

REGULATION NO. 2000/10
ON PUBLIC PROCUREMENT FOR CIVIL ADMINISTRATION IN
EAST TIMOR

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council resolution 1272 (1999) of 25 October 1999,

Taking into account United Nations Transitional Administration in East Timor (UNTAET) Regulation 1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor,

Taking into account the Model Law on Procurement of Goods, Construction and Services, formulated by the United Nations Commission on International Trade Law and recommended by the General Assembly,

After consultation in the National Consultative Council,

Promulgates the following:

Section 1

Object of Regulation

1.1 The object of the present Regulation is to regulate procurement of goods, works and services in East Timor so as to promote the objectives of:

- (a) maximizing economy and efficiency in procurement, and obtaining best value for public expenditures;
- (b) facilitating the urgent reconstruction and economic development of East Timor;
- (c) promoting competition and fostering participation in procurement processes by qualified suppliers, contractors and consultants;
- (d) providing for the fair and equitable treatment of all bidders;

- (e) promoting the integrity of, and fairness and public confidence in, the procurement process; and
- (f) achieving transparency in the procedures relating to procurement.

Section 2

Scope of Application

2.1 The present Regulation applies to all procurement conducted from 1 July 2000 by UNTAET using funds from the East Timor Consolidated Budget or any other funds applied for the purposes of the civil administration of East Timor.

2.2 To the extent that the present Regulation conflicts with the procurement rules of a donor or funding agency with which UNTAET has agreed to comply, the requirements of those rules shall prevail.

2.3 Procurement conducted by UNTAET before 1 July 2000 using funds from the Trust Fund for the United Nations Transitional Administration in East Timor shall be conducted in accordance with the United Nations Procurement Manual Version 01 dated 31 March 1998 and the United Nations Financial Rule 110.16-24.

Section 3

Form of Communications

3.1 Subject to other provisions of the present Regulation, documents, notifications, decisions and other communications referred to in the present Regulation shall be in writing.

3.2 Subject to other provisions of the present Regulation and any other UNTAET regulation, documents, notifications, decisions and other communications referred to in the present Regulation shall be provided in English or Portuguese, or both. Translations in Bahasa Indonesian and Tetun shall be made available as required. In the case of divergence, the English text shall prevail.

Section 4

Currency of payments

The US Dollar shall be the currency for any payments required by the present Regulation.

Section 5

Methods of Procurement

5.1 The procuring entity shall procure goods, works or services by open tendering, subject to the exceptions provided in this Section.

5.2 The procuring entity may procure goods, works or services by restricted tendering:

- (a) when the goods, works or services are only available from a limited number of bidders, all of whom are known to the procuring entity;
- (b) when the time and cost of considering a large number of bids is disproportionate to the value of the procurement; or
- (c) for commodities.

5.3 The procuring entity may procure goods, works or services by two-stage tendering when:

- (a) it is not feasible to define completely the technical or contractual specifications of the procurement; or
- (b) the procuring entity wishes to consider various technical or contractual options and to negotiate with bidders about these options before deciding on the final technical or contractual specifications.

5.4 The procuring entity may conduct procurement by a request for quotations for:

- (a) readily available commercially standard goods not specially manufactured to the particular specifications of the procuring entity, provided that the estimated value of the procurement does not exceed US\$ 200,000;
- (b) small works, provided that the estimated value of the procurement does not exceed US\$ 350,000; or
- (c) routine services, provided that the estimated value of the procurement does not exceed US\$ 75,000.

5.5 The procuring entity may procure goods, works or services from a single source when:

- (a) the procurement does not exceed US\$ 10,000 for goods, US\$ 15,000 for works or US\$ 6,000 for services;
- (b) only one bidder has the technical capability to fulfil the procurement contract;
- (c) only one bidder has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured;
- (d) there is an emergency need for the goods, works or services and engaging in an open tender or another procurement method would therefore be impractical;
- (e) the purchase is of fresh fruit, vegetables or other similar perishable items on market terms; or
- (f) the procuring entity, having procured goods, works or services from a bidder, determines that additional goods, works or services must be procured from that same bidder for reasons of standardization or because of the need for compatibility with existing goods, works or services.

5.6 The procuring entity may procure intellectual services, including consultancy services, by a request for proposals.

5.7 The procuring entity may procure goods, works or services by any of the procurement methods set out in Sections 5.1-5.6 of the present Regulation on a national basis. The procuring entity shall request quotations nationally when the desired goods, works or services are ordinarily available from more than one source in East Timor at competitive prices.

5.8 The procuring entity shall procure goods, works or services by international tender when:

- (a) the estimated value of the procurement exceeds US\$ 1,000,000;
- (b) the goods, work or services are not available from suppliers in East Timor;
- (c) a national tender did not reveal a suitable bidder.

5.9 When the conducting of an international tender is not required, foreign bidders may nevertheless participate in the tendering process in accordance with the present Regulation.

5.10 If the procuring entity uses a method of procurement other than open tendering or, in the case of procurement of intellectual services, a method other than request for proposals, it shall note in the record of the procurement process the grounds for the choice of the procurement method.

Section 6

Monetary thresholds applicable to procurement

The procuring entity shall not artificially divide the procurement of goods, works or services with the intention of avoiding monetary thresholds set out in the present Regulation.

Section 7

Procurement procedures

Sections 8-20 of the present Regulation establish the general procedures for procurement. The procedures set out in Sections 8-20 of the present Regulation apply to all methods of procurement, except to the extent that Sections 21-25 of the present Regulation, as they apply to particular methods of procurement, modify these procedures. In the event of any inconsistency, the procedures in Sections 21-25 of the present Regulation shall prevail.

Section 8

Content of invitations

The invitation to bid or to qualify to bid shall contain:

- (a) the identity and address of the procuring entity;
- (b) the nature and time-frame of the procurement, including the place of delivery of goods or services, and the location of any works;
- (c) the manner of obtaining, and the price of, the bidding documents, or, if applicable, the pre-qualification documents;
- (d) the place and deadline for submission of bids or, if applicable, documents establishing the qualifications of a bidder; and
- (e) such other matters as may be prescribed in an UNTAET directive.

Section 9

Publication of invitations

9.1 The procuring entity shall publish the invitation to bid or the invitation to qualify to bid in the Official Gazette of East Timor (hereinafter: Official Gazette). In the case of an international tender, the procuring entity shall also publish the invitation in Development Business.

9.2 The publication requirements set out in Section 9.1 of the present Regulation are minimum requirements. They do not prevent the procuring entity from further publication and wider dissemination of invitations.

Section 10

Procedures for ascertaining qualifications

10.1 The procuring entity shall ascertain the qualifications of bidders.

10.2 In the case of procurement of a particularly high value or complexity, the procuring entity may undertake a pre-qualification procedure to identify, prior to the submission of bids, bidders that are qualified.

10.3 If a pre-qualification procedure is not conducted, the procuring entity shall conduct a post-qualification procedure to ascertain the qualifications of the successful bidder. A post-qualification procedure shall be undertaken before a procurement contract is awarded.

Section 11

Qualification requirements

11.1 Bidders must demonstrate that they:

- (a) possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability and the personnel to perform the procurement contract;
- (b) have the legal capacity to enter into the procurement contract;
- (c) are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;

(d) have not, and their directors and officers have not, been convicted of any criminal offence related to their professional conduct or the making of false statements as to their qualifications to enter into a procurement contract within a period of three (3) years preceding the date of the publication of the invitation to bid or the invitation to qualify to bid, as the case may be; and

(a) meet such other criteria as may be prescribed in an UNTAET directive.

11.2 The requirements for qualification set out in Section 11.1 of the present Regulation shall apply equally to all bidders without discrimination.

Section 12

Pre-qualification documents

12.1 The pre-qualification documents shall contain:

(a) the identity and address of the procuring entity;

(b) the requirements for qualification set out in Section 11.1 of the present Regulation;

(c) the specifications of the technical or quality characteristics of the goods, works or services to be procured and any requirements concerning testing and test methods, packaging, marking, labelling or conformity certification (hereinafter: technical specifications);

(d) the place and deadline for submission of an application to pre-qualify; and

(e) such other matters as may be prescribed in an UNTAET directive.

12.3 The procuring entity shall respond promptly to any request by a bidder for clarification of the pre-qualification documents, provided that any such request is made within a reasonable time prior to the deadline for the submission of applications to pre-qualify.

12.4 The pre-qualification documents shall not contain any technical specifications that create obstacles to participation by bidders in the procurement process or that unnecessarily limit competition.

12.5 To the extent possible, any technical specifications in the pre-qualification documents shall be based on relevant objective

characteristics. The procuring entity shall not make a reference in the pre-qualification documents to a particular identifying characteristic of a good, work or service, including a name, trade mark, patent or design, unless:

- (a) there is no other precise or intelligible way of describing that characteristic; and
- (b) words such as "or equivalent" are included in the technical specifications.

Section 13

Assessment of qualifications

13.1 The procuring entity shall disqualify a bidder from being awarded a contract, from bidding or from pre-qualifying to bid, as the case may be, if, at any time, it finds that information submitted on the qualifications of that bidder is false, materially inaccurate or materially incomplete.

13.2 The procuring entity shall not disqualify a bidder on the ground that information submitted on the qualifications of that bidder is inaccurate or incomplete in a non-material respect. The procuring entity shall give the bidder a reasonable opportunity to correct non-material inaccuracies or omissions. The procuring entity may disqualify a bidder if it fails to remedy such deficiencies promptly upon the request of the procuring entity.

13.3 The procuring entity may require a bidder that has been pre-qualified to demonstrate again its qualifications in accordance with the same criteria used to pre-qualify that bidder. The procuring entity shall disqualify any bidder that fails to demonstrate again its qualifications if requested to do so.

13.4 The procuring entity shall promptly make available to each bidder:

- (a) the results of the assessment of qualifications and grounds for rejection of qualifications; and
- (b) responses to requests by bidders for clarification of qualification requirements or documents, without identifying the sources of the requests.

13.5 In respect of Section 13.4(a) of the present Regulation, the procuring entity is not required to specify the evidence or give the reasons for its finding that the grounds for rejection of qualifications is present.

Section 14

Bidding documents

14.1 The procuring entity shall provide the bidding documents to all bidders that respond to the invitation to bid, or where a pre-qualification procedure has been conducted, to all bidders that have been pre-qualified.

14.2 The procuring entity shall only charge a price for the bidding documents that reflects the costs of printing and distributing the bidding documents.

14.3 Whether or not a bidder has received any of the following information in pre-qualification documents, the bidding documents shall contain:

- (a) the identity and address of the procuring entity;
- (b) the requirements for qualification set out in Section 11.1 of the present Regulation;
- (c) instructions for the preparation and submission of bids, including the deadline for submission of bids, the time and place of bid opening and the bid validity period;
- (d) the nature and time-frame of the procurement, including the place of delivery of goods or services, and the location of any works;
- (e) contractual specifications, including the terms of the procurement contract, the language that is to govern the procurement contract and the manner of entry into force of the procurement contract;
- (f) technical specifications, the permissible range of deviations from technical specifications, and the manner of quantification of deviations in the evaluation process;
- (g) the criteria to be used in evaluating proposals, and their relative weight as compared to price;
- (h) whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;
- (i) the components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;

- (j) the amount and acceptable forms of any required bid security, performance security or other security;
- (k) information as to site visits and pre-bid conferences;
- (l) whether a margin of preference in favour of domestic bidders will be applied;
- (m) conflict of interest restrictions and corruption rules;
- (n) the manner in which bidders may obtain review of actions, omissions and decisions of the procuring entity; and
- (o) such other matters as may be prescribed in an UNTAET directive.

14.4 The requirements of Sections 12.4 and 12.5 of the present Regulation apply to the formulation of technical specifications in the bidding documents.

14.5 The procuring entity shall respond promptly to any request by a bidder for clarification of the bidding documents, provided that any such request is made within a reasonable time prior to the deadline for the submission of bids. The procuring entity shall circulate responses to such requests to all participating bidders, without identifying the sources of the requests.

14.6 The procuring entity shall provide bidders with reasonable access to project sites. If a pre-bid conference is held, the procuring entity shall prepare and circulate minutes of the conference to all bidders.

Section 15

Submission of bids

15.1 A bid shall be submitted in writing, signed and in a sealed envelope. The procuring entity shall, upon request, provide to a bidder a receipt showing the date and time when its bid was received.

15.2 The procuring entity shall set a deadline for submission of bids, taking into account the nature of the procurement and the time required for the preparation of bids.

15.3 In the case of an international tender, the procuring entity shall not set a deadline less than six (6) weeks from the date of the availability of the bidding documents, subject to the procuring entity certifying that a reduction of the deadline by two (2) weeks is necessary in the public

interest. The procuring entity shall note in the record of the procurement process the specific circumstances justifying the reduction of the deadline.

15.4 Where procurement is conducted on a national basis, the procuring entity shall not set a deadline less than four (4) weeks from the date of the availability of the bidding documents, subject to the procuring entity certifying that a reduction of the deadline by one (1) week is necessary in the public interest. The procuring entity shall note in the record of the procurement process the special circumstances justifying the reduction of the deadline.

15.5 If the procuring entity modifies the bidding documents, or if a pre-bid conference is held, the procuring entity shall extend the deadline if necessary to afford bidders reasonable time to take the modification, or the minutes of the conference, into account in preparing bids.

15.6 The procuring entity may extend the bid validity period beyond the period stipulated in the bidding documents.

Section 16

Bid security

16.1 Any requirement for a bid security shall be applied to all bidders.

16.2 The procuring entity shall only impose a forfeiture of a bid security in the event of:

- (a) a modification or withdrawal of a bid following the deadline for submission of bids;
- (b) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
- (c) failure by the successful bidder to sign a procurement contract in accordance with the terms set forth in the bidding documents; or
- (d) failure by the successful bidder to provide a security for the performance of the procurement contract if required to do so by the bidding documents.

Section 17

Bid Opening

17.1 The procuring entity shall open bids at the time and place indicated in the bidding documents. The time of bid opening shall coincide with the deadline for submission of bids.

17.2 The procuring entity shall read out and record the names and addresses of the bidders and the bid prices at the bid opening.

17.3 Bidders or their representatives may attend the bid opening. The record of the bid opening shall be made available to bidders upon request, and shall be entered into the record of the procurement process.

17.4 The procuring entity shall return bids received after the deadline for submission of bids unopened.

Section 18

Evaluation of bids

18.1 The procuring entity shall evaluate bids in accordance with the criteria, and the relative weight of the criteria, contained in the bidding documents.

18.2 The procuring entity shall correct arithmetical errors appearing on the face of the bid and may seek clarification from bidders about their bids. The procuring entity may not solicit, negotiate or accept changes in the substance or prices of bids.

18.3 The procuring entity shall reject bids that contain material deviations from the requirements set forth in the bidding documents. The procuring entity shall evaluate bids that contain non-material deviations, with the deviations being quantified in the manner indicated in the bidding documents.

18.4 The procuring entity may, in the evaluation of bids, apply a margin of preference in favour of domestic bidders. The margin of preference may be applied only in the manner provided for in the bidding documents.

Section 19

Rejection of all bids

19.1 The procuring entity may reject all bids at any time prior to the acceptance of a bid.

19.2 The procuring entity shall promptly give notice of the rejection of all bids to all bidders. The procuring entity shall, upon request,

communicate to any bidder the grounds for its rejection of all bids. The procuring entity is not required to justify those grounds.

Section 20

Successful bid

The successful bid shall be the bid with the lowest price, subject to any margin of preference and non-price criteria provided in the bidding documents.

Section 21

Restricted Tendering

21.1 When restricted tendering is employed on the grounds referred to in Section 5.2(a) of the present Regulation, the procuring entity shall solicit all bidders capable of supplying the goods, works or services.

21.2 When restricted tendering is employed on the grounds referred to in Section 5.2(b) of the present Regulation, the procuring entity shall solicit bids from a minimum number of five (5) bidders.

21.3 When restricted tendering is employed on the grounds referred to in Section 5.2(c) of the present Regulation, the procuring entity shall solicit bids from a minimum number of five (5) pre-qualified bidders.

21.4 The bidding documents may permit faxed bids if there is no requirement for a bid security or if standing bid securities valid over a specified period of time have been provided by pre-qualified bidders.

21.5 The procuring entity shall publish a notification of the holding of a restricted tendering procedure in the Official Gazette.

Section 22

Two-stage tendering

22.1 In the first stage of the two-stage tendering process, the procuring entity shall solicit bids relating to technical and contractual specifications and the qualifications of the bidders, without a bid price.

22.2 In the first stage of the two-stage tendering process, the procuring entity may engage in negotiations with any bidder whose bid has not been rejected in accordance with the present Regulation.

22.3 In the second stage of the two-stage tendering process, the procuring entity shall invite bidders whose bids have not been rejected to submit final bids on a single set of specifications and with a bid price. The specifications and the criteria for evaluating bids may vary from those set forth in the original bidding documents, provided any deletions, additions or modifications conform with the present Regulation.

22.4 The procuring entity shall communicate any deletions, additions or modifications to bidders in the invitation to submit final bids. A bidder not wishing to submit a final bid may withdraw from the restricted tender process without forfeiting any bid security that the bidder may have been required to provide.

Section 23

Requests for quotations

23.1 The procuring entity shall request quotations from at least three (3) bidders.

23.2 Each bidder is permitted one (1) quotation, which may not be altered or negotiated.

23.3 Quotations may be submitted by facsimile.

23.4 The successful bidder shall be the bidder that provided the lowest-priced quotation meeting the delivery and other requirements of the procuring entity.

Section 24

Single-source procurement

24.1 When the procuring entity conducts single-source procurement on the grounds referred to in Section 5.5(b)- (e) of the present Regulation, it shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery.

24.2 The procuring entity shall be free to negotiate with the sole bidder.

24.3 The procuring entity shall embody in a written contract or purchase order any procurement of goods, works or services that exceeds US \$500.

24.4 The procuring entity shall publish a notification of the holding of a single-source procurement process in the Official Gazette when the estimated value of the procurement exceeds US\$ 20,000.

Section 25

Request for proposals for services

25.1 The procuring entity shall provide the request for proposals for services to a short list of at least three (3), but not more than six (6), bidders.

25.2 In addition to the information required to be provided in bidding documents pursuant to Section 14.3 of the present Regulation, the request for proposal for services shall contain:

- (a) the terms of reference for performance of the services; and
- (b) the final selection criteria to be applied

25.3 The procuring entity shall communicate any modification or clarification of the request for proposals to all bidders participating in the procurement process.

25.4 The procuring entity shall only consider the price of a proposal after completion of the technical evaluation.

25.2 The procuring entity may engage in negotiations with bidders with respect to their proposals and may seek or permit revisions of such proposals.

25.3 Any award by the procuring entity shall be made to the bidder whose proposal best meets the needs of the procuring entity as determined in accordance with the criteria for evaluating the proposals and final selection procedures set forth in the request for proposals.

25.4 The successful bidder shall not be permitted to substitute key staff, unless the procuring entity and the successful bidder agree that undue delay in the selection process makes such changes unavoidable or that such changes are critical to meet the objectives of the procurement. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

Section 26

Language and terminology

26.1 The procuring entity may enter into a procurement contract with a national bidder, excluding joint ventures between national and foreign

bidders, that is written in Tetun. Tetun shall be the governing language for such contracts.

26.2 The procuring entity shall have regard to the use of standardized forms of contract and trade terms, where available, in formulating the terms and conditions of the procurement contract.

Section 27

Prohibition on offering or soliciting of inducement

No person or entity shall solicit on behalf of, or offer directly or indirectly to, any current or former employee of the procuring entity or any other public authority an inducement with respect to an act or decision of, or procedure followed by, the procuring entity in connection with the procurement process. That inducement may be in any form, and may include a gratuity, an offer of employment or an offer of any other thing of service or value.

Section 28

Obligations of the procuring entity in respect of inducements offered or solicited

28.1 The procuring entity shall reject a bid if the bidder offers, gives or agrees to give an inducement of a kind referred to in Section 27 of the present Regulation.

28.2 The procuring entity should record the rejection of a bid and the reasons for the rejection in the record of the procurement proceedings.

28.3 The procuring entity shall promptly inform the bidder of the rejection of the bid.

Section 29

Conflict of interest

29.1 Employees of UNTAET are not permitted to participate as bidders in the procurement process regulated by the present regulation. The procuring entity shall not award a procurement contract to employees of UNTAET directly or to entities where such persons are employed, or are agents or members of the board of directors.

29.2 A person cannot represent a procuring entity or carry out other responsibilities related to a procurement process, or be a consultant to a procurement process, if he or she

(a) is related by birth by two degrees of consanguinity, marriage or business relationship with a bidder participating in the procurement process, with its legal counsel or with its officers; or

(b) during the last three (3) years, the person has been employee or officer of a bidder participating in the procurement process, or has held a financial interest in a bidder.

29.3 The procuring entity shall not award a procurement contract to a bidder associated as a parent company or branch with a consultant who is responsible for preparing documents associated with the procurement process or for supervising the execution of a procurement contract. This Section does not apply to suppliers, contractors or consultants who together are performing the supplier's obligations under a turnkey or design and build contract.

28.4 The procuring entity shall not assign to the same employee of UNTAET the function of requisitioning goods, works or services and the function of conducting the procurement process.

Section 30

Public notice of procurement contract awards

The procuring entity shall promptly publish in the Official Gazette notice of all procurement contract awards when the price of the contract exceeds US\$ 5,000. The notice shall indicate the name and address of the successful bidder and the contract price.

Section 31

Confidentiality

Unless otherwise provided by the present Regulation or any other UNTAET regulation, the procuring entity shall keep confidential the information supplied to it by bidders.

Section 32

Record of the procurement process

32.1 The procuring entity shall maintain a record and preserve documentation of the procurement process.

32.2 In addition to those matters specified elsewhere in the present Regulation, the record shall, to the extent applicable, include:

- (a) a description of the object of the procurement;
- (b) a list of the participating bidders and their qualifications;
- (c) bid price;
- (d) a summary of the evaluation of bids;
- (e) a summary of any review proceedings and decisions thereon;
- (f) requests for clarifications, and responses thereto; a statement of grounds for cancellation of the procurement process;
- (g) a statement of grounds for cancellation of the procurement process; a statement of the grounds for the choice of a procurement method other than open tendering or a request for proposals for services;
- (h) a statement of the grounds for the choice of a procurement method other than open tendering or a request for proposals for services;
- (i) a statement of the grounds for reduction of bid-preparation periods;
- (j) information concerning rejection of bids pursuant to Section 28 of the present Regulation; and
- (k) such other matters as may be prescribed in an UNTAET directive.

32.3 The procuring entity shall, on request, make the record available to any person after a bid has been accepted, unless the procuring entity is required to disclose all or any portion of the record at an earlier time pursuant to any regulation, or by order of a competent court.

32.4 The procuring entity shall prepare the record in a manner that avoids disclosure of proprietary commercial information.

Section 33

Transitional Procurement Unit

33.1 The East Timor Transitional Procurement Unit (hereinafter: Procurement Unit) is hereby established to conduct the procurement process for UNTAET.

33.2 The operation of the Procurement Unit shall be prescribed in an UNTAET directive.

33.3 The Procurement Unit may obtain assistance by hiring qualified third-party procurement agents in accordance with the procedures set forth in the directive referred to in Section 33.2 of the present Regulation.

Section 34

Transitional Procurement Policy Committee

34.1 A Transitional Procurement Policy Committee (hereinafter: Policy Committee) is hereby established to advise the Transitional Administrator on the overall policy on procurement of goods, works and services.

34.2 The Policy Committee shall not be operationally involved in conducting the procurement process.

34.3 The functions of the Policy Committee are to:

- (a) recommend to the Transitional Administrator procurement instructions and manuals for implementing the present Regulation;
- (b) recommend to the Transitional Administrator procedures for appropriate coordination in procurement of goods, works and services in East Timor;
- (c) recommend to the Transitional Administrator steps to be taken to establish policies and practices for procurement planning, contract management, and supply and logistics administration;
- (d) provide advisory interpretations of the present Regulation;
- (e) collect from procuring entities information on procurement in East Timor and monitor generally the observance by procuring entities of the present Regulation;
- (f) arrange training programs for public officials and bidders concerning procurement;
- (g) carry out the review functions assigned to it by Section 39 of the present Regulation.

Section 35

Composition of the Policy Committee

35.1 The Policy Committee shall consist of five (5) members, of which:

(a) two (2) members shall be nominated by the National Consultative Council;

(b) two (2) members shall be selected by the Transitional Administrator; and

(c) a fifth member shall be nominated by the first four members, failing which, the Transitional Administrator shall select the fifth member.

35.2 The Transitional Administrator shall appoint the members of the Policy Committee.

Section 36

Operation of the Policy Committee

The operation of the Policy Committee shall be prescribed in an UNTAET directive.

Section 37

Right to review

37.1 Subject to Section 37.2 of the present Regulation, any bidder that claims to have suffered loss or injury due to a breach of an obligation imposed on the procuring entity by the present regulation may seek review in accordance with Sections 37-42 of the present Regulation.

37.2 The following is not subject to the review provided for in Section 37.1 of the present Regulation:

(a) The selection of a method of procurement pursuant to Section 5 of the present Regulation;

(b) The choice of final selection criteria where procurement is conducted by a request for proposals, in accordance with Section 25.2 of the present Regulation; or

(c) A decision by the procuring entity under Section 19 of the present Regulation to reject all bids.

Section 38

Review by the head of the procuring entity

38.1 Any application for review by a bidder must first be made to the head of the procuring entity.

38.2 The head of the procuring entity shall not entertain an application under Section 38.1 of the present Regulation unless it is submitted within ten (10) business days of when the bidder submitting it became aware of the circumstances giving rise to the matter for review, or should reasonably have become aware of those circumstances, whichever is earlier.

38.3 The head of the procuring entity shall render a decision under this Section within ten (10) business days of the application being put before it under this Section.

38.4 A bidder may appeal a decision made pursuant to Section 38.3 of the present Regulation to the Policy Committee in accordance with Section 39 of the present Regulation.

Section 39

Review by the Policy Committee

39.1 The Policy Committee must entertain an application for review where:

(a) the bidder appeals, in writing, the decision made by the head of the procuring entity under Section 38.3 of the present Regulation, provided that the appeal is submitted within ten (10) business days of the date of the decision; or

(b) the head of the procuring entity fails to render a decision within the required time frame, provided that the application is filed within ten (10) business days of the expiry of the time period for the decision by the head of the procuring entity.

39.2 The Policy Committee shall render a decision under this Section within ten (10) business days of the application being put before it under this Section.

39.3 The Policy Committee may dismiss the application or may:

- (a) annul, in whole or in part, an act or decision of the procuring entity, other than any act or decision bringing the procurement contract into force or any act or decision that affects a procurement contract that has entered into force;
- (b) substitute its own decision for a decision of the procuring entity, other than any decision bringing the procurement contract into force or any decision that affects a procurement contract that has entered into force; or
- (c) refer the act or decision back to the procuring entity for re-consideration.

Section 40

Suspension during review

40.1 The submission of an application in accordance with the time periods set out in Sections 38 or 39 of the present Regulation suspends the procurement process or the performance of the procurement contract, as the case may be, for a period of seven (7) days.

40.2 The head of the procuring entity or of the Policy Committee, as applicable, may extend a suspension provided in Section 40.1 of the present Regulation in order to preserve the rights of the bidder submitting the application, provided that the total period of suspension shall not exceed thirty (30) days.

40.3 The suspension provided by this Section shall not apply if the procuring entity certifies that urgent public interest considerations require the procurement to proceed. The certification shall state the grounds for the finding that such urgent considerations exist. The procuring entity shall make this certification part of the record of the procurement process. The certification is conclusive with respect to all levels of review except judicial review.

Section 41

Record of decisions

Any decision by the procuring entity or by the Policy Committee under Sections 37-40 of the present Regulation and the grounds and circumstances thereof shall be made part of the record of the procurement process.

Section 42

Judicial review

The bidder may challenge in a court of competent jurisdiction a decision of the Policy Committee under Section 39.3 of the present Regulation or a failure of the Policy Committee to make a decision within the time limit set out in Section 39.2 of the present Regulation.

Section 43

Definitions

Wherever used in the present Regulation, the following terms shall have the following meanings:

- (a) "Bidder" means, according to the context, any participant or potential participant in the procurement process;
- (b) "Bidding documents" means the bid solicitation documents or other documents for solicitation of quotations or proposals for service;
- (c) "Goods" means objects of every kind and description including raw materials, products and equipment, and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves;
- (d) "Procurement" means the acquisition by any method of goods, works or services;
- (e) "Procurement contract" means a contract between the procuring entity and a bidder resulting from the procurement process;
- (f) "Procuring entity" means the East Timor Transitional Procurement Unit;
- (g) "Services" means any object of procurement other than goods or works; and
- (h) "Works" means all activities concerning the construction, reconstruction, demolition, repair or renovation of a building or structure or works, as well as services incidental to those activities if the value of those incidental services does not exceed that of the works itself.

Section 44

Entry into Force

The present Regulation shall enter into force on 6 March 2000.

Sergio Vieira de Mello
Transitional Administrator