



**KIRIBATI PUBLIC PROCUREMENT REFORM PROGRAM
(KPPRP)**

CABINET CONCEPT PAPER

APRIL 17, 2017

**MINISTRY OF FINANCE AND ECONOMIC DEVELOPMENT
(MFED)**



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ACRONYMS

\$AUD	Australian Dollar
ADB	Asian Development Bank
AG	Account General
ATG	Attorney General
BAT	Bidder Appeal Tribunal
CEO	Chief Executive Officer (SOE)
CPO	Chief Procurement Officer
CPRB	Central Procurement Review Board
CPU	Central Procurement Unit
CTB	Central Tender Board
DP	Development Partner
FMIS	Financial Management Information System
GoK	Government of Kiribati
KFSU	Kiribati Fiduciary Services Unit
KPI	Key Performance Indicator
KPPRP	Kiribati Public Procurement Reform Program
KPPRP-SC	KPPRP Steering Committee
LC	Leadership Committee
MCIC	Ministry of Commerce, Industry and Co-operatives (MCIC)
MFED	Ministry of Finance and Economic Development
MFED-IA	MFED – Internal Audit
MoP	Method of Procurement
MPRC	Ministry Procurement Review Committee
MSME	Micro, Small and Medium Enterprises (MSMEs).
PE	Procuring Entity
P3	Public Private Partnership
SBDs	Standard Bid Documents
SPP	Sustainable Public Procurement
SOE	State Owned Enterprise
TA	Technical Advisor
TORs	Terms of Reference
UNCITRAL	United Nations Commission on International Trade Law
VfM	Value for Money

1. KPPRP BACKGROUND

Based on 2016 estimates, the Government of Kiribati (GoK) spent approximately \$AUD150 million for the goods, works and services required to support the GoK's operational and capital objectives¹. Approximately 50% of this funding is from GoK's development partners (DPs), and is conducted in accordance with the DPs' processes; the balance is funded in part by DPs and majority by GoK and is governed by the Public Procurement Act 2002. Several internal and external assessments since 2011, the latest being 2016/17, have found the GoK's procurement process under the Act need reform. Areas for improvement are in the categories of legislation, organisation, systems and staff.

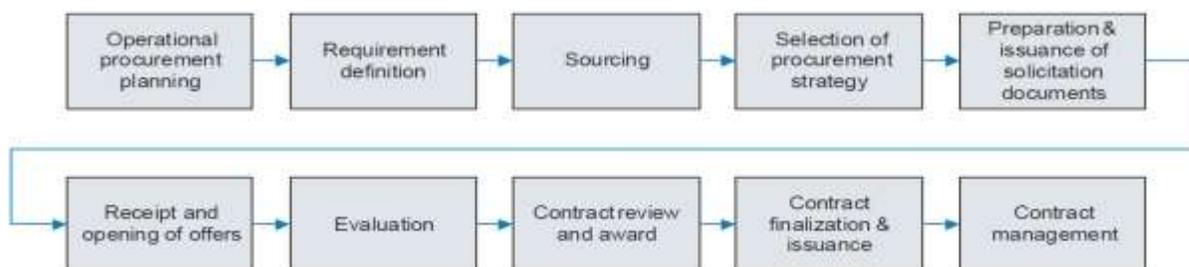
As part of GoK's ongoing public financial management reform program, the Ministry of Finance and Economic Development (MFED), with support from the Asian Development Bank (ADB), has led the drive to address the required improvements in public procurement. This has resulted in the Kiribati Public Procurement Reform Program (KPPRP).

This Cabinet Concept Paper (Paper) seeks Cabinet support to commit to the KPPRP principles for improving GoK's public procurement process (a requirement for the 2016/17 Budget Support). In addition, this Paper outlines 'trigger points' related to KPPRP to be agreed with DPs to release part of their budgetary support contributions for 2017/18.

2. KPPRP SCOPE

2.1 KPPRP Overview: The KPPRP is a five-year program (2017-2021) designed to address procurement deficiencies for all purchases that are subject to the GoK's Procurement Act 2002. Currently this is approx. 50% of total annual purchases (\$AUD75 million based on 2016 estimates). This includes all purchases made by all GoK's ministries and state-owned enterprises (collectively termed 'Procuring Entities' – PEs) funded by GoK, and in part its DPs.

The procurement process is as follows:



¹ It should be noted that, given the limitations of the GoK's accounting systems, this is a high-level estimate.

2.2 KPPRP Design Principles: The KPPRP is based on the proven international best policies and practices, as reflected in the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement 2011. However, given the unique challenges of Kiribati, adjustments will need to be made to this model and policies will have to be developed as noted in this Paper. In addition, the models and reform processes of Kiribati's neighbouring Pacific Island States have been examined, including those of Fiji, Tonga and Tuvalu and should be considered as part of the KPPRP.

2.3 KPPRP Additions: The KPPRP provides focus for PEs to re-examine their non-core activities currently performed by PE staff. Examples are cleaning, security, catering, and others. This could create opportunities for part, or full, outsourcing to the private sector for some functions. If correctly handled this can result in win-win results for both the PEs (cost reductions, improved quality, etc.) and the private sector (building capacity to offer to clients beyond GoK). There are successful examples from the Ministry of Health and Medical Services. In addition, while to date their use has been limited, Public Private Partnerships (P3s) can offer GoK some opportunities in the future and are included in the KPPRP. Given the interrelationship between procurement and inventory management, including surplus/obsolete disposal, the KPPRP includes these functions.

2.4 KPPRP Exclusions: The KPPRP does not address purchases made using DPs' funds and subject to DPs procurement systems. These systems are well proven and as structured provide DPs with assurances required by their policies. Until GoK's procurement process is acceptable to DPs (a long-term goal of the KPPRP) this is likely to continue. However, within MFED is the Kiribati Fiduciary Services Unit (KFSU) that provides dedicated fiduciary support to projects funded by DPs and oversees the purchases (goods, works and services) using the DPs procurement processes. To take advantage of staff synergies and procurement knowledge, the proposal is to position a new Central Procurement Unit (CPU), described later in the Paper, to conduct GoK's procurement within the MFED.

2.5 KPPRP Costs and Benefits: The costs of the KPPRP are to be shared by GoK and the DPs. The highest costs are those related to the long and short term technical advisors (TAs) required during 2017-19 by for MFED to establish the CPU, for the Attorney General (ATG) to draft legislation, and for the Accountant General (AG) to conduct procurement 'value for money' (VfM) audits. In addition, there will be costs for training and study visits for key GoK staff. Discussions are underway with DPs regarding their contributions. All other costs related to the salaries of GoK staff, office space and equipment will be absorbed by GoK.

As the KPPRP develops, results will be seen in improved best value for purchases and staff saving in PEs reflecting the centralisation of the procurement service. In monetary terms, based on experiences in other countries, this could amount to a 10 -15% reduction in total purchase costs together with other improvements in 'best value'. The KPPRP is designed to take early advantage of relatively uncomplicated changes including the purchase consolidated purchases of goods, works and services, now purchased separately by each PE.

3. KPPRP OUTCOME

The KPPRP will deliver all procurement, governed by GoK's procurement legislation, by an efficient, fair, transparent and ethical process that results in 'best value' for the GoK, the people of Kiribati, and other stakeholders. 'Best value' for the purposes of the KPPRP is defined as the optimum combination of price, quality, whole-of-life costs, delivery, and social, economic and environmental considerations. Similarly, inventory management (including stores and disposal) will be conducted in the most efficient and cost-effective manner.

4. KPPRP OUPUTS

The KPPRP will progressively make changes to current legislation, introduce current best practices and reflect the unique demands of Kiribati. Supporting these changes will be a need to make organisational changes and reassignment of roles and consequently develop the capacity of staff and e-Systems to affect the revised processes. Similarly, a wide range of stakeholders, both within and outside of the GoK, will be involved in the KPPRP including the AG, MFED-Internal Audit (MFED-IA), the Kiribati supply community, the PEs and GoK's DPs. GoK's ministries that have policy interrelationships with procurement will be directly involved. This would include the Ministry of Commerce, Industry and Co-operatives (MCIC) responsible for building the capacity of micro, small and medium enterprises (MSMEs). A summary of outputs is provided below. For details of the changes – refer Annexes A, B-1, B-2 and C.

4.1 Procurement Legislation: To accommodate both the changes required under the 2011 UNCITRAL Model Law and those required to reflect GoK's unique requirements, a new procurement bill is planned together with accompanying regulations, standard bid and contract documents, new templates, and a working-level procurement manual. In addition, the 2011 Stores Regulations will be updated. Thus, there will be a full suite of legal and policy documents laying the solid foundation for purchases and inventory management. The key changes are:

- Annual procurement planning, e-Procurement, P3s, full transparency of the procurement process, clear criteria for restricting bidder participation and, Sustainable Public Procurement (SPP) that includes economic, social and environmental considerations
- Establish a CPU for purchases over \$AUD 10,000 (suggested)
- Position Chief Procurement Officer (CPO) role within MFED – CPU
- CPU addresses procurement and inventory management policy and capacity building
- PEs will purchase requirements up to \$AUD 10,000
- One level of contract award authority – Central Tender Board (CTB)
- Bidder Appeals Tribunal (BAT) – an independent body to handle a time-bound process
- Contract management – post award roles and responsibilities defined
- Suppliers with unfair advantage not permitted to bid (e.g. SOEs vs. private sector)
- Outreach, regarding GoK's procurement, to supply community, civil society and media

4.2 Organisational Changes: These reflect the principles of both centralising common activities to build professional capacity and, at the same time, ensuring the appropriate separation of duties. The key new entities and functions are detailed in Annexes B-1 and B-2 and key changes are summarised as:

4.2.1 Central Procurement Unit (CPU): will be in MFED and will have policy responsibilities for all purchases and inventory management and operational responsibilities for all purchases (on behalf of PEs) above \$AUD10,000 (suggested threshold). The CPU will consolidate 'common' purchase of goods, works and services now bought separately by PEs. In addition, the CPU will provide Secretariat support to the CTB and have other duties as detailed in Annex B-1.

4.2.2 Chief Procurement Officer (CPO): currently the CPO, appointed in accordance with the Procurement Act, is the Secretary of the Cabinet, who also chairs the Central Procurement Review Board (CPRB). It is unusual to have the position of the CPO so high within a government. In addition, there should be separation of duties for the CPO's policy role and that of subsequent approval. The proposal is now to move the CPO role to a position within MFED. In the long term, this will require a new Act to give this position powers to affect procurement decisions, in the interim however, the CPO is more appropriate to sit under the powers of the Financial Secretary.

4.2.3 Central Tender Board (CTB): There are currently several levels for policy deviation and contract award approval as detailed in Annex B-2. This KPPRP proposes that policy deviation for purchases over \$AUD 10,000 will be handled by the CPO. However, all contracts over this value threshold will be approved by the CTB. Incidentally, the current high volume of small value purchases (now made by PEs) will decline, based on consolidated purchases by the CPU as the KPPRP develops.

4.2.4 Bidder Appeal Tribunal (BAT): A key element of a transparent procurement process and an anti-corruption tool, is a mechanism for appeal by bidders. Bidders, believing the procurement process defined in the Act was not followed by the GoK, would have the right to appeal under a time bound process. Initially the appeal is to the PE/CPU and, if not satisfactorily resolved, the bidder can submit to a more independent tribunal. There are several models for this and further discussion within GoK is required to determine the best approach.

4.3 Staff and other Stakeholders: Given the current limitations of procurement expertise, both within GoK and the Kiribati labour market, the KPPRP will initially rely on short and long-term international Technical Advisors. The GoK staff taking on new roles in the CPU and CTB will need intensive training. In the short to medium term, PEs will continue to conduct procurement until the capacity in the CPU develops. Similarly, the Ministry Procurement Review Committees (MPRC) and the Central Procurement Review Board (CPRB) will continue their roles pending the establishment of the CTB. Thus, all GoK staff involved should receive procurement training to improve short term 'best value' results. Terms of reference are required for the MPRC and CPRB. In addition, the KPPRP will affect a considerable number of public procurement stakeholders, both within GoK and outside. Their contributions and/or understanding of the reforms will be required. A full listing of such stakeholders and their KPPRP roles are detailed in Annex C.

4.4 Procurement Systems: Apart from a few PE systems that include Excel spreadsheets and M-Supply (for MHMS), there is currently little systems support for procurement and inventory management. In the longer term GoK should develop a full e-procurement/inventory strategy to support full control over activities, including identification of potential areas of risk (e.g. corruption), non-compliance, opportunities for improvement as well as to reduce purchase process costs. GoK should consider the e-procurement software (In-Tend) offered by ABD. Such systems would be integrated into the other systems developing in GoK. For example, the new Financial Management Information System (FMIS) (to replace Attaché) under consideration by MFED and ADB. The pace of moving to e-Procurement will be governed by the changes in MFED's FMIS, Kiribati's internet services, and the increased usage by the national supply community. Additional details of systems reform refer Annex A.

In the short term, there are several activities that should be completed:

4.4.1 Development of an "Procurement e-portal": as part of the MFED website. This would be used, in addition to the traditional media, for the publication of key procurement legislation and data including bid opportunities, contract awards, results of bidders' appeals and the list of suspended suppliers (see below). This small step will offer significant improvement to the transparency deficiencies now existing in Kiribati. An international portal should also be selected that best suits GoK's needs and all PEs instructed to use.

4.4.2 Establishing a Supplier Database: this initially can be Excel based list, and available to all PEs, of suppliers qualified to sell to GoK. It will be used by CPU/PEs to ensure all sources of supply are considered, especially where limited bids are solicited. Plus, it can be used to record suppliers' performance on contracts, and identify suppliers 'suspended' (against defined criteria) from participating in GoK's invitations to bid.

5. IMPLEMENTATION PLAN AND SCHEDULE

5.1 Implementation Plan: Given the scope of the KPPRP, it will be phased over five years (2017-21) and led by the CPO, reporting to the KPPRP Steering Committee (KPPRP-SC), (ToRs to be developed), with members from:

- MFED (Chair)
- Attorney General
- Major spending PEs + associated SOEs i.e. Public Works and Utilities, Ministry of Education and Ministry of Health and Medical Services
- Ministry of Commerce, Industry and Cooperatives
- Kiribati Chamber of Commerce and Industry
- Development Partners (as required)
- CPO - as the project manager of the KPPRP

5.2 Schedule: The initial schedule is as follows, and should be revisited each year to reflect changes to scope, etc. The key 2017-18 dates noted here are offered by GoK to the DPs to be used as 'triggers' for budgetary support.

5.2.1 Budgetary Support Triggers (2017-18)

Formation and kick off meeting of KPPRP – SC – June 2017

Approval of this Concept Paper by Cabinet – June 2017

CPU formed and staffed, including TA – end September 2017

New Procurement Act receives assent – first quarter 2018

e-portal (using MFED website) – first quarter 2018

Procurement and Inventory Management regulations, standard bid documents, procurement manual published – September 2018

5.2.2 Other Short Term Activities (2017-18)

ToRs for all TAs (CPU, ATG and AG) to be developed

ToRs to be developed for MPRC and CPRB

Procurement training for staff (CPU, CTB, Evaluation Committees, MPRC, CPRB, PEs)

Explore professional procurement certification for all procurement staff

Stakeholder consultations, especially domestic supply community on planned changes

Pilot Procurement planning with key PEs for 2018 – select purchases for CPU to handle

Identify and develop procurement strategies for common purchases: e.g. travel, vehicles, stationery supplies, etc. and award at least 3 contracts for consolidated common purchases

Design and staff the Bidder Appeals Tribunal

Develop contacts with public procurement agencies/ministries in Region

Issue of first CPU annual report

Auditor General's office starts procurement Value for Money (VfM) audits

5.2.3 Medium Term (2019-20)

MFED – IA starts procurement VfM audits

All PEs conduct annual procurement planning

All common purchases consolidated and contracts awarded.

CPU expands role to take on (from PEs) more purchases over proposed \$AUD 10,000

Develop e-procurement strategy and schedule

Procurement Key Performance Indicators (KPIs) developed/monitored

Regular outreach programs conducted for supply community, civil society and media.

Actively participate in Regional public procurement fora.

Issue annual CPU report

5.2.4 Long Term 2021

All procurement over agreed threshold (proposed at \$AUD 10,000) conducted by CPU

e-procurement program in place and first phases implemented

Annual CPU reports issued

Regular outreach programs conducted for supply community, civil society and media

ANNEX A – KEY PROCUREMENT REFORMS UNDER THE KPPRP

1. LEGISLATION

- Inconsistent with current international/regional best practices
- Procurement regulations, manual and standard bid documents not developed. Thus, the Act is incomplete/difficult to understand, resulting in varied interpretation/applications
- Limited application of Sustainable Public Procurement (social, economic and environmental)
- Lack of fairness and transparency in the procurement process
- Procurement is transactional (vs. strategic) and annual procurement planning not mandatory
- Post award contract management principles not addressed
- Conditions not defined where suppliers are not permitted to bid. For example, for criminal activities, administratively suspended or default in contract performance
- Inadequate process for bidders' complaints against GoK's non-compliance with legislation
- Stores and disposal of waste and surplus goods decentralised
- P3s, consulting services, outsourcing, and frame agreements not addressed
- Unfair competition – SOEs bid against private sector
- Selection of methods of procurement not based on value thresholds
- Media for international bid solicitation not defined
- Public bid opening (in current Act) but not conducted
- Terms of reference required for Evaluation Committees, CPRB, MPRC

Annual procurement planning (APP) for all PEs is the most important activity to ensure procurement moves from 'transactional' (buy quickly and use same process/suppliers as before) to strategic (buy using full technical and supply market knowledge). Planning well ahead of when the purchase process should start can ensure the most effective strategies are selected. In addition, APPs support the GoK's cash flow estimates and, when published provides the supply community with advance notice of requirements. APP is to be conducted in parallel with the annual budgeting process.

1.1 Procurement Act and Procurement Regulations: All the above will be addressed in the new Procurement Act and Regulations and further detailed in working level documents as described below. While the focus is to be on reforming procurement legislation, a review of all GoK's related legislation is required, including in relation to arbitration, whistleblower protection, corruption, especially bidder collusion offences usually covered under a Competition Act. The ATG is to address/lead on all aspects related to legislative reform, supported by short term TAs.

1.2 Revised Stores Regulations (collectively termed 'Inventory Management'): The current stores Regulations were published in 2011 and require updating. There are several aspects that interrelate with procurement, for example the store keeping process triggers purchase requirements. In addition, the disposal of waste, surplus and obsolete materials is the reverse process of procurement. MFED-IA currently provides support. This will be taken over by the CPU and it will provide policy support for all aspects of inventory management and operational support for disposals. PEs will maintain full accountability for storekeeping and approval of bids for

disposal, etc. Consideration should be given to establishing a value threshold for disposals where the approval of the CTB is required. CPU TA and CPO to lead in all these reform activities.

1.3 Procurement Manual; A working level document, consistent with the legislation and Standard Bid Documents (SBDs), (see below) that provides additional guidance and details to practitioners currently does not exist. A complete procurement manual can only be published upon enactment of the new legislation. However, drafting should be started as soon as possible and then manual released once the legislation enacted. CPU TA and CPO should lead in all these reform activities.

1.4 Standard Bid and Contract Documents (SBDs): currently there are a variety of documents in use by the GoK's PEs. Some are modelled on the SBDs of the DPs. Sound SBDs are an essential element of the procurement process. These are the contract terms and conditions that govern both the pre-award and post-award cycles of the procurement process. SBDs eliminate the time/cost for development of such for each purchase and provide the supply community with certainty and familiarity. SBDs reduce the work of the ATG as only contracts that deviate require ATG's direct involvement. ATG to lead on these with support from CPU TA and CPO.

2. ORGANISATION AND STAFF

Current organisational structures and roles and responsibilities for procurement should be improved to ensure the most effective use of staff and 'best value' from the procurement process for purchases. Procurement governance is incomplete, including by contract approval entities (MPRC and CPRB) and by MFED-IA and AG. The Secretary to the Cabinet is currently the CPO who approves procurement policy deviations, and is the Chair of the CPRB. It is unusual to have the position of the CPO so high within the government. In addition, the inadequate separation of duties by combining the policy role, with that of subsequent approval, is not desirable.

The KPPRP organisational changes are to be progressively made, consistent with legislation enactment and the development of complementary skills and roles of GoK staff. The starting point is the establishment of the CPU that, together with the CPU-TA and CPO, will lead the KPPRP implementation. Full details of the organisational changes can be seen in Annexes B-1 and B-2.

2.1 Central Procurement Unit (CPU) – given the relatively small volume of purchases made by each PE, synergy and 'best value' is lost by having decentralised procurement functions in each PE. Procurement currently within GoK is an adjunct to other roles of accounting and administrative staff. Decentralisation restricts the growth of expertise and, as a result, full efficiency and effectiveness is lost. Similarly, inventory management is PE centred without the benefit of centralised dissemination of best policies and practices.

A CPU is planned to be the GoK's 'centre of excellence' for procurement and inventory management. The CPU will support the development and interpretation of related policy and conduct procurement and some aspects of inventory management on behalf of each PE. The CPU will also conduct all other tasks related to building and professionalising procurement HR capacity and procurement related systems, procedures, templates and tools, as follows:

- All purchases over \$AUD 10,000. This will include the CPU putting in place consolidated purchase agreements for all the routine and common purchases of PEs. Similarly, the CPU will support all PEs for the disposal of surplus and obsolete items.
- While the CPU will support the procurement and inventory management, including disposal, the PEs will retain accountability for the technical and commercial conditions.
- Purchases under the agreed threshold would still be conducted by each PE in accordance with the new Act. However, the PEs' level of effort should be minimal as much of the high volume/low value purchases will be eliminated by the consolidated purchases made by the CPU. Should PEs wish they could have the CPU conduct purchases for them below the \$AUD 10,000 threshold.

2.2 Procurement Governance: there are currently several levels of procurement 'governance' (e.g. Secretary/CEO, SOE Boards, MPRC and CPRB). Plus, for policy deviations there is a relatively 'ad hoc' policy decision making process. Both situations neither ensure 'best value' nor effectively use the limited skills of GoK's staff. For details refer to Annex B-2.

The new Act will eliminate the lack of clarity of the current Act and, thus, the resulting 'ad hoc' policy decisions. Similarly, the key requirement to ensure strategic procurement is that each PE develop and publish (with the help of the CPU/CPO), accessible to all stakeholders, annual procurement plans. At the time of developing the plans, major policy deviations can be considered by the operations and governance structures of GoK.

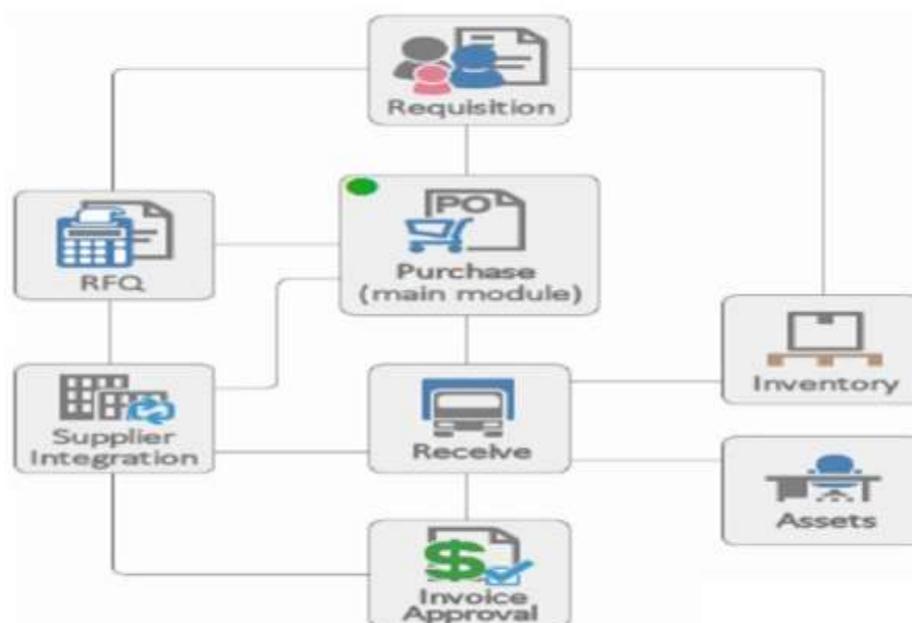
The CTB is to be established and chaired by MFED, secretariat from CPU and voting members from the Attorney General, the ministry/SOE requiring the purchase, other members appointed including temporary membership to ministries and others with technical expertise relevant to the purchase or other interests in the purchases.

In the short term, the MPRC and CPRB will continue their roles. They require ToRs and training to better assist them in their activities.

2.3 Bidder Appeal Tribunal (BAT): The objective of the BAT is to increase transparency and fairness in the GoK's procurement process, including a venue to table possible corruption concerns. The current Act goes some way towards this but is not complete. The new Act will provide for an easy and low-cost forum for dissatisfied bidders (complainants) to seek resolution. The bidders' appeal process starts with the entity that conducted the procurement (either the CPU or PE or both). In the event the complainant is not satisfied with the outcome, it can then go to the BAT, staffed by persons not directly involved in the procurement process. If still dissatisfied, the complainant can seek resolution via the courts. Details of the process, including BAT membership, what can and cannot be appealed, etc., are to be included in the procurement legislation. Given the expectation that the volume of complaints is generally low, the BAT does not have to be a permanent body. There are a range of choices for GoK that will be examined as part of the legal drafting.

3. SYSTEMS

In the longer term GoK should develop a full e-procurement strategy, as summarised in the following figure.



3.1 Accounting data related to procurement: A sound procurement process requires financial and procurement management systems to both support control, analysis and audit, and detection of risks including those of a corrupt nature. Information to be available for a 'spend analysis' would include: what is bought, from whom, when, at what price and what was the method of procurement (MoP) used, and whether the scope was increased/decreased during contract (if so, how much) and how did the contractor/supplier perform. Currently the financial management information systems (FMIS) used are: SOEs - MYOB and the GoK ministries - Attaché. Neither of these systems produce sufficient data to effectively support procurement. In addition, apart from MHMS for pharmaceuticals and medical supplies, the procurement process in PEs is still very much paper based. The 'spend analysis' limitations will present some challenges to the KPPRP in the short term. However, with support from the owner company of Attaché more may be obtained. In addition, in the longer term, GoK will need to develop more detailed coding to better identify types of purchases and migrate to full e-procurement.

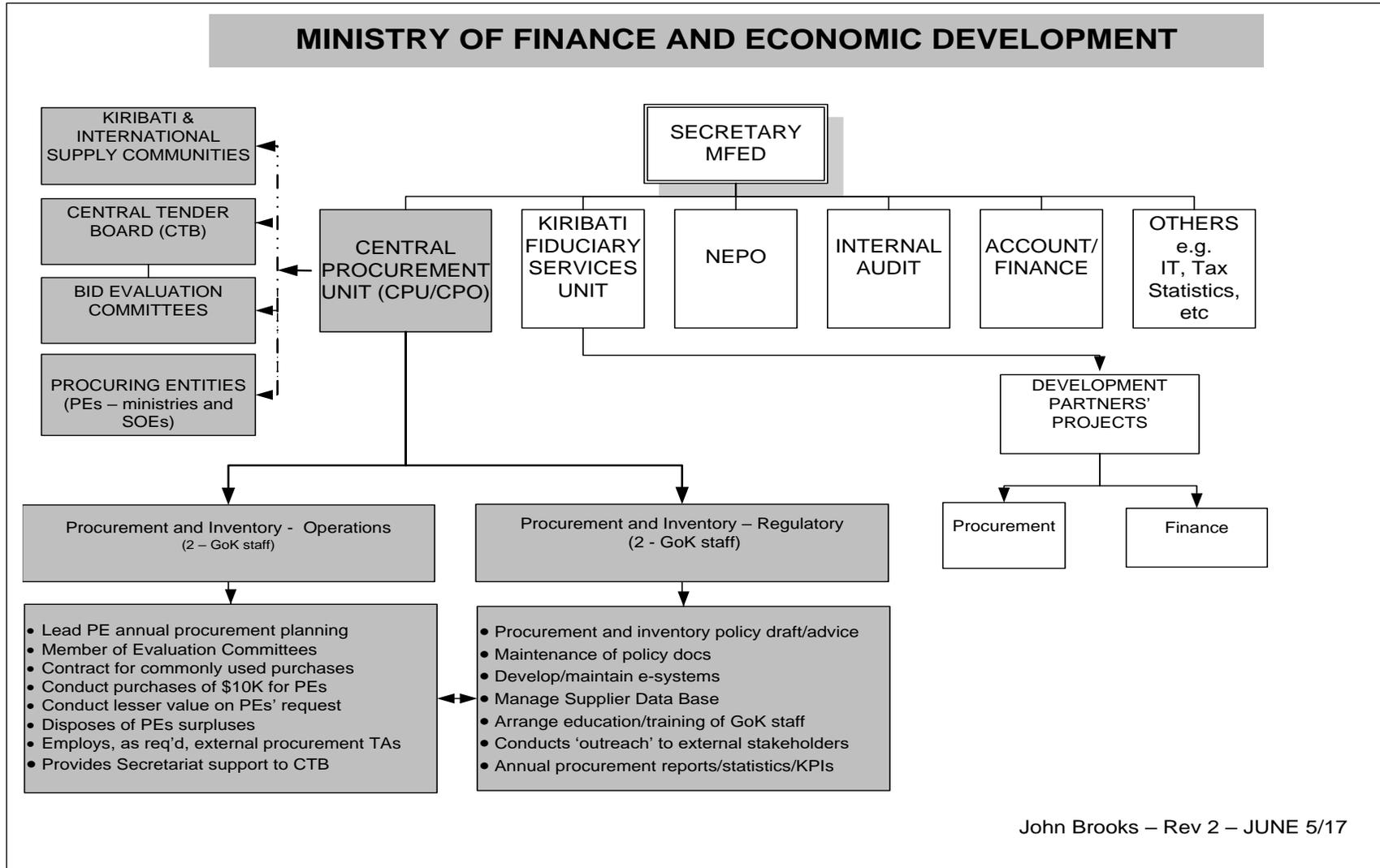
3.2 E-procurement: GoK has initiated studies to replace Attaché, with the support from ADB. However, it will take some years before the changeover occurs. During this time, a more detailed study of GoK adoption of progressive e-procurement should be conducted and include options for the SOEs, that will likely continue to use MYOB. ADB offers an e-procurement system by In-Tend UK. Progressive introduction of e-procurement should pace with changes in the MFED FMIS, the e-business progress in the domestic supply community and the effectiveness of Kiribati's internet services.

3.3 e-portals: currently the GoK's procurement process is not very transparent. Opportunities to bid are limited to publication on the radio and newspapers and, in some instances, local notice boards. Currently, unless bidders ask for contract award information, that is rarely done and there is nothing published. In the short term, to improve transparency, the website of MFED should be adopted to publish key procurement documentation and bid opportunities and awards. Similarly, a range of websites are used by PEs to publicise opportunities requesting international bids. A standard website should be selected by GoK and all PEs should be required to use it.

3.4 Supplier Database: This is needed to support the procurement reforms. Suppliers wishing to sell to GoK must submit details about business registration², scope of supply, address, contacts, financial details and work completed, etc. All is to be entered on the data base. It is also to be used to record supplier performance, and identify the suspended/disbarred suppliers. All this information is used by CPU/PEs to select suppliers for bid invitations or check qualifications of bidders on open solicitations. In addition, the data base can be used for mailings and contacts to the supply community about items of interest. It can be an integral part of e-Procurement, but can also be a standalone spreadsheet.

² The linkage between the Supplier Database and the GoK's requirements for business and tax registration. should be investigated This could eliminate duplication of data. In addition, the GoK should determine if its current business registration/ownership process is sufficient to identify 'beneficial owners' and thus this information can be used to prevent corrupt or unethical practices in relation to public procurement.

ANNEX B-1 PROPOSED PROCUREMENT ORGANISATION CHART



ANNEX B-2 CURRENT AND FUTURE GOVERNANCE FOR CONTRACTS

Current policy per 2002 Act				Proposed policy			
Procuring entity (PE)	Contract value	Policy deviation approval	Contract Award Approval	Procuring entity (PE)	Contract value	Policy deviation approval	Contract Award Approval
Ministry	<\$5,000	PE Sec	PE Sec	Ministry	<\$10,000	PE - Sec	PE-Sec
SOE	<\$5,000	PE- CEO	PE CEO	SOE	<\$10,000	PE - CEO	PE - CEO
Ministry	<\$50,000	PE - Sec	MPRC	Ministry	<\$50,000	CPO	CTB
SOE	<\$50,000	PE- CEO	SOE Board	SOE	<\$50,000	CPO	CTB
Ministry	>\$50,000	CPO	CPRB	Ministry	>\$50,000	CPO	CTB
SOE	>\$50,000	CPO	CPO/CPRB	SOE	>\$50,000	CPO	CTB
<u>NOTES</u>				<u>NOTES</u>			
<p>1. The value thresholds above are defined in the Act.</p> <p>2. There are no value thresholds dictating the related default Method of Procurements. (MoPs) Thus, policy deviation requests likely based on precedent vs. policy</p> <p>3. For major purchases, i.e., over \$50,000 there is not a separation of duties as CPO authorises policy deviation and then is Chair of CPRB that approves purchase. In addition to the two roles, the CPO/Chair is the Secretary to the Cabinet (highest level civil servant).</p> <p>At this moment, there is no other oversight on procurement. Neither MFED-Internal Audit (IA) nor the AG conduct audits of the procurement history (pre-award) or post award (including for contractor compliance) against the Act nor if 'VfM' was achieved.</p>				<p>1. Value thresholds shown here are 'suggested' Thus, they could start low (risk management strategy) and be progressively increased as CPU and GoK's procurement process builds capacity.</p> <p>2. Separation of duties applied to the above i.e. CPU that performs procurement services for the PE is not the approver of contract award for such. The same is for policy deviation made by CPO</p> <p>3. Instances for ad hoc policy deviations will be reduced based on: (a) Default MoPs will be clearer in Regulations by assigning value thresholds to each; (b) APP will identify in advance where policy deviation required. Thus, all persons/stakeholders that review can provide comments.</p> <p>4. CPO is Head of the CPU. The CPU provides only Secretariat support to the Central Tender Board (CTB).</p> <p>5. AG to start procurement VfM audits 2018; MFED-IA to start also in 2018</p>			
<p>CPO – Chief Procurement Officer; CPRB: CPRB - Central Procurement Review Board; CPU – Central Procurement Unit KOAG: Kiribati Office of Auditor General; MoP: Method of Procurement; MPRC: Ministry Procurement Review Committee</p>							

ANNEX C STAKEHOLDERS IN THE KPPRP

The KPPRP will directly concern the following internal and external stakeholders:

1.0 Stakeholders within GoK

1.1 MFED: Has overall responsibility for the KPPRP, chairs the KPPRP-SC and will be the locus for the integrated CPU. In addition, the MFED Internal Audit, (MFED-IA) applicable does not currently audit pre-and post award procurement activities of all PEs. This should be introduced under the KPPRP. Currently MFED-IA is in addition responsible for policy for stores/inventory management and supports PEs in the disposal process. This activity is to move to the CPU. The Accountant General will be involved in providing support to CPU via Attaché for 'spend analysis' and will be the GoK point on any new FMIS to be acquired. With CPU help, consideration should be given to incorporating e-Procurement in the new FMIS.

1.2 Procuring Entities (PEs): Initially they will be supported by the CPU for the consolidated purchase of common requirements. As the CPU builds capacity, it will take over for all PEs the procurement and inventory management support. This will be progressive as the CPU gathers strength. However, consistent with their legislated fiscal and operational responsibilities, PEs will retain such rights in the procurement and inventory management process.

1.3 Auditor General (AG): Currently the AG does not conduct audits of VfM for purchases. This would include assessing that, in addition to compliance with policy, practices, etc., the best value and VfM was obtained. This scope is now planned to be part of the AG's work, starting in 2018 (based on PEs' 2017 activities). Staff are in place but will need TA and training to address procurement scope.

1.4 Attorney General (ATG): Lead on the drafting of procurement legislation, regulations and the terms and conditions for SBDs. Short term TA support will be required to develop new procurement legislation and related documents. Where possible, this work should be scheduled to involve staff of the CPU and build their capacity by involvement.

As part of the KPPRP, the ATG has been requested to examine current GoK legislation, or the need for new, to ensure coverage of such aspects, related to public procurement including: ensuring 'beneficial owners' of GoK's suppliers can be easily identified (company registration), prevention of price fixing and collusive bidding (usually addressed in legislation governing 'Competition') and 'whistleblower' and 'freedom of information' legislation.

1.5 Leadership Commission/Anti-Corruption (LC): In September 2013, Kiribati acceded to the UN Convention Against Corruption (UNCAC); it has yet to ratify. However, in 2015, Kiribati was included in a UNCAC sponsored review and the report was published "The Pacific's

Implementation of Chapter III of the UNCAC”³. This noted anti-corruption changes that were required that in part are addressed in the “Leaders Code of Conduct Act 2016” receiving assent in January 2017. A ‘Leadership Commission’ (LC) is to be established with responsibilities including those related to investigating unethical and corrupt practices by senior civil servants, members of the judiciary, politicians and senior appointees in local governments. This Act goes a long way to support GoK’s anti-corruption focus for public procurement. The LC members will require some training, relative to the new procurement legislation, to support them in their roles.

1.6 Ministry of Commerce, Industry and Co-operatives (MCIC): A more aggressive policy is required to support GoK’s sustainable public procurement (SPP) policies incorporating environmental, social and economic considerations. MCIC must be consulted to ensure GoK’s public procurement policies support the domestic micro, small and medium enterprises (MSMEs). In addition, MCIC should address the business environment deficiencies identified in the 2015 World Bank ‘Doing Business’ in Kiribati.

Other Ministries may also need to be consulted in the SPP policies, – for example Environment, Lands and Agricultural Development.

1.7 Ministry of Justice: The Ministry of Justice is to ensure the judiciary is aware of new procurement legislation, etc.

1.8 Ministry Procurement Review Committee (MPRC): Until legislated changes are in place, the MPRC will continue its role of evaluating and approving purchases for Ministries, with a value between \$AUD 5,000 and \$50,000. In the interim, as ToRs do not exist for this function, they should be drafted and MPRC members receive training to develop their capacities. The ToRs should also address the bid evaluation activities supported by the MPRC.

1.9 Central Procurement Review Board (CPRB): Like the MPRC, the CPRB will continue its roles until new legislation is enacted. In addition, ToRs and some training are required to assist all members to develop their capacities. The ToRs should also address the bid evaluation activities supported by the CPRB.

2.0 External Stakeholders

2.1 Supply Community: There will be a range of changes most favourably impacting the supply community including:

- To learn in advance what is to be bought (via published annual procurement plans)
- Clear and easily accessible procurement legislation, policy and procedure documents

³http://www.unodc.org/documents/corruption/Publications/2016/Pacifics_Implementation_of_UNCAC_Chapter_III.pdf

- Guidelines on how to register and qualify to bid
- More accessible publications of bid opportunities and bid award via e-portal/web page
- Policies to assist Kiribati's MSMEs
- Access to Bidder Appeal Tribunal
- Attend outreach programs to better understand GoK's procurement process

Training/outreach programs are to be conducted to ensure that the domestic supply community is kept fully informed as the KPPRP progresses. In part, this will be supported by including a member from Kiribati Chamber of Commerce and Industry on the KPPRP-SC. Regular updates on progress on KPPRP should be included on the MFED e-portal and on the selected website for international bid solicitation.

The most immediate area for the domestic supply community involvement is in GoK's plans to consolidate 'common' purchases that are currently purchased by several PEs. Each purchase category will need to have specific procurement plans/strategies developed. This must be done in conjunction with market assessments to develop an approach that will give the domestic supply community time to adjust to changes.

2.2 Media/Civil Society: Kiribati's civil society with a focus on procurement⁴ is currently very limited. However, it and the media have important roles to play in monitoring, and in the case of media, reporting on public procurement activities of interest. However, to do this, these two stakeholders will need to be well informed about the KPPRP and what resources are available to them. These stakeholders should be included in the procurement outreach programs.

2.3 Public Accounts Committee: In its oversight role, this committee will need to be brought up to speed on the KPPRP and new legislation.

2.4 Parliamentarians: Will require briefing on planned legislated changes. This will help them in their deliberations on the Procurement Bill and, although proposed changes are positive (refer section 2.1 above), in their dealings with their constituents/suppliers on the impact of the changes.

2.5 Development Partners: Funding, sharing regional training, educational and other initiatives, supporting growth/capacity.

⁴ March 2017 – "Kiribati launches new anti-corruption group. A group of private citizens have launched a new advocacy group called Kiribati Citizens Against Corruption (KCAC). For more information, contact Ngatau Neneia (Mr.), founder and interim executive director, at corruptionwatchkiribati@gmail.com or at mobile # + 00 686 73044358. [source: <http://newsbin-apintact.blogspot.ca/2017/03/pacific-anti-corruption-updates-3-march.html>]." - The Asia – Pacific Integrity in Action Network (supported by: UNDP, Government of Australia and UN Office on Drugs and Crime)

2.6 Regional groupings/Neighbouring States: Many of Kiribati's neighbouring island states face the same challenges, including limited supply markets, remoteness from international suppliers, small domestic demand and in the in-progress development of sound procurement systems and procurement professionals. Kiribati should look to learn from these states by study visits, regional procurement training and education – for example on-line procurement courses offered by the University of the South Pacific. Similarly, some consideration could be given to advantages from consolidating purchases with these states.