this clause requires justification for not accepting the lowest tender. However, price is only one (apparently minor) consideration under the evaluation criteria enumerated in 4.8.3.1-16 (appearing as item 10). In all other respects, the evaluation is guided by weighting. This appears inconsistent but also suggests a practice which is different to the legal framework. As noted at 4.8.3.10 above, a far more robust evaluation process is needed.
- *Part D, Section 3, Article 4.8.6:* the entire Tender Evaluation Team should complete and sign the Evaluation Report, not just the Head of the Agency.
- *Part D, Section 3, Article 4.10.4:* this clause allows post-tender negotiations but does not explain how or why. Please also see earlier comments concerning negotiations.
- *Part D, Section 3, Attachment 1:* the Tender Report is so brief as to be largely valueless. A good evaluation template should contain far more detail. It also envisages only 'Sale of Asset' or 'Tender for Goods/Services'. The procurement of both Works and Consulting Services is ignored.
- *Part D, Section 3B:* this section covers 'closed tender' but does not really explain what this is. It appears to be an UNCITRAL type 'restricted' procedure whereby only a limited number of bidders will be invited to submit bids and this without advertising. That is what the vaguely defined conditions suggest, although these are very unclear.
- *Part D, Section 3B, Article 3.3.2:* these conditions do not explain properly when the procedure should be used, nor are they consistent with the acceptable circumstances identified in Article 3.4.
- *Part D, Section 3B, Article 3.4.4:* not going to open tender because advertising costs are likely to be too high seems a very curious 'acceptable circumstance'.
- *Part D, Section 3B, Article 3.4.5:* this reason for using a closed tender is far too permissive - either there is a system of bidder registration or there is competition. Inviting suppliers who are known to the procuring entity falls between both stools and should not be acceptable.
- *Part D, Section 3B, Article 3.6:* no explanation is given for treating a closed tender as a 'fast track' procedure.
- *Part D, Section 3.7:* it is not understood why there are different 'turnaround times' for different procurement values (although it is noted that two different value ranges have identical turnaround times). Turnaround time should be turnaround time, irrespective of value.
- *Document titled 'Tender Process Documentation':*

It is not clear whether this forms part of the CIGFPPM, or whether it is some other free standing form of guidance. Either way, it contains a number of weaknesses. Among these is Section 5, in which regard:

- It states 'if the tender is straight forward and in accordance with procedures then it may be unnecessary for the Tender Committee to meet'. This calls into question the mandate of the Tender Committee. If it is to review proposed contract awards it should do so for all of these above NZD 30,000 not just the ones that are 'straight forward'.
- Who, in any event, decides what is 'straightforward'? This decision appears to be delegated to the Secretariat, where it is questionable whether the expertise exists to make these types of judgment.

- This 'straight forward' delegation to the Secretariat is contrary to the document titled 'Appendix 1, Terms of Reference for the Tender Review Committee (TC)', which requires under Assessment Criteria, 2 that 'a tender' (presumably this is meant to refer to 'a contract') 'is ONLY to be awarded after the tender report and supporting documentation has been reviewed and agreed to by the Tender Committee'. In the case of 'straight forward' tenders the Tender Committee apparently does not review anything.

ANNEX E

**EXAMPLES OF QUESTIONABLE AND BAD PRACTICE NOTED DURING REVIEW OF TENDER
EVALUATION AND OTHER FILES**

EXAMPLES OF QUESTIONABLE AND BAD PRACTICE NOTED DURING REVIEW OF TENDER EVALUATION AND OTHER FILES

The table below lists just some of the examples of questionable and bad practice noted during documentary review of a sample of tender evaluation and other files. This is not exhaustive. It is certain that a more detailed, in depth review would produce further examples.

<i>Questionable or Bad Practice Issue</i>	<i>Comments and Recommendations</i>
<p>Tenderers being required to pay a "tender document deposit" of NZD 750, with the deposit being refundable:</p> <ul style="list-style-type: none"> • "to the successful Tenderer without requiring the return of the Tender Documents", and • "to the unsuccessful Tenderers, providing the documents are returned in a reasonable condition no later than 10 working days after the date on which notice is issued advising that another Tender has been accepted or that no Tender is being accepted." 	<p>What is the purpose of this deposit? It seems to guarantee only that unsuccessful Tenderers will return the Tender Documents to the Ministry issuing them. Why are they needed to be returned? They cannot be used again. No useful purpose seems to be served by this provision.</p>
<p>Requirements in Tender Documents for foreign contractors to ensure that "50% of the total cost of the Contract Works be spent locally in Rarotonga for resources such as materials, plants and labour".</p>	<p>While the wish to encourage and stimulate local business is understandable, this is not the best way to achieve it. The review recorded complaints about "local contractors being too greedy" and charging far more for plant hire, for example, than if the same plant was brought into the country by the successful Tenderer. Foreign contractors should not be forced to use local resources if these are uneconomical and cause undue additional cost.</p>
<p>Many examples in tender invitation documents of text such as "Any Tender received after the time of closing of tenders will be marked accordingly and may, at the discretion of the Principal, be accepted for further consideration in the tender process."</p>	<p>If late tenders are accepted, what is the purpose of setting a deadline for their receipt? Accepting late tenders discriminates against those tenderers that complied with the deadline, and thus disadvantages them in the tender evaluation process. The text should be changed to make clear that late tenders will be rejected.</p>
<p>Late tenders being accepted.</p>	<p>As noted above, accepting late tenders discriminates against those tenderers that complied with the deadline, and thus disadvantages them in the tender evaluation process. Late tenders should not be accepted, but should be rejected immediately upon receipt.</p>
<p>Tenders being opened in closed session.</p>	<p>This provides the opportunity for manipulation. Public openings should be the norm.</p>
<p>Tender prices being read out twice, by two different people.</p>	<p>Once is sufficient. However, since tenders are routinely opened in closed sessions, the impact of reading out prices is in any event lost.</p>
<p>Lengthy delays (eg 60 days, 8 months) after tender closing deadlines before evaluations take place.</p>	<p>Such delays provide ample opportunity for manipulation of tenders. Evaluations should commence immediately after the tender closing deadline.</p>
<p>Tender Evaluation Guidelines and Terms of Reference stipulating a Points and Scoring regime, then contradicting this in subsequent Tender Evaluation Procedures.</p>	<p>All tender evaluation references must be fully consistent with each other.</p>
<p>Tenders being taken through the complete evaluation process even though they did not comply with the requirements of the tender.</p>	<p>Such tenders should be discarded (disqualified) immediately it becomes clear to the Evaluation Committee that they have failed to comply with the tender requirements.</p>
<p>A tender submitted without adequate technical content (ie no designs provided for the equipment, as required by the tender documents) being accepted, and the contract awarded to the tenderer on the basis that one member of the Evaluation Committee "had sighted" the equipment offered and considered it "most suitable".</p>	<p>Any tender presented with insufficient technical data to enable the Evaluation Committee to decide whether it satisfies the technical specifications should either be rejected as non-compliant or, at best, the Evaluation Committee should formally seek, in writing, clarification of the designs/specifications offered. It cannot be acceptable for the Committee to accept a tender as technically compliant on the basis of one of its members having seen the equipment offered and considering it suitable.</p>

<p>Inappropriate evaluation criteria being used for goods procurements. For example:</p> <p>(a) Using weighting systems such as:</p> <ul style="list-style-type: none"> (i) Contract Price – 60% (examples of only 35% and 40% also were seen) (ii) Relevant Experience and Resources – 20% (iii) Methodology – 10% (iv) Locally Established Company – 5% (v) Tenderers meet requirements stated in Tender Documents – 5% <p>(b) By way of further example:</p> <ul style="list-style-type: none"> (i) How is “Relevant Experience and Resources” judged, and how does the evaluator decide on a score within a scale of 1-20? (ii) Similarly, how is “Methodology” judged, and how does the evaluator decide on a score within a scale of 1-10? (iii) “Locally Established Company” being given a weighting. (iv) “Tenderers meet requirements stated in Tender Documents” being used as a weighted evaluation criterion. (v) Within this weighting system, price being given too low a weighting; eg only 40%-60%. <p>(c) Further still, using scoring systems for tender prices such as:</p> <ul style="list-style-type: none"> (i) Lowest price scores 5. (ii) All prices up to and including 20% above the lowest price score 4. (iii) Prices between 21% and 40% above the lowest price score 3. (iv) Prices between 41% and 60% above the lowest price score 2. (v) Prices between 61% and 80% above the lowest price score 1. (vi) Prices 81% and higher above the lowest price score 0. 	<ul style="list-style-type: none"> (a) Weighted evaluation mechanisms for goods procurement introduce subjectivity into the evaluation process, and open it to manipulation and abuse. Ascribing such a low importance as only 60% to price is inappropriate. A vastly preferable system is to set clear and detailed technical specifications in the tender invitation documents, to reject all tenders that fail to meet these specifications and then, from all those tenders that satisfy the specifications, select for award the lowest priced tender. (b) : <ul style="list-style-type: none"> (i) Relevant experience and resources requirements should be clearly stipulated in the tender invitation documents and then used as a Pass or Fail qualification criterion, not an evaluation criterion. (ii) No further comment. (iii) This is not the optimum method of seeking to support local industry. A proper domestic preference provision should be adopted. This would be applied at the financial evaluation stage of the process, and be linked to locally produced goods and services. (iv) If a tender does not meet the requirements of the Tender Documents it should be discarded (disqualified) and not considered further. (v) Once technical compliance has been established, price should be the sole remaining evaluation criterion – see (a) above. (c) Scoring tender prices for goods in this way is inappropriate. Please see (a) above.
<p>Prices for services tenders being read out at a tender opening session prior to technical evaluation being undertaken.</p>	<p>Pricing envelopes for services tenders should only be opened after technical evaluation of all tenders has taken place, and then only for those tenders that have achieved the minimum technical acceptance scoring threshold. This is to prevent technical evaluations of tenders being influenced by the prices of those tenders.</p>

<p>(a) Inappropriate evaluation criteria being used for services tenders. For example:</p> <ul style="list-style-type: none"> (i) Contract Price – 60%. (ii) Relevant Experience and Resources – 20%. (iii) Methodology – 10%. (iv) Locally Established Company – 5%. (v) Tenderers meet requirements stated in Tender Documents – 5%. <p>(b) Within such an arrangement, price being weighted in an odd way, viz:</p> <ul style="list-style-type: none"> (i) Lowest price scores 5. (ii) All prices up to and including 20% above the lowest price score 4. (iii) Prices between 21% and 40% above the lowest price score 3. (iv) Prices between 41% and 60% above the lowest price score 2. (v) Prices between 61% and 80% above the lowest price score 1. (vi) Prices 81% and higher above the lowest price score 0. 	<p>This is an extremely unusual set of evaluation criteria for services tenders. The Review Team has never previously seen such an arrangement.</p> <p>It is not normal to ascribe such a high value to price within the evaluation of services tenders. A 20% weighting, or at most 30%, is far more usual, although even then the weighting is applied in a different way.</p> <p>It is recommended that the entire criteria regime for evaluating services be changed to meet common international standards, along the lines:</p> <ol style="list-style-type: none"> 1. Technical evaluation is conducted without knowledge of tendered prices. All tenders that meet or exceed the established technical acceptance threshold go forward to financial evaluation. 2. The lowest total price is awarded 100 points. All other total prices are awarded scores in direct relation to this price, using the following formula: <table border="1" data-bbox="816 525 1445 590"> <tr> <td style="text-align: center;"><u>Lowest total price</u></td> <td style="text-align: center;">X</td> <td style="text-align: center;">100 =</td> <td style="text-align: center;">Financial Score</td> </tr> <tr> <td style="text-align: center;">Other total price</td> <td></td> <td></td> <td></td> </tr> </table> <ol style="list-style-type: none"> 3. <i>Combined Technical and Financial Evaluation</i> 3.1 Each Final Technical Score (awarded under Paragraph 1 above) is given a 0.8 weighting, and each Financial Score receives a 0.2 weighting, as follows: Final Technical Score x 0.8 = Weighted Technical Score Financial Score x 0.2 = Weighted Financial Score 3.2 The Weighted Technical Score and the Weighted Financial Score are added together, resulting in the Combined Evaluation Score. 3.3 The firm receiving the highest Combined Evaluation Score is awarded the contract. 	<u>Lowest total price</u>	X	100 =	Financial Score	Other total price			
<u>Lowest total price</u>	X	100 =	Financial Score						
Other total price									
<p>During a services tender evaluation:</p> <p>(a) When finding difficulty in understanding the pricing rates offered by tenderers, carrying out meetings with them in order "to get clarification on the makeup of their tender rates".</p> <p>(b) Subsequently requesting one of the tenderers to resubmit revised pricing rates.</p>	<p>Both of these practices were incorrect. Clarifications during tender evaluation should only be requested and provided in writing (verbal discussions should never be permitted) and, once submitted, tenderers should never be allowed to change their prices.</p>								
<p>Members of tender evaluation committees declaring conflicts of interest, but being permitted to remain on the committee and to conduct their evaluation.</p>	<p>This presents obvious risks of the evaluation process being compromised. Any member with a conflict of interest should immediately be removed from the tender evaluation committee in accordance with the provisions of Clause 6.1 of the CIGFPPM.</p>								
<p>Evaluation criteria being changed from the originally established ones, because these would have resulted in a number of tenders receiving a zero score on the Contract Price line.</p>	<p>This is extraordinarily bad practice. Once evaluation criteria have been set (and, by normal good practice standards, stated in the tender invitation documents) they should not be changed. Indeed, not only is it bad practice, it may very well be illegal practice. Such instances have been ruled by Australian and European courts as illegal.</p>								
<p>In a tender in which only two tenders were received, one of the tenderers acting as a sub-contractor to the other tenderer in his tender.</p>	<p>No tenderer should ever be permitted to appear in any other tender in any capacity. All tenders in which such a tenderer appears should be disqualified.</p>								
<p>Advance payments being made, often in significant amounts (eg 50%; 100%) without being guaranteed by any form of security.</p>	<p>Making such unsecured payments exposes Government to unnecessary risk. In cases where contractors and suppliers receive such payments and then default, direct financial losses accrue to Government. As a general principle, with the exception of minor payments, advance payments should:</p> <ol style="list-style-type: none"> (a) be resisted as strongly as possible, (b) where they are unavoidable, be kept as small as possible, and (c) always secured by bank guarantees provided by the supplier or contractor in favour of Government. 								
<p>Defects liability periods of only 6 months for major construction works.</p>	<p>This is an unrealistically short Defects Liability Period. It is recommended that the standard period should be 12 months. It is difficult to see a justification for any period shorter than this.</p>								

<p>Unnecessarily extensive advertising – cases of 15 to 20 times noted. Advertisements being placed only a few days before the tender closed and indeed on the day the tender closed.</p>	<p>CIGFPPM only requires 5 times. Unnecessary advertising is a waste of Government resources.</p>
<p>Calls for Quotation issued without proper specifications or any governing conditions apart from where the object of the quotation was to be delivered; eg no closing date for receipt of quotations, no delivery time requirements, no documentary requirements, no warranty requirements, no payment provisions, etc, etc.</p>	<p>While Calls (Requests) for Quotations should be simpler documents than Invitations to Tender, they must still include all necessary details to:</p> <ul style="list-style-type: none"> (a) enable respondents to understand precisely what is required, and to present quotations accordingly, and (b) protect the issuing Ministry's interests. <p>A properly detailed Request for Quotations template should be prepared and made available for use across all of Government.</p>
<p>Tender documentation that states "Requests for further information leading to cause of the decision will not be entertained."</p>	<p>This is fundamentally bad procurement practice. Tenderers should have the right to request and be provided a debriefing as to why their tender was unsuccessful. Debriefs are a key part of ensuring transparency and accountability in Government procurement and assist the private sector to improve the quality of future tenders.</p>
<p>Tender documentation that in the tender conditions state "The tenderer must tender to carry out <i>whole</i> of contract as required by the contract documents" yet the award criterion includes an assessment of "Ability to meet whole <i>or part of</i> the specified quantities and specifications" and tenders for only part of the contract are accepted.</p>	<p>Clause 4.5.1.2.7 of the CIGFPPM requires that "It must be clearly stated whether tender proposals will be accepted for all or part of the specifications listed for the tender." Tender documentation needs to be internally consistent and then adhered to.</p>

ANNEX F

OPTIONS FOR CENTRALISING PUBLIC PROCUREMENT IN THE COOK ISLANDS

OPTIONS FOR CENTRALISING PUBLIC PROCUREMENT IN THE COOK ISLANDS

1. Options

1.1 There are two main ways in which public procurement (ie that of Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises) in the Cook Islands could be centralised. These are:

- 1.1.1 A completely new organ of Government could be established, with responsibility for conducting all public procurement above NZD 3,000. This new organ could be titled the Government Supplies Department/Authority or similar, and could be set up in a number of ways, including:
- (a) a new department or division could be established within the Ministry of Finance and Economic Management (MFEM),
 - (b) a new department or division could be established within some other Ministry, or
 - (c) a new free standing Ministry or a new State Owned Enterprise (SOE) could be set up.
- 1.1.2 All public sector procurement above NZD 3,000 could be outsourced to an independent, third party procurement agent.

2. Advantages and Disadvantages

2.1 Each of these options has advantages and disadvantages. These may be summarised as follows:

- 2.1.1 A new department or division (titled, for example, the Government Supplies Department/Division or similar) is established within MFEM to conduct all public sector procurement above NZD 3,000.

Advantages

- (a) As noted under Section 2.1.1, *Disadvantages*, (a) below, establishing a new centralised public procurement operation would require the recruitment of at least one senior internationally experienced Procurement Specialist to set this up and manage it effectively for at least the first few years of its existence. This would ensure that the necessary high level, professional skills, technical ability and experience were available for the benefit of public procurement in the Cook Islands, as well as for training, mentoring and developing the skills of Cook Islands counterpart staff.

Disadvantages

- (a) There presently appear to be no personnel engaged in public sector purchasing with sufficient skills, qualifications or experience to enable a new Government Supplies Department/Division or similarly titled entity to be established with any real chance of operational success. To establish such an organ would demand the recruitment of at least one senior internationally experienced Procurement Specialist to set up the operation and manage it effectively for at least the first few years of its existence. This recruitment would have the disadvantage of cost but, as noted in Section 2.1.1, *Advantages*, (a) above, some counter balancing advantages
- (b) Any new such organ would require to be invested with substantial additional staff, accommodation, IT and other resources.
- (c) Setting up a centralised Government Supplies Department/Division within MFEM would combine the present regulatory role of MFEM with a newly established implementation role to carry out procurement on behalf of the rest of Government and the public sector. This would create a conflict of interest, in that MFEM would then be responsible for regulating itself in carrying out its procurement implementation responsibilities.

- (d) Whether or not it is fair, MFEM is the subject of criticism from many Government Ministries, SOEs and the private sector. This criticism revolves around its perceived slowness in dealing with procurement matters (eg the Tender Committee taking too long to approve, or otherwise, proposed contract awards above the AUD 30,000 threshold) and its lack of responsiveness to the procurement market (eg unclear, bureaucratic, unwieldy procurement procedures, etc). It thus is felt that if a centralised Government Supplies Department/Division was set up within MFEM it would attract even more criticism from the rest of Government and, in particular, the private sector. This criticism could take several forms, including allegations of "empire building", of the body responsible for slowing down procurement taking on an even larger role in it, etc.

2.1.2 A new department or division (titled, for example, the Government Supplies Department/Division or similar) is established within some other Ministry to conduct all public sector procurement above NZD 3,000

Advantages

- (a) As noted under Section 2.1.2, *Disadvantages*, (a) below, establishing a new centralised public procurement operation would require the recruitment of at least one senior internationally experienced Procurement Specialist to set this up and manage it effectively for at least the first few years of its existence. This would ensure that the necessary high level, professional skills, technical ability and experience were available for the benefit of public procurement in the Cook Islands, as well as for training, mentoring and developing the skills of Cook Islands counterpart staff.

Disadvantages

- (a) There presently appear to be no personnel engaged in public sector purchasing with sufficient skills, qualifications or experience to enable a new Government Supplies Department/Division or similarly titled entity to be established with any real chance of operational success. To establish such an organ would demand the recruitment of at least one senior internationally experienced Procurement Specialist to set up the operation and manage it effectively for at least the first few years of its existence. This recruitment would have the disadvantage of cost but, as noted in Section 2.1.1, *Advantages*, (a) above, a number of counter balancing advantages
- (b) Any new such organ would require to be invested with substantial additional staff, accommodation, IT and other resources.
- (c) Given the strategic importance of public procurement in the Cook Islands, it would seem inappropriate to establish centralised procurement under any existing Ministry other than MFEM, or possibly the Prime Minister's Office. To do so would remove it from its logical place at the centre of Government operations. It could also have the potential to cause inter-ministerial jealousy, particularly in those Ministries that were not selected to house the new operation.

2.1.3 A new free standing Ministry or a new State Owned Enterprise (SOE) is established to conduct all public sector procurement above NZD 3,000

Advantages

- (a) As noted under Section 2.1.3, *Disadvantages*, (a) below, establishing a new centralised public procurement operation in whatever form would require the recruitment of at least one senior internationally experienced Procurement Specialist to set this up and manage it effectively for at least the first few years of its existence. This would ensure that the necessary high level, professional skills, technical ability and experience were available for the benefit of public procurement in the Cook Islands, as well as for training, mentoring and developing the skills of Cook Islands counterpart staff.

Disadvantages

- (a) There presently appear to be no personnel engaged in public sector purchasing with sufficient skills, qualifications or experience to enable a new free standing Ministry or a new State Owned Enterprise (SOE) to be established with any real chance of operational success. To establish such a body would demand the recruitment of at least one senior internationally experienced Procurement Specialist to set up the operation and manage it effectively for at least the first few years of its existence. This recruitment would have the disadvantage of cost but, as noted in Section 2.1.1, *Advantages*, (a) above, some counter balancing advantages
- (b) Any new such organ would require to be invested with substantial additional staff, accommodation, IT and other resources.
- (c) Further, the arrangements necessary to establish a new Ministry or SOE would require significant additional investment in legislative and other effort that would not be required under any of the other options discussed in this Section 2.1.

2.1.4 All public sector procurement above NZD 3,000 is carried out by an independent, third party procurement agent.

Advantages

- (a) This would immediately bring into action a properly resourced team of procurement professionals, which would have rapid benefits in significantly improving the efficiency, effectiveness and value for money of the Cook Islands' public sector procurement.
- (b) The cost to the Cook Islands of its public sector purchasing would substantially reduce; ie value for money savings would be achieved for the benefit of the national economy.
- (c) Government would not have to invest in additional staff, accommodation, IT and other resources.
- (d) Very importantly, an independent third party procurement agent would know how to conduct procurement in a transparent and professional manner, and would be experienced in ensuring the achievement of maximum value for money in all its activities on behalf of Government.
- (e) A known and respected independent procurement agent would be able to make a massive change to the present system of advance payments, ensuring that most procurements were not paid for in this risky manner.
- (f) The procurement agent would assist Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs to achieve much higher standards of performance, by schooling and mentoring them in many aspects of procurement, including:
 - (i) procurement planning,
 - (ii) formulating requirements,
 - (iii) writing technical specifications and terms of reference,
 - (iv) transmitting procurement requirements to the procurement agent,
 - (v) receiving deliveries of supplies,
 - (vi) supervising works constructions, either directly or through consulting engineers,
 - (vii) monitoring the provision of services,
 - (viii) maintaining records of assets, and
 - (ix) accounting for procurements.
- (g) The Procurement Agent would run regular procurement workshops to assist Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs in building their procurement knowledge and skills.

- (h) It is felt that using an independent procurement agent to conduct all public sector procurement would be well received by the private sector, which would see this as a far more professional method of acquiring Government supplies, services and works than is experienced through the arrangements presently in place. In discussions the Review Team held with a significant number of major private sector players the latter were unanimous in their assertion that an independent procurement agent would bring substantial benefits to both Government and the private sector alike, particularly in shifting backlogs of unspent donor funds held up by inefficient Government procurement processes and activities.

Disadvantages

- (a) Government might have the perception of losing control over its public sector purchasing. However, this would be an inaccurate perception. The role of the procurement agent is to act as the servant of Government and to hold the interests of Government paramount at all times.

ANNEX G

PROCEDURE FOR APOINTING AN INDEPENDENT THIRD PARTY PROCUREMENT AGENT

Procedure for Appointing an Independent Third Party Procurement Agent

The procedural steps envisaged in the Government of Cook Islands appointing an independent third party procurement agent to conduct all of the Cook Islands public procurement above NZD 3,000 are as follows:

1. Government confirms the decision to appoint an independent third party procurement agent.
2. Prepare Terms of Reference defining the scope of the services to be provided by the procurement agent. These will include, but not be limited to, requirements for the procurement agent to:
 - 2.1 Operate from a base in Rarotonga (or to provide a compelling argument for operating from an alternative location).
 - 2.2 Establish, equip and maintain an office in Rarotonga, led by a Resident Manager with international procurement experience (ideally including warehousing and logistics skills).
 - 2.3 Operate in a true agency role, acting for and on behalf of the Government of Cook Islands (Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs, as appropriate). This will include, but not be limited to, requirements to:
 - 2.3.1 hold the interests of their clients (Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs) paramount,
 - 2.3.2 use appropriate methods of procurement (eg open international tenders, limited or restricted tenders, requests for quotations, requests for proposals, framework or panel contracts, direct orders, etc) depending upon the circumstances of each,
 - 2.3.3 obtain for their clients the best possible prices and terms for their procurement needs, and
 - 2.3.4 specifically, pass on to their clients all discounts obtained for their benefit.
 - 2.4 Arrange shipment of requirements to Cook Islands on the most advantageous terms it is possible to obtain. This may entail the procurement agent appointing a dedicated freight forwarding agent or agents, or possibly taking on this role itself. The procurement agent will be required to review the available options in this regard before putting appropriate arrangements in place.
 - 2.5 Report regularly to Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs on the progress of contracts placed on their behalf for their requirements.
 - 2.6 Account to the Ministry of Finance and Economic Management (and SOEs, as appropriate) on a monthly basis for all:
 - 2.6.1 funding payments received,
 - 2.6.2 payments made to contractors, consultants and suppliers,
 - 2.6.3 procurement fees charged,
 - 2.6.4 balances held in the operational account to be maintained by the procurement agent, and
 - 2.6.5 requests for forward funding.
 - 2.7 Provide such further reports as may be required by the Government of Cook Islands.

3. Prepare an open international tender advertisement and related Invitation to Submit Proposals (ISP).
4. Publish the tender advertisement in appropriate international and national media.
5. Issue ISPs to those firms responding to the tender advertisement.
6. Issue responses to requests for clarifications received from firms in connection with the ISP.
7. Receive proposals in response to the ISPs and maintain these in secure conditions until the deadline for their presentation.
8. Evaluate all proposals, immediately after the deadline for their receipt, and prepare a detailed evaluation report, including recommendation for contract award.
9. Following approval of the evaluation report, issue contract to the successful tenderer.
10. Procurement agent mobilises, establishes its procurement office in the Cook Islands, and undertakes initial introductory discussions with all Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs.
11. Ministry of Finance and Economic Management (and SOEs, as appropriate) remit initial funding of operational account to the procurement agent.
12. Procurement agent commences its procurement work.

Notes:

- (a) Steps 2, 3, 6 and 8 require procurement skills that are not available in the Cook Islands. An international procurement specialist therefore will need to be contracted by Government to carry out this work on its behalf.
- (b) Steps 4, 5, 7 and 9 are also key stages in the procurement process, and thus would benefit from the support of an international procurement specialist .
- (c) It is *recommended* (**Recommendation # 6**) accordingly that an international procurement specialist be contracted to carry out or support as the case may be the steps outlined in Notes (a) and (b) of this Annex G.

ANNEX H

**TERMS OF REFERENCE AND BUDGET
REVISION OF THE PROCUREMENT SECTIONS OF THE COOK ISLANDS GOVERNMENT
FINANCIAL POLICIES & PROCEDURES MANUAL (CIGFPPM), AND PROVISION OF INITIAL
TRAINING IN THEIR USE**

Terms of Reference
Revision of the Procurement Sections of the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM), and Provision of Initial Training in their Use

1. **Requesting Government:** Government of the Cook Islands
2. **Project Title:** Revision of the Procurement Sections of the Cook Islands Government Financial Policies & Procedures Manual (CIGFPPM), and Provision of Initial Training in their Use
3. **Background:**
 - 3.1 The Government of the Cook Islands has embarked upon a program to improve the present public procurement system. A range of measures is in hand, including a process to appoint an independent third party procurement agent to conduct all procurements above NZD 3,000 on behalf of Ministries, Departments, Island Administrations, Crown Funded Agencies and State Owned Enterprises (SOEs). Other components of the procurement system are also under review, with a view to achieving further improvements.
 - 3.2 It is clear that sound public procurement policies, procedures and practices are essential for good governance and ensuring value for public funds. It also is important to ensure that procurement staff are properly skilled and experienced, and that they have the required tools to provide efficient and diligent procurement services to the Government of the Cook Islands.
 - 3.3 Accordingly, Government requires a consultant International Procurement Specialist to undertake a detailed revision of the procurement sections of the CIGFPPM, and the training of Ministerial, Departmental, Island Administrations, Crown Funded Agencies and SOE staff in all matters related to them.
4. **Objective:**
 - 4.1 Review the procurement sections of the CIGFPPM in the light of the May 2012 report "Review of Government of the Cook Islands Procurement System" and revise these CIGFPPM sections into updated and improved versions, including all necessary template forms.
 - 4.2 Train Ministerial, Departmental, Island Administrations, Crown Funded Agencies and SOE staff in all matters of procurement related to use of the revised procurement sections of the CIGFPPM (please also see Footnote 3 to Section 7.2 hereunder).
5. **Activities:**
 - 5.1 Prior to commencing drafting of the manual, the consultant International Procurement Specialist will have preparatory discussions with relevant stakeholders. These will include:
 - 5.1.1 Secretary for Finance
 - 5.1.2 A representative range of ministries including Infrastructure & Planning, Health and Education
 - 5.1.3 A representative range of Ministers, as necessary
 - 5.1.4 Other bodies, such as the Prime Minister's Office, the Cook Islands Investment Corporation, the Cook Islands Tourism Corporation and the Crown Law Office
 - 5.1.5 A representative range of SOEs including the Airport Authority, Ports Authority and Te Aponga Uira
 - 5.1.6 Donors, including NZAid

5.2 Prepare the revised sections of the CIGFPPM. In this regard:

5.2.1 While sub-standard, the existing purchasing arrangements of ministries and SOEs at least have the virtue of relative simplicity and speed. In ensuring that the essential elements of the public procurement process are fully covered, the revised procurement sections of the CIGFPPM must ensure that they:

- (a) do not overcomplicate the subject, including in the template forms,
- (b) do not introduce unnecessary bureaucracy, but
- (c) do ensure that, compatible with the aims described in Sections 5.2.1 (a) and (b) above, they achieve optimum conciseness, simplicity and clarity.

5.2.2 The revised procurement sections of the CIGFPPM must include, but not necessarily be limited to, the following areas of procurement activity:

- (a) guidance on how to draft technical specifications and terms of reference,
- (b) guidance on how to requisition requirements of goods, works and services through the procurement agent,
- (c) all necessary template forms to enable ministries and SOEs to requisition requirements through the procurement agent,
- (d) guidance for Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs on how to carry out their own procurements below the NZD 3,000 threshold,
- (e) all necessary template forms (eg RFQs, RFPs, simple contracts/purchase orders, conditions governing RFQs and RFPs, contract/purchase order conditions, evaluation reports, etc) for procurements to be conducted by ministries and SOEs under the NZD 3,000 threshold,
- (f) guidance on how to monitor and progress contracts during their lives,
- (g) guidance on how to supervise works constructions,
- (h) guidance on maintaining assets registers, and
- (i) guidance on accounting for receipts and disposals of goods and works.

5.3 Train staff from Ministries, Departments, Island Administrations, Crown Funded Agencies and SOEs in all matters related to the revised procurement sections of the CIGFPPM (please see Footnote 3 to Section 7.2 below).

6. Documentation:

6.1 The Government will make available to the consultant International Procurement Specialist the following relevant documents:

6.1.1 Ministry of Finance and Economic Management Act 1995-96

6.1.2 Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM)

6.1.3 Report – Review of Government of the Cook Islands Procurement System (May 2012)

7. Outputs:

7.1 Revised procurement sections of the CIGFPPM, including template forms.

7.2 Ministerial, Departmental, Island Administrations, Crown Funded Agencies and SOE staff trained³ (target – not less than two staff members from each Ministry,, Department, Island Administration, Crown Funded Agency and SOE) in how to:

7.2.1 use the revised procurement sections of the CIGFPPM,

7.2.2 requisition their requirements through the procurement agent, and

7.2.3 carry out their own procurements below NZD 3,000.

8. Time frame:

Six working weeks.

³ Before the training can commence, the revised procurement sections of the CIGFPPM need to be approved and issued as Ministerial instructions under Section 63 of the MFEM Act. There likely will be a hiatus between the consultant International Procurement Specialist presenting the CIGFPPM draft revisions to MFEM and these being approved and issued as Ministerial instructions. This potentially calls into question the implication in the budget at Annex H.2 that training of staff will follow immediately after presentation of the CIGFPPM draft revisions to MFEM. In practice this should not become a problem, since the report *recommends* that the International Procurement Specialist appointed to undertake the CIGFPPM revisions should also assist Government in managing the tender process to appoint the third party independent procurement agent. Training therefore could follow the conclusion of the evaluation of the procurement agent proposals, with the resulting overall programme of the International Procurement Specialist being:

Month 1: Prepare and issue procurement agent tender.

Months 2 & 3: Procurement agent tender period, including responding to clarification requests received from prospective tenderers, and revision of the procurement sections of the CIGFPPM.

Month 4: Evaluation of the procurement agency proposals and issue of subsequent contract.

1st half of Month 5: Training based on the promulgated revisions to the procurement sections of the CIGFPPM.

Budget

Revision of the Procurement Sections of the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM), and Provision of Initial Training in their Use

International Procurement Specialist

<i>1. Fees</i>			
1.1 Revision of CIGFPPM Procurement Sections, including discussions with stakeholders	40 days @	NZD 1,500 per day =	NZD 60,000 ⁴
1.2 Initial training of Ministerial, SOE, etc staff in new procurement arrangements	10 days @	NZD 1,500 per day =	NZD 15,000 ⁵
<i>2. Reimbursable Expenses</i>			
2.1 Return airfare to Rarotonga			NZD 22,000 ⁶
2.2 Accommodation on Rarotonga	70 nights @	NZD 417 per night =	NZD 29,190 ⁷
2.3 Meals and incidental travel expenses on Rarotonga	70 days @	NZD 190 per night =	NZD 13,300 ⁸
2.4 Car hire costs on Rarotonga	70 days @	NZD 50 per day =	NZD 3,500
2.5 Contingency (eg for printing, communications, local travel costs, etc)			<u>NZD 7,010</u>
		Total	<u>NZD 150,000</u>

⁴ For indicative costing purposes only, fees are based on a 5 day working week using the AusAID Adviser Remuneration Framework plus consulting firm overheads. If an individual International Procurement Specialist is appointed directly the overheads will be saved and the total fee cost will reduce by up to approximately 25%.

⁵ For indicative costing purposes only, fees are based on a 5 day working week using the AusAID Adviser Remuneration Framework plus consulting firm overheads. If an individual International Procurement Specialist is appointed directly the overheads will be saved and the total fee cost will reduce by up to approximately 25%.

⁶ This figure assumes that the International Procurement Specialist will originate in Europe. If s/he travels from a nearer location the airfare cost will reduce accordingly.

⁷ For indicative costing purposes only, accommodation costs are based on AusAID's Short Term Reimbursable Travel Rates for Contractors, effective 14 September 2010.

⁸ For indicative costing purposes only, meals and incidental travel expenses are based on AusAID's Short Term Reimbursable Travel Rates for Contractors, effective 14 September 2010.

ANNEX I

DOCUMENTS CONSULTED DURING THE REVIEW

Documents Consulted During The Review

Cook Islands Audit Office – 1st Quarter Report of the Audit Office (1 July 2011 to 30 September 2011)

Cook Islands Government Financial Policies and Procedures (5 December 2002)

- Part B, Section 1 – Capital Expenditure
- Part B, Section 14 – Unallocated Capital Funding
- Part D, Section 2 – Purchase and Sale of Goods and Services
- Part D, Section 3 – Public Tendering
- Part D, Section 3A – Public Tendering – Sale of Assets
- Part D, Section 3 B – Public Tendering – Closed Tender

Cook Islands Government Public Financial Management Roadmap 2011-12 to 2014-15

Cook Islands Investment Corporation – Tender Document - TSA Wastewater Management System C31/12

Cook Islands Public Financial Management Performance Report and Performance Indicators – Revised Draft Report (August 2011)

Cook Islands Technical Assistance Facility (CITAF) Application Guidelines

Development Partnership Agreement between New Zealand Government and Australian Government and Cook Islands Government for Cook Islands Outer Islands Development Infrastructure Construction and Upgrade 2005-2008

Documents for Tender Supply and Delivery of a Three Tonner Forklift including Rotator for the Ministry of Infrastructure and Planning - Contract C18/11

- Tender and Tender Evaluation Reports (June 2011)
- Chief Executive Officer, Ministry of Infrastructure and Planning letter to Chairman, Tender Committee (Monday 14th February 2012)
- Tender Committee Secretariat letter 383/1112 to Financial Secretary and Deputy Solicitor General
- E-mail exchanges Deputy Solicitor General/Tender Committee Secretariat/Financial Secretary – Tender Committee Chairman (February 22, 2012 to Friday, March 09, 2012)
- Financial Secretary – Tender Committee Chairman letter 384-1112 to Acting Secretary, Ministry of Infrastructure and Planning (9 March, 2012)

Documents for Tender WMI Programme – Rarotonga Landfill Baler and Sorting Table Equipment Tender – CW002/2012

- Tender Evaluation Guidelines and Term of Reference
- Tender Evaluation Report

Documents for Tender WMI Waste Systems Upgrade Installation Tender No. C01/2012

- Tender Evaluation Report

Documents for Tender WMI Programme – Options Assessment for High Level Sanitation 'Design' Solutions – Rarotonga and Aitutaki CW001/2012

- Tender Evaluation Guidelines and Terms of Reference
- Tender Evaluation Report - February 2012 (01/03/2012)
- Acting Secretary, Ministry of Infrastructure and Planning letter to Chairman, Cook Islands Government Tender Committee (Thursday 01st March 2012)
- Tender Committee Secretariat letter 379/1112 to Financial Secretary and Deputy Solicitor General (05 March 2012)
- Financial Secretary letter 380-1112 to Acting Secretary, Ministry of Infrastructure and Planning (05 March, 2012)

Facilitating an NIE Capacity Assessment for Cook Islands – Initial Report (18 April 2012, draft version)

Ministry of Education 2011 School Stationery and Consumables Tender – Tender Document

Ministry of Education Stationery and Consumables 2012 – Package of Documents including Tender Document - MFEM - Reference T002-12

Ministry of Finance and Economic Management Act 1995-96

Ministry of Finance and Economic Management Documentation

- Approved Tender Log 2011-12
- Approved Waiver Log 2011-12
- Capital Funds Committee Process Documentation
- Capital Initiatives Budget 2012-15
- Tender Award Notification – Website Post
- Tender Filing
- Tender Log 2011-12
- Tender Process Documentation
- Tender Waiver Log 2011-12
- Terms of Reference for the Capital Funds Committee
- Terms of Reference for the Tender Review Committee

Ministry of Health Budget Summary 2001-12

Ministry of Health Call for Quotation for Imaging Equipment

Ministry of Health, Director of Funding and Planning e-mail – Budget for Drugs (Wed 02/05/2012)

Ministry of Health Procurement Documents

- Boucher and Muir Pty Ltd Quotation for Vaccine Refrigerators (7th September 2011)
- Vaccine Fridges Quotation Comparison Sheet
- Scales Quotation Comparison Sheets

Ministry of Health Standardised Procurement List (2010.07):

- Narcotics and Psychotropics
- Essential Medicines
- Wound Dressings
- Vaccines
- Contraceptives
- Recommended medicines for National EMLs
- IV Fluids, IV administration and Sutures
- Suppliers

Ministry of Infrastructure and Planning – Arorangi Jetty Contract No CIPA-2 – Package of Documents held by MFEM – Reference No T005-12

Ministry of Infrastructure and Planning – Sample Tender Document for Supply Contract

National Investment Program FY 2011/2012 to 2017/2018

Ports Authority in Conjunction with Ministry of Infrastructure and Planning – Cruise Liners Landing Platform and Jetty Arorangi Passage, Rarotonga, Cook Islands Tender Documents – Contract No. CIPA-2

The Cook Islands Renewable Energy Chart Implementation Plan February 2012