



GOVERNMENT OF SAMOA

TENDERS BOARD

**GUIDELINES
FOR GOVERNMENT PROCUREMENT
AND CONTRACTING:
CONSULTING SERVICES**

Ministry of Finance
June 2008

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
A. Purpose	1
B. Principles and Objectives	1
C. Definitions	1
D. Application of Guidelines	2
E. Record-Keeping	3
F. Electronic Procurement	3
II. PLANNING AND PREPARATION	3
A. Procurement Planning (General)	3
B. Preparation of Request for Proposals (RFP)	4
C. Letter of Invitation (LOI)	4
D. Instructions to Consultants (ITC)	5
E. Terms of Reference (TOR)	6
F. Draft Contract	7
G. Cost and Labor Estimates	7
III. ELIGIBILITY	8
A. General Eligibility Requirements	8
B. Special Eligibility Requirements	8
C. Conflicts of Interest	9
D. Unfair Competitive Advantage	10
E. Associations between Consultants	10
F. Domestic Preferences	10
IV. PRINCIPAL METHOD OF PROCUREMENT FOR CONSULTING SERVICES: QUALITY- AND COST- BASED SELECTION (QCBS)	11
A. General Considerations	11
B. Advertisement	11
C. Requests for Expression of Interest (REI)	11
D. Long List and Short List	12
E. Consultant Review and Clarification of the RFP	13
F. Preparation of Proposals	13
G. Time Interval for Preparation and Submission of Proposals	14
H. Organizing for Evaluation and Award	14

I.	Extension of Validity	15
J.	Receipt of Proposals	15
K.	Opening of Technical Proposals and Safeguarding of Financial Proposals	16
L.	Evaluation of Proposals: Consideration of Quality and Cost	16
M.	Evaluation of Quality	16
N.	Opening the Financial Proposals	18
O.	Evaluation of Cost	19
P.	Combined Quality and Cost Evaluation	19
Q.	Negotiation and Award of Contract	20
R.	Modifications to the Contract	21
S.	Debriefing	22
T.	Rejection of All Proposals and Re-invitation	22
U.	Confidentiality	22
V.	OTHER METHODS OF SELECTION	23
A.	General	23
B.	Quality-Based Selection (QBS)	23
C.	Selection Under Fixed Budget (FBS)	24
D.	Least-Cost Selection (LCS)	25
E.	Selection Based on Consultants' Qualifications (CQS)	25
F.	Single-Source Selection (SSS)	26
G.	Small Purchases	27
VI.	TYPES OF CONTRACTS AND SELECTED PROVISIONS	27
A.	Types of Contracts	27
B.	Selected Provisions	28
VII.	SELECTION OF INDIVIDUAL CONSULTANTS	30
VIII.	AWARD INQUIRIES AND CHALLENGES	31
IX.	EXCLUSION OF CONSULTANTS	32
X.	INTEGRITY IN PROCUREMENT	32
XI.	CONTRACT ADMINISTRATION	33

I. INTRODUCTION

A. Purpose

1.01 These Guidelines describe the general principles and procedures which, except as the Tenders Board may otherwise agree, shall be observed in carrying out procurement of consulting services for Government-financed projects.

B. Principles and Objectives

1.02 Public funds must be used with due attention to economy and efficiency as mandated under the Public Finance Management Act 2001, Treasury Instructions and Operating Manuals, Cabinet Directives and the Cabinet-approved B4 Schedule of Authorities. Therefore, procurement of consulting services shall be conducted in accordance with the following basic principles and objectives:

- (a) Transparency;
- (b) Open and fair competition;
- (c) Value for money;
- (d) Ensuring high quality;
- (e) Accountability; and
- (f) Promoting integrity and combating corruption in procurement.

C. Definitions

1.03 For purposes of these Guidelines (referred to below as the **Tenders Board Guidelines (Consulting Services)** or the **Guidelines**):

- (a) **B4 Schedule** means Treasury Instruction B.4, Authorities for Expenditure and Delegation Schedule and Purchasing Authorities Table, as amended.

- (b) **Consultant** means a firm - - and, except as otherwise expressly stated in particular provisions below or clearly appropriate due to the unique aspects of dealing with individuals, an individual natural person - - participating in Government procurement or contracting.
- (c) **Consulting services** means professional or technical services of an intellectual and advisory nature such as, without limitation, policy advice, institutional reforms, management, engineering services, construction supervision, commodity inspection and testing, financial services, procurement services, social and environmental studies, and auditing.
- (d) **Procurement** means the acquisition of consulting services by contract subject to these Guidelines.
- (e) **Services** means consulting services or non-consulting services
- (f) **Tenders Board Guidelines (Goods and Works)** means the Guidelines for Government Procurement and Contracting: Goods and Works issued by the Treasury Department, as amended.

D. Application of Guidelines

1.04 These Guidelines apply to any procurement of consulting services by a Ministry or Corporation subject to the Public Finance Management Act 2001, Treasury Regulations, Treasury Instructions and Operating Manuals, the B4 Schedule and Cabinet Directives, in order to ensure that such procurement is carried out with due diligence, efficiency and in conformity with best technical and professional practices.

1.05 Procurement of goods and works, as well as non-consulting services (including, without limitation, operation and maintenance of facilities or plant, surveys, exploratory drilling, aerial photography, satellite imagery, and services contracted on the basis of measurable physical output) shall be in accordance with the Tenders Board Guidelines (Goods and Works).

1.06 Procurement of consulting services under Government-financed projects through the budget, aid and loan is covered by these Guidelines except that aid and loan procurement shall also observe applicable donor or financier guidelines.

1.07 These Guidelines apply to all Government Ministries, as well as Corporations in which the Government has more than a 50 percent share or voting rights.

E. Record-Keeping

1.08 Keeping full and accurate records of each major stage in the procurement process is essential to transparency and accountability, and facilitates monitoring of compliance with the present Guidelines. Therefore, Ministries and Corporations shall prepare and retain such records in accordance with standard Government practice.

F. Electronic Procurement

1.09 It is recognized that electronic procurement offers many benefits over traditional manual processes in terms of speed, efficiency and transparency, among other things. The Tenders Board, therefore, intends to develop appropriate procedures for electronic procurement, including proposal submission, advertisement and disclosure of information on procurement rules, policies and practices.

II. PLANNING AND PREPARATION

A. Procurement Planning (General)

2.01 Advance planning and preparation are essential to maximizing competition and otherwise achieving procurement objectives in an effective, economical and timely manner. For each consulting services procurement of significant size or complexity, a standing or ad hoc Design Team should be assigned to manage the process in accordance with delegated authorities, duties, qualifications, interests and competence. In addition, pre-proposal meetings may be held to gather market and technical

information while stimulating competition. Draft Requests for Proposal may also be issued for this purpose.

2.02 Procurement planning and preparation include such steps as (1) defining the object(s) of procurement and grouping them into appropriate bid packages; (2) performing market research as necessary to ascertain the availability of services to be procured and the terms and prices or rates under which they have been procured in the past by the Government and are normally procured in the commercial market; (3) formulating a specific procurement plan and schedule of key steps in the process; (4) delineating technical requirements and associated quality assurance measures; (5) selecting appropriate qualification requirements; (6) choosing the right method of procurement; (7) preparing advertisements; (8) drafting Requests for Proposals; (9) conducting or obtaining preparatory or baseline studies; and (10) projecting a performance schedule and cost and labor estimate.

2.03 In preparing for procurement, particular attention should be given to obtaining all required approvals and confirming that sufficient funds are available and approved for expenditure prior to advertisement and solicitation of expressions of interest.

B. Preparation of Request for Proposals (RFP)

2.04 The RFP shall contain provisions giving effect to the requirements of these Guidelines. It shall include all the information necessary for consultants to prepare responsive proposals in a clear and unambiguous manner. The detail and complexity of these documents may vary depending on the types of consulting services to be procured and the size of the contract, as well as other relevant factors. However, in addition to any other necessary information, the following shall be included at a minimum: (a) a Letter of Invitation, (b) Information to Consultants, (c) the TOR, and (d) draft contract. The RFP should also notify consultants of their right to submit award inquiries or challenges. Ministries or Corporations shall use standard RFP documents when required by donors or financiers for procurement financed by such agencies. Formats issued by the Government for self-financed procurement of consulting services shall be used as applicable, subject to exceptions granted by the Tenders Board.

C. Letter of Invitation (LOI)

2.05 The LOI states the Government's intention to enter into a contract for consulting services in accordance with the TOR and invites the short-listed consultants to submit a proposal for the assignment. It identifies the source of funds, short-listed consultants, the method of procurement, and date, time, and address for submission of proposals. The LOI also describes the content of the RFP and asks the invited consultants to confirm receipt of the RFP and their intention to submit (or not submit) a proposal.

D. Instructions to Consultants (ITC)

2.06 The ITC seek to make selection as fair and transparent as possible by providing information on the proposal and evaluation process. They provide the information needed by consultants to prepare responsive proposals. The contents of the ITC generally including the following, without limitation:

- (a) very brief description of the assignment;
- (b) standard formats (or content outlines) for the technical and financial proposals;
- (c) the names and contact information of officials to whom requests for clarification shall be addressed, and the deadline for submission of such requests;
- (d) a detailed description of the evaluation, selection and opening procedure to be followed, including, but not limited to, evaluation criteria, sub-criteria and the methodology for weighting/scoring (including relative weight of cost and quality, and any minimum passing score for quality, and, when approved by the Tenders Board under para. 3.06, any domestic preference margin);
- (e) an estimate of the total level of key labor time inputs (but not the level for each envisaged staff position) required, or the total budget, but not both (however, consultants are free to prepare their own estimates of staff time to carry out the assignment and to offer the corresponding cost in their proposals);
- (f) minimum experience, academic achievement, and so forth, for key staff;
- (g) details and status of donor or financier funding, if applicable;
- (h) information on negotiations, and financial and other information that shall be required of the selected consultant during negotiation of the contract;

- (i) currency or currencies in which fees/remunerations and the costs of services shall be expressed, compared, and paid (normally the consultant's own currency or the local currency);
- (j) reference (particularly if foreign consultants may compete) to any local laws of particular relevance to the contract;
- (k) a statement that the consultant must identify any conflicts of interest affecting it and its affiliates relating to the services in its proposal, and that such conflicts may result in disqualification if such action is deemed necessary or appropriate under these Guidelines;
- (l) the method by which the proposal shall be submitted, including a requirement for the technical proposals and price proposals to be sealed and submitted separately so as to ensure that the technical evaluation is not influenced by price;
- (m) the required period during which consultants' proposals must be valid (which should be adequate for the evaluation of proposals, decision on award, Tenders Board or Cabinet review, and finalization of contract negotiations) and during which the consultants shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and total price proposed, and, in case of a request to extend the validity period, the right of consultants not to do so;
- (n) the anticipated date on which the selected consultant shall be expected to commence the assignment;
- (o) whether the consultants' contract and personnel shall be tax-free or not, and, if not, the taxes that may apply and how they will be evaluated;
- (p) if not included in the other RFP documents, phasing of the assignment, if appropriate, and likelihood of follow-up assignments;
- (q) any conditions for subcontracting part of the assignment;
- (r) reservation of the right to reject all proposals and reprocure;
- (s) supporting documents and information required to accompany the proposals; and
- (t) whether a pre-proposal conference will be held.

E. Terms of Reference (TOR)

2.07 TOR shall be prepared by the Ministry or Corporation for each assignment. Whenever possible, they should be prepared by person(s) who are knowledgeable about the technical or professional field required for the assignment. The precise

content of TOR may vary according to the needs of each case, but will generally consist of at least the following: (1) project background; (2) objectives of the assignment; (3) scope of work; (4) training and capacity building features (if any); (5) list of outputs/deliverables (for example, reports, data, maps, surveys); (6) schedule and performance period; (7) any facilities, equipment, staff, data, software or other support to be provided by the Government; and (8) institutional and organizational arrangements. The TOR should contain sufficient information on the project and the specific assignment to enable short-listed consultants to present proposals that are responsive to the RFP.

2.08 Background information should include a list of existing studies and basic data relevant to the services. The scope of work must be compatible with the available budget, describe the services fully and accurately (including, but not limited to, any necessary surveys), and clearly define the respective responsibilities of the Government and the consultant. However, TOR should not be overly detailed or inflexible, and should permit competing consultants to comment on the TOR and propose their own methodology and staffing to the extent practicable. If capacity building, knowledge transfer and training are an objective, they should be specifically outlined along with details of number of staff trained, and other pertinent details, so as to enable consultants accurately to estimate the resources required. The list of support to be provided by the Government should be as accurate as possible in order to avoid misunderstandings on the part of competing consultants.

F. Draft Contract

2.09 The draft contract shall contain standard general conditions, together with special conditions and other provisions appropriate to the particular procurement. The most common types of contracts and selected key provisions are briefly discussed in Part VI of these Guidelines.

G. Cost and Labor Estimates

2.10 Preparation of a realistic cost and person-hour estimate is essential if adequate budgetary resources are to be earmarked. The cost estimate or budget shall be based on the Ministry or Corporation's assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (for example, vehicles,

laboratory equipment). Costs shall generally be divided into two broad categories: (a) consultant's fee or remuneration (according to the type of contract used) and (b) reimbursable costs. The structure and components of consultant's remuneration will vary, but will generally include not only basic salary, but also social charges, overheads, fees or profit and any allowances or other benefits that are not separately reimbursed as costs. Examples of common types of reimbursable costs include travel and transport; mobilization/demobilization; staff allowances or other fringe benefits; information systems; communications; office rent, supplies, equipment, shipping and insurance; translation and printing of documents; and contingencies. Figures for contingencies should not generally exceed 10-15%, depending on the circumstances. If remuneration of staff and/or cost reimbursements will be in multiple currencies, the relevant currency for each item should be used as the basis for estimation.

III. ELIGIBILITY

A. General Eligibility Requirements

3.01 In order to be eligible to be included on short lists and to submit proposals, consultants must meet the following general requirements:

- (a) possess a valid business license;
- (b) be free from insolvency, bankruptcy, or similar status;
- (c) have legal capacity to enter into contract;
- (d) have an adequate record of business integrity and ethics;
- (e) not be excluded pursuant to Part IX of these Guidelines; and
- (f) the firm and its principals (or the individual consultant, as applicable) have not been convicted within the last year of, or currently under indictment for, a criminal offense involving corruption or other misconduct reflecting a lack of suitability to participate in procurement.

B. Specific Eligibility Requirements

3.02 Any additional eligibility conditions for participation in a particular procurement shall be limited to those that are essential to ensure the consultant's capability to fulfill the contract in question. However, Government employees may only be hired as consultants, whether as individuals or as members of a team of a consulting firm, if they (i) are on leave of absence without pay; (ii) are not being hired by the agency they were working for immediately before going on leave; and (iii) their employment would not create a conflict of interest.

C. Conflicts of Interest

3.03 Consultants must provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work. In providing advice, they must avoid conflicts with other assignments and their own individual or corporate interests. Consultants shall not be hired for any assignment that would conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Government. Without limitation on the generality of the foregoing, consultants shall not be hired under any of the following circumstances:

- (a) A firm that has been engaged by the Government to provide goods, works, or non-consulting services for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or non-consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation.
- (b) Neither consultants (including the personnel and sub-consultants of consulting firms) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. For example, consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare TOR for an assignment shall not be hired for the assignment in question.

(c) Consultants (including the personnel and sub-consultants of consulting firms) that have a business or family relationship with a Government employee who is directly or indirectly involved in preparation of the TOR for a contract, the selection process for such contract, or supervision of such contract may not be awarded the contract unless the conflict stemming from this relationship has been resolved in advance in a manner acceptable to the Ministry or Corporation throughout the selection process and the execution of the contract.

D. Unfair Competitive Advantage

3.04 Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive an unfair competitive advantage from having provided consulting services related to the assignment in question. Therefore, the Ministry or Corporation shall make available to all the short-listed consultants together with the request for proposals all information that would in that respect give a consultant a competitive advantage.

E. Associations between Consultants

3.05 Consultants may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, to offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. Associations of consultants in the form of joint ventures must appoint one of the firms to represent the association; all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Once the short list is finalized, and the RFP is issued, any association in the form of joint venture or sub-consultancy among short-listed firms shall be permissible only with the Ministry or Corporation's approval. Consultants shall not be required to form associations with any specific firm or group of firms, but association of foreign firms with qualified national firms in general may be encouraged by inclusion of an appropriately weighted evaluation criterion or sub-criterion in the RFP in accordance with para. 3.06.

F. Domestic Preferences

3.06 In order to ensure high quality, encourage competition and achieve value for money, Government procurements are normally open to all qualified and eligible consultants regardless of nationality and without restriction as to the nationality of their employees. Nevertheless, when appropriate and effective to build local capacity or the utilization of local know-how, the Tenders Board may approve, on a case-by-case basis, the use of a margin of preference for domestic consultants, domestic key employees, or inclusion of domestic joint venture partners. If approved, the amount and procedures for application of the domestic preference margin shall be specifically described in the ITC. Criteria for determining domestic status must also be stipulated. In no event will a preference margin exceed 10/100 available quality points.

IV. PRINCIPAL METHOD OF PROCUREMENT FOR CONSULTING SERVICES: QUALITY- AND COST-BASED SELECTION (QCBS)

A. General Considerations

4.01 Open and fair competition requires that all qualified and eligible consultants be given an opportunity to express interest in a procurement. The principal method for procuring consulting services other than small purchases involves a structured competition among short-listed firms taking into account both quality and cost in accordance with the relative weights stipulated in the RFP. This method is called QCBS. To ensure achievement of the principles and objectives in paragraph 1.02 of the Guidelines, the Tenders Board requires all Ministries and Corporations to observe the requirements set forth in Part III on planning and preparation, along with those of this Part IV relating to advertising; submission of expressions of interest (EOI); compiling long and short lists of eligible and qualified consultants; accepting, opening and evaluating proposals; selecting consultants; and obtaining certain Tenders Board and other approvals.

B. Advertisement

4.02 Requests for EOI by consulting firms (and, when applicable in accordance with paragraph 7.02, by individual consultants) shall be advertised in a widely circulated

newspaper, as well as internationally when required by a donor or financier or otherwise when advisable in the interest of competition. Electronic posting on Government websites is also encouraged. No less than 14 days from the date of posting or publication of the advertisement shall be provided for consultants to submit EOI before preparation of the long and short lists. The English language shall generally be used; however, the Samoan language may be used in addition to English when required for clarity or otherwise deemed appropriate.

C. Requests for Expression of Interest (REI)

4.03 A request for expressions of interest (REI) should, at a minimum, contain the following: (1) name of the procuring Ministry or Corporation (with full contact information); (2) if applicable, donor or financier and loan or grant number; (3) brief but clear and accurate description of the consulting services sought, along with the implementation period; (4) method of procurement; (5) specific eligibility requirements; (6) invitation for eligible consultants (specifying whether firms or individuals) to express interest; and (7) the information required and the deadline and place for submission of EOI. The information requested shall be the minimum required to assess suitability and should not be so complex as to discourage consultants from expressing interest. Examples of the types of information commonly requested include, without limitation, core business and years of experience therein; eligibility; qualifications in the field of the assignment; and technical and managerial organization of a firm. TOR are not attached, nor is information regarding performance of services or qualifications of the firm's personnel (including curricula vitae). Legal documentation - - such as certificates of incorporation, powers of attorney, and financial statements - - is also not required.

D. Long List and Short List

4.04 The Ministry or Corporation shall prepare a long list of eligible and qualified consultants based on the EOI received. From this long list, a short list comprised of at least 3 consultants (or more when required by a donor or financier), shall be prepared. If more eligible and qualified consultants express interest, the most qualified should be preferred. If there are less than 3, the Ministry or Corporation should review the criteria and consider whether they should be revised to increase competition while still ensuring necessary high quality. Following such review, the process may proceed, but

the Ministry or Corporation shall prepare and place in the procurement file a written justification of why the criteria and level of competition achieved are appropriate and in the public interest. In compiling the short list, in addition to eligibility and qualifications, the Government's experience with a particular consultant as well as the consultant's relevant experience and capability for the specific assignment should also generally be taken into account. All consultants who express interest shall be given full and fair consideration, but individuals will not be included in short lists of consulting firms and vice versa. The final short list shall be provided to all consultants that expressed interest; posting the list on Government websites is also encouraged. Short-listed consultants shall be provided with a copy of the RFP.

E. Consultant Review and Clarification of the RFP

4.05 The RFP issued by the Ministry or Corporation will govern each selection process. It is each consultant's responsibility to study the RFP carefully and note any issue of ambiguity, internal contradiction, inconsistency with the Guidelines, omission or other relevant matter prior to proposal submission. Consultants must raise such issues with the procuring Ministry or Corporation in writing within the time specified in the RFP for seeking clarifications. Clarifications regarding the RFP may be requested during this interval. The Ministry or Corporation shall provide these clarifications in writing (addressing the questions posed without identifying the consultants who raised them) to all firms on the short list who intend to submit proposals.

4.06 For complex contracts, a pre-proposal conference may be arranged, whereby potential consultants may meet with representatives from⁵ the procuring Ministry or Corporation to seek clarifications. Minutes of the conference should be prepared and provided to all short-listed consultants. Any additional information, clarification, correction of errors or alteration in the RFP shall be provided to all such consultants.

4.07 In the event of a substantive amendment to the RFP, whether due to consultant-requested clarifications, pre-proposal conferences, or otherwise, the submission date should be extended. Adequate time shall be allowed for consultants to make necessary changes in the proposals in response to such amendments. A period of 30 days is considered generally adequate for this purpose (additional time may be appropriate in unusual circumstances) where the changes involved are substantial; a shorter period may be allowed when the changes are not substantial.

F. Preparation of Proposals

4.08 Proposals, in order to be accepted as responsive to the RFP and therefore eligible for contract award must generally meet the following requirements: (a) be responsive to the TOR and prepared according to the ITC; (b) be clearly marked with the name of the short-listed consultant making the proposal, whose details such as company registration and current business license can be confirmed; (c) provide the information/documentation required by, and comply with the other requirements of, the RFP; (d) be received by the deadline, and valid for at least the minimum period, set out in the RFP; and (e) be submitted in the format required (e.g., separate financial and technical proposals).

4.09 Consultants must make all other preparations as may be necessary to prepare and submit responsive proposals, including but not limited to (as applicable) site visits, formation of associations, and so forth. Directions must be strictly followed, and all required supporting documents and information provided. Curricula vitae submitted with the proposal should be reviewed and verified to ensure accuracy, and shall be signed by both the consultant and the staff member and dated. Noncompliance with important requirements of the RFP will result in rejection of the proposal.

4.10 Excessive formalities, i.e. non-substantive requirements for proposals such as official seals and stamps on documentation (which are not generally necessary in Samoa) may unnecessarily discourage competition. Such requirements should be kept to the minimum needed to ensure a legally binding and conforming proposal. Nevertheless, consultants should comply with all formalities stipulated in the RFP.

G. Time Interval for Preparation and Submission of Proposals

4.11 The date, hour and place for the latest delivery of proposals shall be stated in the RFP. (Unless otherwise advised by the Tenders Board, all proposals are to close on a Monday, when this does not fall on a public holiday, at 1:30 p.m.) The RFP shall allow enough time for consultants to prepare and submit responsive proposals. The specific amount of time allowed will depend on the nature, magnitude and complexity of the assignment, but normally shall not be less than 3 to 4 weeks for simpler assignments

(generally the latter for internationally competed procurements) or 2 to 3 months for less simple tasks. More than 3 months may be appropriate for unusually complicated assignments.

H. Organizing for Evaluation and Award

4.12 For each procurement of substantial size or complexity, shortly before the deadline for submission of proposals, the Ministry or Corporation shall form an Evaluation Committee to conduct the evaluation of proposals and to prepare an Evaluation Report. The Evaluation Committee shall be composed of an odd number, but not less than 3, of Government personnel or private experts, headed by a Chair elected by the members. Regardless of institutional affiliation, each member shall exercise objective and independent judgment and decide all matters in the public interest.

4.13 All Evaluation Committee members and other persons involved in assessing, evaluating or deciding on the award of a contract must declare any interest in any company or close family relationship to the principals of any consulting firm that has submitted a proposal and shall be excluded from the evaluation and decision making process on, and shall not have access to any documents or information relating to, that particular procurement. Private sector experts shall, as a condition of their participation, sign appropriate forms declaring that they have no interests of the types described in the preceding sentence, accepting the application of Government personnel ethics standards in the performance of their duties, and undertaking not to use any information relating to or resulting from the proposal evaluation for any non-Governmental purpose nor to disclose it outside of the Government.

I. Extension of Validity

4.14 Every effort shall be made to complete the evaluation before the expiration of proposal validity and the validity of the proposals should only be extended in unusual circumstances. When an extension is considered necessary, due to clarification requests pursuant to paragraph 4.05 above or in order to increase competition, or for other sufficient reason, consultants shall be asked to extend the validity of their proposals. Extension of proposal validity is voluntary, and should be for as short a time as necessary to complete the evaluation and approval process. In the event of an

extension, written notice thereof shall be furnished to all consultants on the short list, with a copy to the Tenders Board.

J. Receipt of Proposals

4.15 Technical and financial proposals shall be submitted at the same time but, in order to safeguard the integrity of the process, in separate sealed envelopes. Proposals shall be submitted by hand or, when approved by the Tenders Board and specified in the RFP, by mail. All proposals are to be addressed to the Secretary of the Tenders Board. Consultants are solely responsible to ensure timely submission, and shall be required to obtain a receipt upon deposit of the proposals and to deposit the proposals in the designated Tender Box. When permitted, mailed bids shall follow the directions contained in the ITC including, but not limited to, being sealed as required. The Government shall not be responsible for delays in delivery by mail. Misdirected proposals or modifications of proposals that are received at the specified place after the time stipulated for proposal closing shall be returned unopened. No amendments to the technical or financial proposal shall be accepted after the deadline.

K. Opening of Technical Proposals and Safeguarding of Financial Proposals

4.16 Immediately after closing time for proposal submission, all technical proposal envelopes shall be opened by the Evaluation Committee, or by other individual(s) duly authorized to do so in accordance with established Ministry or Corporation procedure. The date and time of receipt shall be recorded in a set of minutes together with the names of all consultants who have submitted proposals. The said Committee or designee(s) shall also verify that sealed financial proposals are present and ensure that these are held unopened and safeguarded until the time subsequently to be specified for public opening of financial proposals.

L. Evaluation of Proposals: Consideration of Quality and Cost

4.17 Evaluation of proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded. Financial proposals shall be

opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

M. Evaluation of Quality

4.18 The Evaluation Committee shall evaluate each technical proposal in accordance with the RFP, which shall provide for taking into account the following three criteria in all cases: (a) the consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, and (c) qualifications of the key staff proposed. Transfer of knowledge or training, as well as the level of participation of local nationals among key staff in the performance of the assignment, may also be considered if and to the extent so provided in the ITC. Each criterion shall be marked on a scale of 1 to 100. Then the marks shall be weighted to become scores. Although the actual percentage figures to be used shall fit the specific assignment, the following weights are indicative, and weights outside the following ranges shall require Tenders Board approval: (1) consultant's specific experience, 0-10 points; (2) methodology, 20-50 points; (3) key personnel, 30-60 points; and, if/as provided in the ITC, (4) transfer of knowledge, 0-10 points, and (5) domestic preference margin (when approved by the Tenders Board), 0-10 points.

4.19 Criteria shall normally be divided into sub-criteria, and the sub-criteria also stipulated in the ITC. For example, possible sub-criteria under methodology are *innovation* and *level of detail*. However, the number of sub-criteria should be limited to the essential. Exceedingly detailed lists of sub-criteria that may render evaluation a mechanical exercise more than a professional assessment of the proposals should be avoided. The weight given to experience can be relatively modest, since this criterion has already been taken into account when short-listing the consultants. More weight shall be given to the methodology in the case of more complex assignments.

4.20 Evaluating only key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight should generally be assigned to this criterion if the assignment is complex. The evaluators shall review the qualifications and experience of proposed key personnel in their *curricula vitae*. Individuals shall be rated in the following three sub-criteria, as relevant to the task:

- (a) general qualifications: general education and training, length of experience, positions held, time with the consulting firm as staff, and so forth;

- (b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and
- (c) local experience: knowledge of the local language, culture, administrative system, government organization, and so forth, if relevant to the assignment.

4.21 Each proposal shall be evaluated on the basis of its responsiveness to the TOR, in accordance with the evaluation criteria and sub-criteria specified in the ITC only. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve any minimum technical score specified in the RFP.

4.22 At the end of the process, the Evaluation Committee shall prepare a Technical Evaluation Report of the quality of the proposals. The full Technical Evaluation Report shall be submitted to the Tenders Board for its approval or recommendation to Cabinet where appropriate, in accordance with the B4 Schedule of Authorities. The Report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of each of the responsive proposals. Each member of the Evaluation Committee shall sign the Technical Evaluation Report, attesting to the accuracy of its contents (if there are dissenting views, these should be indicated in the Report). All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

N. Opening the Financial Proposals

4.23 After the evaluation of quality is completed and the Technical Evaluation Report has been approved, the Ministry or Corporation shall (1) notify those consultants whose proposals did not meet any minimum qualifying mark or were considered otherwise non-responsive to the RFP that their financial proposals will be returned unopened after signature of the contract; and (2) inform the consultants who have submitted proposals meeting any minimum qualifying mark and that are otherwise responsive of the technical points assigned to each consultant as well as of the date, time, and place set for opening the financial proposals. A copy of these notices shall be promptly provided to

the Secretary of the Tenders Board. The opening date should allow sufficient time for consultants to make arrangements to attend.

4.24 After verification that each proposal is sealed and the seal remains intact, the financial proposals of the responsive consultants shall be opened publicly in the presence of their representatives who choose to attend. The name of the consultant, the technical points, and proposed prices (including currency) shall be read aloud and recorded, along with confirmation that each proposal is properly signed and there is only one original of each. The opened proposals shall be marked as originals. Official minutes of the public opening shall be prepared for distribution to all of the consultants whose financial proposals were opened. The representatives of the consultants present shall also sign an attendance sheet.

O. Evaluation of Cost

4.25 The financial proposals shall then be reviewed. Arithmetical errors shall be corrected, as long as both the mistake and the intended proposed price are apparent on the face of the proposal. For the purpose of comparing proposals, the costs shall be converted to a single currency (local currency or fully convertible foreign currency) as stated in the RFP. The RFP shall specify the source of the exchange rate to be used and the date of that exchange rate. The date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal.

4.26 The cost evaluation methodology shall be as described in the RFP. For the purpose of evaluation, "cost" shall exclude local identifiable indirect taxes on the contract and local income tax payable on the remuneration of services rendered in Samoa by non-resident staff of the consultant. The cost shall include all consultant's remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost.

P. Combined Quality and Cost Evaluation

4.27 The total score shall be obtained by weighting the quality and cost scores and adding them together. The weight chosen for the cost shall take into account the complexity of the assignment and the relative importance of quality. In QCBS, the weight for cost shall normally be 20 points out of a total score of 100. The proposed weightings for quality and cost shall be specified in the RFP. The results of the cost evaluation and combined evaluation shall be recorded in a Final Evaluation Report, which shall be promptly provided to the Tenders Board for its approval or recommendation to the Cabinet as appropriate, in accordance with the B4 Schedule of Authorities. Upon approval, the firm obtaining the highest total score shall be invited by the Ministry or Corporation for negotiations.

Q. Negotiation and Award of Contract

4.28 Negotiations shall include discussions of the TOR, the methodology, staffing, any Government support, and special conditions of the contract. These discussions shall not substantially alter the original TOR or the basic terms of the contract, lest the quality or cost of the services, or the relevance of the initial evaluation, be affected. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated in the final contract.

4.29 The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

4.30 Financial negotiations shall include clarification of the consultants' local tax liability (if any) and how this is to be reflected in the contract. Notwithstanding the foregoing, in the case of lump-sum contracts, the price includes all costs, and therefore no financial negotiation is generally necessary or appropriate. For time-based contracts, payment is based on inputs (staff time and reimbursables) and the offered price shall

include staff rates and an estimation of the amount of reimbursables. When the selection method includes price as a component, negotiations of staff rates should not take place, except in special circumstances, e.g., if staff rates offered are much higher than typically charged rates by consultants for similar contracts. The prohibition of negotiation does not preclude the Government's right to ask for clarifications, and, if fees are very high, to ask for change of fees. Reimbursables are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore should not generally be subject to negotiations. However, if the Ministry or Corporation wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates), it may indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.

4.31 If negotiations with a consultant fail to result in an acceptable contract, they shall (with the approval of the Tenders Board) be terminated, and the consultant shall be informed of the reasons for such termination. The next ranked consultant shall then be invited for negotiations. Once negotiations are commenced with the next ranked firm, negotiations with the previous firm shall not be reopened. After negotiations are successfully completed with the next ranked firm, the approval of the Tenders Board or Cabinet, as applicable, must be secured. Once this approval has been obtained, the Ministry or Corporation shall promptly notify the other responsive firms on the short list that they were unsuccessful.

4.32 After completion of the steps described in the preceding paragraph, the Ministry or Corporation shall (1) finalize the contract, sign it, and send the signed contract to the successful consultant for counter-signature; and (2) advertise, in a widely circulated newspaper (as well as internationally when required by a donor or financier) and with electronic posting on Government websites also encouraged, the following information: (a) the names of all consultants who submitted responsive proposals; (b) the technical points assigned to each such consultant; (c) the evaluated prices offered by each such consultant; (d) the final point ranking of these consultants; and (e) the name of the winning consultant and the price, duration, and summary scope of the contract. A written notice containing the same information shall be sent to all consultants who have submitted proposals.

R. Modifications to the Contract

4.33 Before agreeing to and signing substantial contract modifications, the Ministry or Corporation shall secure a further approval by the Tenders Board or the Cabinet, as applicable after confirming that funds are available for the proposed modification. For purposes of this paragraph, “substantial contract modifications” include substantial modification of the scope of the services; substituting, adding or deleting key staff; waiving contract conditions; terminating the contract; or any other change(s) that would, alone or in the aggregate when added to other changes, increase or decrease the original contract amount by more than 10% of the original contract value.

S. Debriefing

4.34 The advertisement and notice of contract award described in the preceding paragraph shall state that any consultant who wishes to ascertain the grounds on which its proposal was not selected may address a request for an explanation to the procuring Ministry or Corporation, which shall promptly provide it in writing and/or a debriefing meeting, at the consultant’s option. The requesting consultant shall bear all the costs of attending such a debriefing. If the consultant is not satisfied with the explanation given and wishes to seek a meeting with the Tenders Board, it may do so by submitting a written request to the Secretary of the Tenders Board, who will arrange a meeting. In this discussion, only the consultant’s proposal can be addressed and not the proposals submitted by competitors; however, information regarding the winning consultant’s proposal may also be disclosed when appropriate and necessary to provide an adequate explanation of the reasons for the award decision.

T. Rejection of All Proposals and Re-invitation

4.35 Rejection of all proposals will be justified only if all proposals are non-responsive and present major deficiencies in complying with the TOR or involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be considered. Before exercising the right to reject proposals, the Ministry or Corporation shall notify the Tenders Board, indicating the reasons for rejection of all proposals, and shall obtain approval before proceeding with the rejection and the new process. The new process may include a new REI, a new short list, and revisions to the RFP and the budget.

U. Confidentiality

4.36 In order to avoid either the reality or perception of improper interference, information relating to examination, clarification and evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the publication of the award of contract, except as otherwise specified in these Guidelines. If, prior to this point, a consultant wishes to bring additional information to the notice of the Government, it should do so in writing.

4.37 In order to ensure that consultants are willing to supply complete and accurate information, information supplied by consultants shall be used only for procurement purposes and is to be kept confidential even after award.

V. OTHER METHODS OF SELECTION

A. General

5.01 Although QCBS is the principal method of procuring consulting services, other methods may be used for small purchases and, as appropriate and subject to Tenders Board approval, for other than small purchases. These other methods and the criteria by which they may be deemed appropriate are briefly described in this Part V. Relevant provisions of Part IV on QCBS, as modified to suit the differing characteristics of each method, should be applied to such other methods to the extent feasible whenever competition is used. In all cases, due consideration should be given to the principles and objectives in paragraph 2.02 of these Guidelines.

B. Quality-Based Selection (QBS)

6.01 QBS involves evaluating only the quality of the technical proposals and negotiating the financial proposal and the contract with the consultant who submitted the highest ranking technical proposal. It is appropriate for:

- (a) complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants, and for which innovation is to be demonstrated in the proposals;
- (b) assignments that have a high downstream impact and in which high quality of the services is deemed essential to the outcome of the project; and
- (c) assignments that can be carried out in substantially different ways, such that proposals be difficult to compare.

5.03 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP shall provide either the estimated budget or the estimated quantity of key staff time, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

5.04 If technical proposals alone are invited, after evaluating the technical proposals using the same methodology as in QCBS, the Ministry or Corporation shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The Ministry or Corporation and the consultant shall then negotiate the financial proposal - - both remuneration and costs - - and the contract. All other aspects of the selection process shall be identical to those of QCBS, including advertising the award of contract, except that only the price of the winning firm is published. If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS to ensure that the price proposal of only the selected firm is opened and the rest returned unopened, after the negotiations are successfully concluded.

C. Selection under Fixed Budget (FBS)

5.05 This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the price proposals shall be opened in public and prices shall be read out aloud. Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract. The publication of the award of contract shall be as described under QCBS.

D. Least-Cost Selection (LCS)

5.06 This method is only appropriate for selecting consultants for smaller-scale assignments of a standard or routine nature (e.g., audits or engineering design of non-complex works), when well-established practices and standards exist. Under this method, which may not be used as a substitute for QCBS when the latter is appropriate, a minimum qualifying mark for quality is established. Technical and financial proposals, to be submitted in two envelopes, are invited from a short list. Technical proposals are opened first and evaluated. Consultants whose proposals secure less than the minimum qualifying mark or are otherwise non-responsive are rejected, and the financial proposals of the rest are opened in public. The firm with the lowest price shall then be selected and invited to finalize the contract. Should negotiations fail, the next ranked firm may be invited to start negotiations. Publication of the award of contract shall be as described for QCBS. Under this method, all proposals above the minimum compete only on cost. The minimum qualifying mark shall be stated in the RFP, and shall not generally be less than 70 points out of 100.

E Selection Based on Consultants' Qualifications (CQS)

5.07 This method may be used for smaller-scale assignments for which preparation and evaluation of competitive proposals is not justified. In such cases, a TOR shall be

prepared, EOI and information on the consultants' experience and competence relevant to the assignment shall be requested, a short list (generally consisting of at least 3 firms) established, and the firm with the most appropriate qualifications and references selected. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract. Should negotiations fail, the Ministry or Corporation shall start negotiations with the next ranked firm.

5.08 The name of the consultant to which the contract was awarded, and the price, duration, and scope of the contract shall be published in a newspaper of wide circulation (and internationally if required by a donor or financier). Posting on Government websites is also encouraged.

F. Single-Source Selection (SSS)

5.09 Single-source selection does not provide the benefits of competition in regard to quality and cost, lacks transparency, and could encourage unacceptable practices. Therefore, it shall be used only in exceptional cases, when, upon careful consideration of the principles and objectives of the present Guidelines, it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm, generally only when such previous work was awarded competitively (see next paragraph), (b) in emergency cases such as in response to natural disasters, or (c) when only one firm or individual is qualified or has experience of truly exceptional worth. With respect to small purchases, see paragraph 5.12 below.

5.10 When continuity for downstream work is essential, the initial RFP shall outline this prospect, and, if practical, the factors used for the selection of the consultant shall take the likelihood of continuation into account. Continuity in technical approach, experience acquired, and continued professional liability of the same consultant may make continuation preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the Ministry or Corporation shall ask the initially selected consultant to prepare technical and financial proposals on the basis of the TOR, which shall then be negotiated.

5.11 If the initial assignment was not awarded on a competitive basis or the downstream assignment is substantially larger in value, a competitive process shall

normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. Exceptions to this rule will be permitted only under special circumstances and only when a new competitive process is not practicable.

G. Small Purchases

5.12 Small purchases as described in this paragraph do not require prior approval of the Tenders Board and may utilize the indicated special procedures, provided that other competitive methods of procurement may always be used when deemed appropriate, and that procurement transactions shall in no case be artificially fragmented in order to fall under a specific threshold. Transactions up to \$2,000 in value may be awarded based on at least one oral or written quote. Transactions above \$2,000 but not more than \$5,000 in value may be awarded based on at least three oral or written quotes. Transactions above \$5,000 but not more than \$50,000 must be awarded based on at least three written quotes obtained pursuant to a formal Request for Quotations or similar solicitation with open and fair competition. All transactions shall be conducted with due regard to the principles and objectives set forth in paragraph 1.02 above and any applicable Government standard procedures.

VI. TYPES OF CONTRACTS AND SELECTED PROVISIONS

A. Types of Contracts

6.01 *Lump Sum Contract.* Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. Payments are linked to specific outputs (deliverables), such as studies, reports, drawings, bills of quantities, or software programs.

6.02 *Time-Based Contract.* This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess, such as construction supervision, advisory services or customized training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract shall

include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate. Time-based contracts must be closely monitored and administered to ensure that the assignment is progressing satisfactorily and payments claimed by the consultants are appropriate.

6.03 *Other.* Any other method of procurement used must follow any guidelines and instructions issued by the Treasury under its Operating Manuals and/or instructions and approved by the Board.

B. Selected Provisions

6.04 *Currency.* RFPs shall clearly state that firms may express the price for their services in any fully convertible currency. If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided the proposal includes no more than three foreign currencies. The Ministry or Corporation may require consultants to state the portion of the price representing remuneration or reimbursable costs in local currency.

6.05 *Price Adjustment.* To adjust the remuneration for foreign and/or local inflation, a price adjustment provision shall be included in the contract if its duration is expected to exceed 18 months. Contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.

6.06 *Payment Provisions.* Payment provisions, including amounts, schedule, procedures, and currency shall be agreed upon during negotiations and recorded in the contract. Such provisions shall be consistent with standard practices and procedures set down by the Ministry of Finance under the Public Finance Management Act 2001 and Treasury Instructions. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Advances (for example, for mobilization costs) exceeding 10 percent of the contract amount should normally be backed by advance payment securities. Payment shall normally be in the currency or currencies specified in the RFP, except where a different arrangement is agreed between the Government and the consultant.

6.07 *Prompt Payment.* Payments shall be made promptly when due in accordance with the contract provisions. To that end, only disputed amounts may be withheld, with the remainder of the invoice paid in accordance with the contract.

6.08 *Bid and Performance Securities.* Bid and performance securities should not normally be required in connection with consulting services.

6.09 *Government's Contribution.* The Government may assign members of its own professional staff to the assignment in different capacities. The consultant services contract shall give the details governing such counterpart staff, as well as facilities or other support that shall be provided by the Borrower, such as housing, office space, secretarial support, utilities, software, data, materials, and vehicles. The contract shall indicate measures the consultant can take if any of the items cannot be provided or have to be withdrawn during the assignment, and the compensation the consultant will receive in such a case, if any.

6.10 *Conflict of Interest.* The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consulting or other activities that conflict with the interest of the Government under the contract. The contract shall include provisions limiting future engagement of the consultant for other services resulting from or directly related to the firm's consulting services in accordance with the requirements of paragraphs 3.03, 3.04 and 9.04 of the Guidelines.

6.11 *Professional Liability.* The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the Government will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit or clarify this liability. If they do so, they should ensure that (a) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (b) the consultant's liability to the Government may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the special conditions of the contract (the amount of such limitation will depend on each specific case); and (c) any such limitation may deal only with the consultant's liability toward the Government and not with the consultant's liability toward third parties.

6.12 *Staff Substitution.* During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the consultant shall propose other staff of at least the same level of qualifications for approval by the Government.

6.13 *Applicable Law and Settlement of Disputes.* The contract shall include provisions dealing with the applicable law and the forum and rules or procedures for the settlement of disputes.

VII. SELECTION OF INDIVIDUAL CONSULTANTS

7.01 Individual consultants are employed on assignments when they are more appropriate and cost-effective than firms, e.g. tasks for which teams of personnel are not required, no additional outside (home office) professional support is needed, and the experience and qualifications of the individual are of paramount importance. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it is advisable to employ a firm.

7.02 Individual consultants are selected on the basis of their qualifications for the assignment. Advertisement is not required for assignments valued at less than \$50,000 (although it is encouraged even when not required), and consultants do not need to submit proposals. Consultants shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Ministry or Corporation. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and those selected to be employed by the Ministry or Corporation shall be the best qualified and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of conditions in Samoa, such as local language, culture, administrative system, and government organization.

7.03 When officers or employees of a consulting firm are considered for selection as individual consultants, the conflict of interest provisions described in these Guidelines shall apply to the employing firm.

VIII. AWARD INQUIRIES AND CHALLENGES

8.01 Unsuccessful consultants with inquiries concerning the procurement process or award decision in a specific instance should first request a debriefing pursuant to paragraph 4.34 above.

8.02 An unsuccessful consultant who is not satisfied with the explanation and information obtained in a debriefing may submit a challenge within 7 days. Challenges will not be accepted if received by the Ministry or Corporation after such date. The challenge must be in writing and set forth with specificity the basis of the challenge and the material facts relating thereto. It shall be addressed to the procuring Ministry or Corporation, with a copy to the Secretary of the Tenders Board. Challenges may not be filed directly with the Tenders Board in the first instance.

8.03 The procuring Ministry or Corporation should issue a written decision on challenges received within 14 days of receipt. On an exceptional basis, if more time is needed, the Ministry or Corporation shall notify the consultant concerned. If a negative decision is issued, within seven days of receipt of such decision, a dissatisfied bidder may submit a written request (with supporting reasons) for Tenders Board review. If on the other hand, no decision is issued within twenty-one days of receipt of an award challenge, the bidder may also request Tenders Board review before the end of the twenty-eighth day. In either case, the bidder shall send a copy of the request to the Ministry or Corporation.

8.04 The Tenders Board will review the matter and issue a decision within 30 days of receipt of a consultant's request. On an exceptional basis, if more time is needed, the Tenders Board shall so inform the consultant. The decision of the Board will be final, provided that if the consultant believes that such decision is not consistent with these Guidelines or is otherwise contrary to law, it may appeal to court.

8.05 Whenever it is determined to be appropriate, after consideration of the principles and objectives of procurement set forth in these Guidelines, an award or contract may be temporarily suspended pending decision on the award challenge. Such suspension

may be implemented by the Ministry or Corporation or directed by the Tenders Board. The Cabinet may also direct such action with regard to an award subject to its approval.

8.06 The Tenders Board may issue and from time to time amend detailed procedures, forms and guidelines regarding inquiries and challenges.

IX. EXCLUSION OF CONSULTANTS

9.01 A consultant may be excluded from participating in procurement in the event of (1) debarment or suspension (see paragraph 9.02 below); (2) disqualification for misconduct (see paragraph 9.03 below); or (3) a conflict of interest (see paragraph 3.03 above and 9.04 below).

9.02 A firm or individual may be debarred for a period of one to three years in the event of indictment or conviction of any offense involving a lack of business integrity, or for any other cause that seriously and directly affects its suitability as a Government consultant. When necessary to protect the Government, firms or individuals being considered for possible debarment may be suspended for a temporary period not to exceed six months. Proposals to suspend or debar may be made at any time by a Ministry or Corporation, and must be approved by the Tenders Board prior to implementation. Prior to debarment for any reason other than indictment or conviction, and when practicable prior to suspension, the firm or individual concerned shall be given written notice of the proposed action and the basis therefore, as well as an opportunity to request a hearing or submit written evidence in mitigation or opposition.

9.03 Consultants shall be disqualified from eligibility for an individual award if they are determined to have provided false information on eligibility, qualifications or other important matters; submitted proposals in the name of others; offered or given improper inducements to persons involved in the evaluation and award process; colluded with other consultants; engaged in unfair competition; or otherwise acted in such a manner as to undermine the integrity of the procurement process.

9.04 In addition to the exclusions specified in paragraph 3.03 above, a consultant that has provided consulting services for the preparation or implementation of a project, and any of its affiliates, shall not also provide goods or works for such preparation or implementation.

X. INTEGRITY IN PROCUREMENT

10.01 The Government requires that all persons involved in procurement must observe the highest standards of ethics during procurement, contracting and contract performance. Corrupt, fraudulent, collusive and coercive practices are strictly prohibited and will be subject to punishment to the fullest extent provided by law or these Guidelines. Government personnel shall observe all applicable civil service standards of conduct and ethics, and shall act fairly and objectively, without fear or favor, in the public interest. All participants in procurement transactions shall act in a manner that is beyond reproach, avoids malpractices, combats corruption, and promotes public confidence in the integrity of the process.

10.02 Audits and inspections are an important safeguard for the integrity of procurement as with all other types of public expenditure. Accordingly, Government personnel shall cooperate fully with auditors and inspectors in the performance of their duties. Consultants shall also cooperate and provide access to pertinent books and records in accordance with the terms of the relevant contracts.

XI. CONTRACT ADMINISTRATION

11.01 Government personnel are responsible to exercise sound contract administration so as to ensure that the public interest is protected after award. Consultants shall be treated fairly and in accordance with the law, but still be held strictly to the proper performance of their obligations. The Government's rights should not be waived or relinquished except upon receipt of valid consideration therefore.

11.02 Contracts shall be closed out as soon as possible after physical completion and audit. Standard Government practices and procedures will be followed when applicable.