

## Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement Self-assessment report Samoa

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Identifying reform needs, assessing progress and evaluating the effectiveness of anti-corruption policies and practices are central principles enshrined in the ADB/OECD Initiative and its Action Plan. In this context, the present self-assessment report from Samoa was prepared as background to the Initiative's thematic review exercise on measures to curb corruption in public procurement in the Asia-Pacific region.

This thematic review on public procurement was initiated in reaction to the findings of the Initiative's 2003-2004 in-depth analysis of the legal and institutional anti-corruption frameworks of the Action Plan's then 21 endorsing countries against the standards of this Plan ("Anti-Corruption Policies in Asia and the Pacific – the legal and institutional frameworks", November 2004). In this study, public procurement was identified as one of the areas requiring particular attention in the Asia and Pacific region and where consequently the Initiative's Steering Group had a vital interest to promote reform.

With this aim, the group agreed to pursue analytical work on corruption in public procurement through a thorough review of relevant existing policies, practices and rules so as to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices. This thematic review further seeks to assess how countries translate into practice their commitment made under the Action Plan to curb corruption in public procurement. Eventually, the review's findings will provide governments with an analytical framework to design policies and procedures that ensure greater transparency and integrity in public procurement and to identify priorities for reform in this respect.

In line with the Action Plan's principle of self-assessment, the review is conducted on the basis of information provided by participating countries in reply to a questionnaire specifically prepared for this purpose by the ADB/OECD Initiative. The present document represents the replies submitted by Samoa in this framework.

Further information on the exercise, on other participating countries and on the analysis' outcome is available at the Initiative's website at <http://www1.oecd.org/daf/asiacom/stocktaking.htm#trpp>.

## A. General framework

### *Legal and organizational framework:*

1. Please list and briefly describe laws and regulations related to government procurement, including those that give exemption to the standard government procurement rules. Where available, please attach a copy or indicate an internet-site for download of these regulations, if possible in English language. Ensure to include secondary legislation, rules and procedures. Also, please indicate relevant international or regional agreements<sup>1</sup> that your country is committed under, including its level of involvement (e.g. signature, ratification, implementation).

Samoa does not have an independent legal framework regulating the policies on public procurement. It nevertheless has several other instruments to provide legal coverage such as: Treasury Instructions 1965 and 1977, Cabinet Directive 98 (19), Public Finance Management Act 2001, (PFMA), Tenders Board Guidelines 2003. These documents are the result of the Government efforts over the recent years to improve the procurement environment as a whole. These efforts have led to increased perception of integrity in procurement as a result of more openness and transparency. These instruments are available online in the Ministry of Finance website: [www.mof.gov.ws](http://www.mof.gov.ws).

Samoa recently passed legislation (Money Laundering Prevention Act 2000) to prevent money laundering based on the Commonwealth model which addresses all 40 Recommendations of the Financial Action Task Force on Money Laundering formed by G8 countries in 1989. Samoa is currently working towards accessing WTO and has not yet considered its level of involvement in the WTO Agreement on Government Procurement.

2. Please explain the repartition of tasks and responsibilities in the procurement process among centralized, decentralized and specialized authorities (in particular: design of policies and standards; capacity building; definition of needs and terms of individual tenders; execution of different procurement stages from advertising to contract awarding; dispute resolution; control of the fulfillment of the terms and conditions by the contractor).

Samoa has significantly decentralized its procurement functions. The procurement processing responsibilities have been devolved to the various line ministries and departments, with set thresholds of approval authorities. The central Tenders Board, chaired by the Minister of Finance is responsible for establishing rules and procedures related to procurement. This Board also has the responsibility for inviting bids and their public opening to ensure transparency.

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<sup>1</sup> e.g. APEC Non-Binding Principles on Government Procurement; WTO Agreement on Government Procurement; etc.

The Public Finance Management Act 2001, under which the Tenders Board was formed, provides for one representative from the private sector, and also expanded the functions of the Tenders Board. The Act gives the ministries and state owned enterprises the responsibility for their procurement but the Tenders Board still holds the responsibility for inviting tenders for goods, works and services (currently above T\$50,000) and awarding contracts based on prescribed financial thresholds, as well as establishing rules and procedures relating to provisions contained in the Instructions and Regulations.

3. Is procurement of goods governed by the same procedures as procurement of services?

The Procurement Guidelines provide that the same procedures govern the procurement of goods and services. The basic principles explicit in the Guidelines underlining all procurement stipulate:

- Transparency to achieve economy and efficiency and to combat fraud and corruption;
- To achieve open and fair competition and value for money, the Tenders Board requires all Ministries and Corporations to obtain goods and works through public tender in accordance with the procedures stipulated under Treasury Instructions, Regulations and Operating Manuals;
- To achieve transparency, all tenders are to be opened by the Tenders Board in the presence of bidders or their representatives;
- To ensure safety and well-being of all citizens and to ensure contractors bidding for major works possess the requisite professional technical and administrative requirements, all Contractors and sub-Contractors bidding for building, construction and civil works must be approved Contractors registered by the Ministry of Works.

4. Does the procurement law establish a Public Procurement Office (PPO)? Is the PPO appropriately staffed against its mandate? In this context, please state the total number of staff involved in public procurement country-wide. Are the procurement entities/PPO provided with adequate financial resources for the execution of their tasks?

There is no Public Procurement Office as such in Samoa.

5. Please name the sectors, areas or conditions subject to particular procurement rules (if applicable, e.g. military; local governments; state owned enterprises; urgency).

The Procurement Guidelines of the Tenders Board apply to all Government Ministries using public funds. This is also applicable to state owned enterprises.

*Procurement policies and practices:*

6. Do model tender documents exist (e.g. handbooks, model forms, model contracts, etc)? If yes, is their use mandatory, and do they contain a specific anti-corruption clause?

The use of the Procurement Guidelines of the Tenders Board is mandatory. At present there are no standard bidding documents. The bidding documents under projects financed by the World Bank and the Asian Development Bank have been adapted for use under the government funding; these bidding documents contain specific anti-corruption clauses.

7. Please provide the latest available economy-wide annual total numbers and values of purchases, with breakdown a) by sector and b) by type of procurement. In this context, please describe the procurement types foreseen by law (e.g. sealed tender, direct purchase; limited tendering) and the policy of your Government towards these types.

The Guidelines include different procurement methods: Open Tendering; Local and International Shopping; Single Source; Limited Tendering (for Repeat Orders); and other methods at the discretion of the Tenders Board. The current practice is to conduct open tendering for contracts above T\$50,000. Other methods of procurement (from open competitive bidding) and the particular requirements for each tender are determined by the Tenders Board having regard to:

- the complexity or potential cost of the contract;
- any specific requirements of donor funded works or services;
- the unique or highly specialized nature of the works or services;
- the need to build local capacity to carry out the works or services urgently required; and
- increasing the utilization of local know-how and materials.

As in open and competitive bidding, the principles of transparency, fairness, equal opportunity, and efficiency and economy, shall be taken into account.

Procurement statistics are currently not collected or disaggregated as yet.

8. Please explain under which conditions pre-selection procedures are conducted.

Pre-selection or pre-qualification of bidders may be used for most civil works contracts, and contracts for the supply of expensive and technically complex equipment, to ensure that only technically and financially capable firms will be invited to submit bids.

9. If your country is currently engaged in or planning a major reform of its procurement system, please briefly state the scope and objectives of this reform.

Consistent with its ongoing reforms in the public sector, Samoa is planning to introduce further procurement reforms with the objective of ensuring economy, efficiency and transparency. In this respect, the World Bank has recently approved a Technical Assistance grant for a Procurement Reforms and Capacity Development Project. The overall objective of the project is to support the implementation of public procurement reforms and procurement capacity building. Specifically, it is envisaged the project will further develop the Procurement Guidelines, and prepare procurement manuals along with standard procurement documents, as well as to develop the capacity of government officials in managing public procurement.

## B. Transparency and Fairness

### *Transparency of general procurement policies and regulations:*

10. Are the existing laws, regulations and policy guidelines on public procurement publicly available and, if yes, where/how?

Yes. All are provided to all Ministries and Corporations free in both English and Samoan.

11. In your country, do certain territorial entities or institutions establish lists of eligible contractors (sometimes called “white-lists”)? If yes, please explain the criteria for a company to be included in or excluded from this list, and what use is made of such lists.

The Procurement Guidelines of the Tenders Board allow a restrictive participation approach to the procurement of civil works, where for all civil works procurement, contractors and even sub-contractors are required to be registered for bidding. The registration process is conducted twice a year. The criteria for registration are disclosed to firms in prescribed forms, which include technical experience; capabilities of resources; financial position; and past experience. Contractors are assessed in three categories for registration: Category A with capability to undertake contracts over T\$1 million; Category B from T\$0.5-1.0 million; and Category C below T\$0.5 million. In addition, to foster the growth of small/medium size contractors, the Guidelines prescribe that contractors from a higher category are not allowed to bid for contracts in the lower category(ies), however, the vice-a-versa is accepted.

12. Is a bid security and/or a performance guarantee required from the bidder? What are the procedures for advertisement of procurement opportunities?

The Guidelines contain provisions for bid and performance securities at appropriate levels (two percent for bidding and maximum ten percent for performance).

The Guidelines stipulate that all contracts for public tendering shall be advertised in the country and internationally where required by a donor financier. All invitations to bid and procurement notices shall be advertised in a widely circulated newspaper. The submission period is determined by the nature and complexity of the contract but bidders are generally given a minimum of 14 days from the date on which bids were invited in which to submit bids.

*Transparency of procurement opportunities:*

13. Describe where and how tender opportunities are published, including if their publication is mandatory or depends on certain criteria (if so, please list)? Please state if a fee has to be paid to receive tendering documents and – if yes – how this fee is fixed and whether other processing fees apply. Please briefly explain whether your country allows adequate and reasonable time for interested suppliers to prepare and submit responsive bids.

See also #12 above. In practice, a fee has to be paid to receive tendering documents; normally no more than \$100 to cover the costs of tender documents.

14. Are selection and award criteria prescribed by law? If yes, are they prescribed in an exclusive manner? Please name these criteria a) for procurement of goods, and b) for procurement of services (e.g. technical requirements, qualification of the bidder, evaluated price, expertise/experience, etc.) and those that are explicitly excluded (e.g. nationality of the bidder or other affinity, etc.). Is the description of these criteria in the tender documentation mandatory?

Bids which conform to the technical specifications and are substantially responsive to the bidding documents shall be compared on the basis of their evaluated costs and the bid with the lowest evaluated cost, which may not necessarily be the lowest priced bid, may be selected for award. Bid evaluation must be consistent with the method, terms and conditions set forth in the bidding documents. Apart from the price, other relevant factors such as the efficiency of the equipment, including its operating costs, the time of completion of construction or delivery, and the availability of after-sales services or spare parts, shall be taken into account in determining the lowest evaluated bid to the extent and in the manner specified in the bidding document. For contracts for which prequalification is not required, information concerning the bidder's experience, financial position, and technical staff shall be required in the bidding documents.

*Transparency of contract evaluation and award procedures:*

15. What is the procedure if none of the bids or too few – relative to a prescribed limit – fulfill the technical requirements as defined in the call for tender (e.g. reopening of the bid, negotiations, etc.)? Do you keep a register of all bids received?

Bidding documents usually provide that a Ministry or a Corporation, with prior approval of the Tenders Board, may reject all bids. Such rejection is justified when all the bids submitted are not substantially responsive, or when there is evidence of lack of competition, or where all bid prices substantially exceed the cost estimates. When all bids have been rejected, a rebidding may be called, and the Ministry or Corporation shall request for new bids from all who were supplied with bidding documents in the first instance. However, if there has been a sufficient number of bids in the initial bidding, the Ministry may consider inviting bids only from those who have previously submitted bids. If all bids have been rejected because of lack of competition or failure to meet the specifications, the Ministry shall examine the causes for rejection and consider, before calling for new bids, revision of the specifications or bidding conditions. Where all bid prices substantially exceed the cost estimates the Ministry may, negotiate with the lowest evaluated bidder for a reduction of the bid price. If no satisfactory contract can be concluded and a rebidding is called, modification of the scope of the contract shall be considered.

The Secretariat of the Tenders Board keeps a register of all bids received.

16. Where and how are actions and decisions in the procurement process recorded? How long and where are these records preserved, and who can access this information?

All actions and decisions in the procurement process that come through the Tenders Board are recorded as Minutes of the Tenders Board and are accessible to the Controller and Chief Auditor. A quarterly report of contracts approved and awarded by the Board is submitted to the Cabinet. These records are not disposed without the prior approval of the Controller and Chief Auditor.

17. How and to whom is the final decision on awarding the tender disclosed? Do reasons for the selection of the winning bidder have to be stated? Are post-awarding negotiations allowed and, if yes, under what conditions?

The Guidelines stipulate that the full evaluation report and recommendation for award of contract shall be submitted to the Tenders Board for its approval or recommendation to Cabinet where appropriate, in accordance with the provisions for Schedules of Authorities. The award of contract is made to the bidder whose bid has been determined to be the lowest evaluated substantially responsive bid and who meets the appropriate standards of capability and financial responsibility. The Ministry or Corporation will notify unsuccessful bidders promptly in writing. If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address a request to the relevant Ministry or the Tenders Board.

18. Are framework contracts allowed? If yes, what measures are taken to control against corrupt or unnecessary demands?

No.

## C. Integrity

### *Integrity of procurement personnel:*

19. Do codes of ethics or similar instruments exist that explicitly apply to procurement personnel and entities? If yes, do they specifically address corruption risks, and do they contain conflict of interest provisions (e.g. provisions making mandatory the declaration of personal interests by agents and buyers)?

The Procurement Guidelines specifically stipulate that all persons involved in assessing and/or evaluating and/or deciding on the award of a contract must declare any interest in any company or close family relationship to the principals of any company which has made a bid and shall be excluded from the evaluation and decision making process on that particular tender and shall not have access to any documents or information relating to that particular tender. The Public Finance Management Act, the Public Bodies Transparency and Accountability Act, the Public Service Act and the Treasury Regulations and Instructions also explicitly have provisions that address corruption risks and make mandatory the declaration of conflicts of interest. The Guidelines also stipulate that the process of bid evaluation is confidential until the award is notified. This is considered essential to enable the Ministry or Corporation and the Tenders Board to avoid either the reality or the perception of improper interference.

20. Does your country provide for specific training for procurement personnel that include integrity issues? Please list manuals or policy guidelines that might exist to clarify procurement procedures and principles to procurement personnel (if existing please attach a copy or internet-address for download).

Specific training is provided by the Ministry of Finance, on the requirements of the Public Finance Management Act and to clarify procurement procedures in the Procurement Guidelines.

21. Is procurement personnel required – and if yes by what regulation and to what institution – to report attempts by suppliers to undermine the impartiality and independence of action by offering bribes, benefits or other forms of inducement?

This is not explicitly stipulated in any regulation or guidelines but it is implicitly stipulated in the Public Service Act and the Public Finance Management Act under the general provision for “Obligation to Report”, knowledge of any circumstances which may cause him to consider that an offence may have occurred may report to the Minister of Finance or the Financial Secretary.

22. Which penal and/or administrative sanctions are applicable to procurement personnel for accepting or soliciting bribes? Are public officials liable for the economic damage that the procuring entity suffers? What is the policy that applies to procurement personnel for accepting or soliciting small facilitation payments such as gifts, benefits, hospitality (e.g. outright forbidden, accepted under certain circumstances, etc.; please explain).

Employees suspected of a breach of the Code of Conduct are liable to be charged under the Public Service Act or under the PFMA. Under the PFMA, a person is liable for surcharge where it is established that that person has intentionally or recklessly “authorized or permitted a breach of procedures relating to the calling, considering or awarding of tenders.

The acceptance of small facilitation gifts is generally not allowed and may be considered a breach of the Code of Conduct.

*Integrity of bidders and suppliers:*

23. Which penal sanctions are applied to a bidding company as a legal person and to its employees if it is found guilty of corruption related to the bidding procedure? Is the company liable for the economic damage that the procuring entity suffers?

A company may be boycotted from government procurement and the breach may proceed further to the Courts.

24. Do your country’s laws and regulations permit authorities to suspend, temporarily or permanently, from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official? If yes, is such disqualification mandatory or optional and which body decides on the disqualification and its exact terms? Which means are employed to implement the disqualification (e.g. publicly available list, declaration in the bidding process...)?

Not explicitly stipulated in any regulation. In practice, the Cabinet may on the advise of the Tenders Board suspend temporarily or permanently an enterprise determined to have bribed a public official; this determination is made available to the enterprise and to all Ministries by Cabinet Directive.

25. Do bidders have to explicitly declare their abstention from any means that could improperly influence the procurement process or decision and, if yes, do such declarations also cover such unlawful practices by subcontractors or other third parties?

This is not explicitly required in the Procurement Guidelines but it is generally used in bidding documents.

26. Do bidders have to disclose commissions, gratuities, or fees that have been or have to be legally paid to individuals or sub-contractors for their services provided for instance in the preparation of a bid or the execution of the contract?

Yes.

## D. Accountability

### *Separation of responsibilities and independent scrutiny:*

27. Which means are employed to avoid insulation of procurement staff and to ensure mutual control? (e.g. rotation of officers, decisions taken/validated by more than one actor, etc.)?

The individual implementing agencies in the ministries and departments are fully responsible for the preparation of bidding documents and managing the procurement process. However, all public tenders are lodged with and opened publicly by the Tenders Board. The bids are then evaluated by an Evaluation Committee or Team which must have at least three people with one preferably from another Ministry. Approval for award of tenders is the mandate of the Tenders Board or the Cabinet in accordance with approved authorities. The Government operates strict contract administration. Any variation in contracts must be approved by the Tenders Board. Such provision is not contained in the Guidelines but is fully operational in practice.

28. Are there regular and systematic internal and external audits of procuring entities/PPOs? If yes, are they mandatory; which bodies are in charge of this audit; are the audit reports publicly available? Are independent actors/NGOs invited to monitor the procurement procedures and what is the setting prescribed by law?

Regular and systematic internal audits are done by the Ministry of Finance Internal Audit and Investigation Division. The Controller and Chief Auditor conducts an external audit annually of all Ministries although it has the mandate to conduct reviews regularly. In practice, the internal and external reviews of Ministries procurement are regular and consistently undertaken. The Controller and Chief Auditor's Annual Report is tabled in Parliament and made public thereafter.

There are no laws that prescribe the monitoring of procurement procedures by independent actors/NGOs.

### *Review and complaint mechanisms:*

29. Do your laws and regulations provide for review and complaints procedures? If yes, are they at administrative and/or judicial levels; what is the time limit for complaint/appeal, if any? How many complaint cases related to procurement are handled per year?

The Procurement Guidelines provide a process for formal complaints by bidders against the bidding process in the first instance to the implementing entity and further to the Tenders Board, which may appoint an ad-hoc committee to address the complaint.

One or two.

30. Who is entitled to initiate a complaint procedure (e.g. competing bidders, any citizen, etc.) and how are potential informants protected against retaliation (e.g. confidentiality, anonymity)? Are the decisions of the body handling complaints binding? What are the consequences if a complaint is proven valid (e.g. reopening of the bidding, liquidation of damages, etc.)?

A competing bidder may initiate a complaint procedure however any citizen may do so in writing. The decisions of the Tenders Board are binding once a matter has been fully investigated. The Tenders Board Guidelines have Confidentiality clauses which are strictly observed. The Tenders Board may decide, depending on the circumstances of the complaint to reopen a bidding.