



Government of the
Independent State of Samoa

Ministry of Finance

TREASURY INSTRUCTIONS

Section 6

Procurement & Contracting

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PART K: GOVERNMENT PROCUREMENT

K.1. APPLICATION OF INSTRUCTIONS AND INSTITUTIONAL ARRANGEMENTS

K.1.1. Application of Instructions

K.1.1.1. Who the Instructions apply to

(1) The following procuring entities shall comply with the Instructions:

- (a) all Ministries; and
- (b) all public body/ies.

(2) The procuring entities may be audited for compliance with the Instructions by the Controller and Chief Auditor under the Audit Office Ordinance 1961.

K.1.1.2. When the Instructions apply

The Instructions apply to all Government procurement except to the non-procurement activities specified in Instructions 1.1.3

K.1.1.3. When the Instructions do not apply

For these Instructions, the following activities are deemed not to be procurement activities:

- (a) employing staff (excluding the engagement of contractors and consultants);
- (b) disposals and sales by tender;
- (c) investments, loans and guarantees;
- (d) gifts, donations and any form of unconditional grants;
- (e) statutory appointments;
- (f) legal services.

K.1.1.4. Opt-out procurement

(1) Where a procurement activity is covered by these Instructions (meets the requirements of Instruction 1.1.1), in certain circumstances, a procuring entity can opt-out of applying the Instructions. These circumstances are listed below and are called 'opt-out procurements'.

(2) Where a procuring entity opts-out of applying the Instructions, it shall conduct its procurement according to the Procurement Principles set out in Instruction 2.1. A procuring entity shall seek to achieve the best value for money, and not necessarily the lowest price, over the life of the contract, regardless of whether or not the Instructions apply.

(3) The following is the list of valid opt-out procurements:

- (a) **Between Ministries and public bodies:** Where a Ministry or public body purchases goods, services or works from another Ministry or public body. However, if the purchaser chooses to use an open competitive process, then the Instructions shall apply;
- (b) **Overseas:** Goods, services or works purchased outside of Samoa for use exclusively outside of Samoa;
- (c) **Offices overseas:** Any procurement relating to constructing, refurbishing or furnishing Samoa Government offices overseas;
- (d) **Non-contractual arrangement:** Any non-contractual arrangement (e.g. a Memorandum of Understanding between two Ministries) or any form of assistance including cooperative agreements (e.g. diplomatic assistance to another Government);
- (e) **Conditional grant:** Any form of conditional grant. However, a procuring entity shall not design or structure a procurement as a form of conditional grant to avoid applying the Instructions;
- (f) **International funding:** Any procurement funded by an international grant, loan or other assistance or that shall comply with an international organisation's procedure where that procedure is inconsistent with the Instructions.
- (g) **International agreements between countries:** Agreements between countries for the joint implementation of a project. Unless otherwise stipulated in the international agreement between countries, these international agreements shall not extend to include agreements related to the procurement of services and works related to the project;
- (h) **Government's central financial control functions:** Central banking control functions on behalf of Government such as those carried out by the Central Bank of Samoa, and Government debt management functions such as those carried out by the Ministry of Finance;
- (i) **Essential security interests:** Measures necessary for the protection of essential national security interests, or preservation of public order, prevention of health risks, procurement indispensable for national security, the maintenance or restoration of international peace or security, public order, health or morals.

K.1.2. Procurement Division

K.1.2.1. Establishment of the Procurement Division

The Board shall be supported by a Procurement Division established within the Ministry of Finance under the overall direction of the Financial Secretary or the Chief Executive Officer of the Ministry of Finance.

K.1.2.2. Functions of the Procurement Division

The functions of the Procurement Division include:

- (a) providing policy advice and secretarial support in the screening and processing of tenders, particularly to ensure compliance with the Instructions ;
- (b) providing assistance and support to procuring agencies in improving their procurement systems and procedures;
- (c) enabling the development and delivery of training programs for procuring entities with the objective of producing a network of qualified and well experienced procurement practitioners across Government;
- (d) monitoring the application of the Government’s procurement policies and principles and advising the Board on improvement measures to be applied;
- (e) providing ongoing secretarial and secure records management services to the Board;
- (f) guiding the development and maintenance of the procurement portal in the Ministry of Finance website and ensuring weekly maintenance updates to reflect tender invitations endorsed by the Board and contracts awarded;
- (g) maintaining a comprehensive database of all decisions of the Board’s and enabling public access to non-confidential information;
- (h) registering the receipt and dispatch of all tenders submitted and correspondence received from procuring entities, tenderers and members of the public;
- (i) producing promotional materials to strengthen public awareness of the Board’s good governance initiatives in eliminating fraudulent and corrupt procurement practices;
- (j) providing enabling arrangements for procuring entities to access widespread procurement publication and self-development avenues locally, regionally and internationally using cost effective means;
- (k) improving transparency and decision making, through ensuring the provision of relevant and appropriate documents supporting contract award;
- (l) establishing executing agency accountability and risk responsibility at the outset of tendering processes and generally promoting initiatives for improved quality assurance through risk assignment, technical diligence, internal audit and internal control;
- (m) defining, with the Board’s approval, standard requirements for award recommendation documentation requirements, including a probity declaration in which all key aspects of the planning, tendering and evaluation processes have been fully satisfied.
- (n) dissemination to all procuring entities of any procurement documents.

K.1.2.3. Staff of Procurement Division

The staff of the Procurement Division shall be appointed in accordance with the prevailing public service requirements for recruitment and selection of employees.

K.1.3. Thresholds and Approvals

- (1) As per Section 2, Part B, Instruction B.4 (2) of these Instructions, the Ministry of Finance through the Procurement Division (PD) shall prepare the relevant thresholds in the form of Appended B.4 Schedule for methods of procurement, the authorisation levels for awards of contract, the authorisation levels for signing of contracts and approval of contract payments,

for the endorsement of the Board, before submission to Cabinet for final approval and issuance in a Cabinet Directive.

- (2) The Board may review the thresholds and approval levels and submit the revised thresholds and approval levels to Cabinet for approval.

K.2. PROCUREMENT PRINCIPLES, PLANNING AND PREPARATION

K.2.1. Procurement guiding principles

- (1) Government procurement shall be conducted in accordance with the following principles:
- (a) ***Open and fair competition***; procurement must be advertised or disseminated publicly and openly to allow all those eligible to participate and must be carried out by fair competition (unless otherwise stated in these Instructions), free of corruption or collusion;
 - (b) ***Wide participation by eligible parties***: procuring entities should endeavour to ensure that the procurement is widely disseminated to all eligible parties can participate in the procurement;
 - (c) ***Transparency***: procuring entities should endeavour to ensure that there is openness and clarity on procurement policy and its delivery;
 - (d) ***Responsiveness***: the procuring entities should endeavour to meet the aspirations, expectations and needs of the community served by the procurement;
 - (e) ***Accountability***: mechanisms should be in place to enable procuring entities and those involved in procurement to discharge their personal responsibility on issues of procurement risk and expenditure;
 - (f) ***Consistency***: - suppliers of services and goods, contractors and consultants shall, all things being equal, be able to expect the same general procurement policy to apply across all procuring entities;
 - (g) ***Effectiveness***: procuring entities should meet the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to procurement requirement;
 - (h) ***Efficiency***: the procurement must be conducted as cost effectively as possible and must consider whether the bidder is capable of carrying out the supply of goods and services or construction work in a cost effective manner;
 - (i) ***Informed decision making***: procuring entities must make their decisions based on accurate information;
 - (j) ***Legality***- procuring entities must observe and conform with all Government of Samoa procurement laws and procedures;
 - (k) ***Value for money***: procurement must be carried out on the basis of value for money as the most favourable combination of whole life costs of a product, service or work

and quality (in the sense of fitness for purpose) in order to meet the requirements¹ or intended of the procuring entity;

- (1) Promoting probity, quality assurance, ethics and integrity in procurement and contract delivery
- (2) Associated contracting processes shall aim to produce procurement outcomes of the right type, at the right price, at the right time, at the right place and of the right quality

K.2.2. Procurement planning

K.2.2.1. Planning

- (1) Procuring entities shall plan procurement with a view to achieving maximum value for public expenditure so that it is carried out within available financial resources and other applicable limitations and at the most favourable time.
- (2) Where appropriate, procuring entities shall aggregate procurement requirements in order to achieve economies of scale.
- (3) Before commencing a procurement process, a procuring entity shall:
 - (a) inquire as to whether or not its requirements can be met by the transfer of goods from another Ministry;
 - (b) ensure that an accurate estimate of the cost of the procurement including the cost of contingencies that might reasonably be expected to arise under a contract for the procurement has been prepared; and
 - (c) commit the amount of the estimate in accordance with the provisions of the approved budget enacted in the applicable Appropriation legislation.

K.2.2.2. Annual Procurement Plan

- (1) Procuring entities shall prepare an annual procurement plan for each financial year in accordance with prevailing Government policies and using the standard template issued by the Ministry of Finance, and containing at least the following information:
 - (a) a detailed breakdown of the goods, works and services required;
 - (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
 - (c) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common-use items;

¹ See: KPMG, Value for Money in Public Procurement, 2014, Online Materiel, URL: <https://www.kpmg.com/RO/en/IssuesAndInsights/ArticlesPublications/news/Documents/CEAP-web-en.pdf> (Accessed on 23 June 2016); See also: OECD, 2012, Value for money and international development: Deconstructing myths to promote a more constructive discussion;

- (d) an estimate of the value of each package of goods, works and services required including provisional sums, contingencies and all applicable taxes, and details of the budget available and sources of funding;
 - (e) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking into account the applicable approval requirements;
 - (f) other details as may be relevant to any item in the plan.
- (2) Annual procurement planning must be integrated with applicable budget processes.
 - (3) Procuring entities must forward their completed annual procurement plans to the Procurement Division for publication on the Ministry of Finance website.

K.2.2.3. Monitoring of Annual Procurement Plan

Procuring entities shall prepare and submit to the Ministry of Finance quarterly procurement progress reports providing progress updates, containing at least the following:

- (a) a comparison of the annual procurement plan targets with progress;
- (b) a comparison of actual and planned days for procurement time, contract execution time, and post contract execution obligations (e.g. defect liability period and payment of the retention monies) and total time in calendar days.

K.2.2.4. Agency General Procurement Notice

To apprise local and international vendors of upcoming opportunities in each financial year, procuring entities shall prepare and circulate a General Procurement Notice which shall identify the general types and quantities of goods, works and services specifically required for each of the standard procurement categories of works and services for the concerned budget year.

K.2.3. Procurement preparation

The procuring entity shall, before instituting a procurement procedure:

- (a) assemble final encompassing project design documents, scopes of service, terms of reference, technical specifications, supply schedules, detailed cost estimates, bills of quantity which are essential parts of the bidding documents;
- (b) subject to the conditions of the grants, loans and other assistance from international donar partners, the procuring entity shall use the bidding documents pre-approved by AGO and issued by the Ministry of Finance from time to time.
- (c) secure the relevant approvals required under Instruction 1.3.

K.2.4. Bid Evaluation Committees

- (1) Bid Evaluation Committees shall be appointed by the Head of the procuring entity, or his or her delegate, for all contracts whose value exceed the thresholds in Instruction 1.3.
- (2) The Committee shall compose of a minimum of three members and a maximum of five members which shall include:
 - (a) the officer responsible for preparing the bidding document;
 - (b) a representative from the Ministry of Finance;
 - (c) a representative from the Office of the Attorney General;
 - (d) a representative from the Ministry of Works, Transport and Infrastructure for evaluation of bids for structural works, or a representative from the Land Transport Authority for evaluation of bids for civil works; and
 - (e) any other member to provide technical or commercial expertise, as required.

K.2.5. Artificial division of procurements

A procuring entity shall not artificially divide an object of procurement with the intention of avoiding the financial thresholds in Instruction 1.3.

K.2.6. Division into lots

- (1) Despite Instruction 2.5, procuring entities may divide a procurement requirement, which could be procured as a single contract, into a package, consisting of several lots which are to be bid together, where it is anticipated that the award of several separate contracts may result in the best overall value for the procuring entity.
- (2) A requirement shall not be divided into lots:
 - (a) for the sole purpose of avoiding thresholds;
 - (b) where the award of several separate contracts would:
 - (i) create problems of compatibility or inter-changeability between items procured as separate lots; or
 - (ii) unduly strain contract administration resources;
 - (c) where the award of several separate contracts would invalidate or otherwise restrict any provider's warranty or liability; or
 - (d) where the award of several separate contracts would increase the costs of servicing, maintenance or similar requirements.
- (3) Where a requirement which could be procured as a single contract is divided into lots, the procuring entity shall:

- (a) permit bidders to bid for a single lot, any combination of lots or all lots; and
- (b) demonstrate, prior to contract award, that the recommended contract award or combination of contract awards offers the best overall value for money for the procuring entity.

K.3. PROCUREMENT METHODS

K.3.1. Selection of procurement method

- (1) Procuring entities shall select the most appropriate method of procurement for each requirement as part of the procurement planning process.
- (2) The choice of procurement method shall take into account:
 - (a) the estimated value of the procurement;
 - (b) the potential sources for the procurement, notably the competitiveness of the national and international market for the goods, works or services and the likely interest of potential national and international bidders, given the size and nature of the requirement;
 - (c) the nature of the goods, works or services required; and
 - (d) the circumstances surrounding the procurement, such as the existence of an emergency need or of situations which might justify use of limited bidding.

K.3.2. Open Competitive Tender Method

- (1) Public procurement of goods, works and services shall be undertaken by means of competitive bidding, advertised in accordance with Instruction 5.2, to which equal access shall be provided to all eligible and qualified bidders without discrimination.
- (2) Methods of procurement other than competitive bidding are permitted only in the circumstances specified in Instructions 3.3 to 3.7.
- (3) When a method of procurement other than competitive bidding is used, the procuring entity shall include in the record of the procurement proceedings a written justification of the decision to utilise the procurement method, including the grounds for taking that decision.
- (4) Consultant services shall be procured by the request for proposals method in accordance with Instructions 7.1 and 7.2.

K.3.3. International Procurement

- (1) When a procurement requires international participation:
 - (a) any procurement notice shall be published in accordance with Instruction 5.2;
 - (b) any invitation to bid, invitation to pre-qualify and bidding documents shall be in English;
 - (c) procuring entities shall allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit applications to prequalify and bids in accordance with the instructions given in the bidding documents;

- (d) bidders shall be permitted to express their bids, as well as any security documents to be presented by them, in their respective domestic currencies, or in a currency widely used in international trade and stated in the bidding documents;
 - (e) general and special conditions of contract shall be of a kind generally used in international trade; and
 - (f) technical specifications shall, to the extent compatible with national requirements, be based on international standards.
- (2) Instruction 3.3 applies to open competitive tender method (Instruction 3.2), selective bidding (Instruction 3.4) and restricted bidding (Instruction 3.5).

K.3.4. Selective Bidding Method

- (1) Selective bidding means competitive bidding preceded by pre-qualification and may be used in the case of particularly high value or complex procurement with a view to identifying, prior to the submission of bids, those bidders that are qualified.
- (2) The requirements and criteria for assessing the qualifications of bidders in selective bidding shall be those referred to in Instructions 4.3, 4.5 and 4.6.
- (3) In the pre-qualification stage the:
 - (a) procuring entity shall provide prequalification documents to all bidders responding to the invitation to prequalify;
 - (b) prequalification documents shall provide bidders with the information required to prepare and submit applications for prequalification; and
 - (c) procuring entity shall respond promptly to any request by a bidder for clarification of the prequalification documents that is received by the procuring entity within a reasonable time prior to the deadline for the submission of applications to prequalify.
- (4) The procuring entity shall make a decision with respect to each application to prequalify and all bidders that have been prequalified shall be invited to submit bids in the procurement proceeding.
- (5) At any time prior to contract award, the procuring entity may require a bidder that has been prequalified to demonstrate again its qualifications in accordance with the same criteria used to prequalify such bidder and the procuring entity shall disqualify any bidder that fails to demonstrate again its qualifications if requested to do so.
- (6) In all other respects, the provisions of the competitive bidding method apply.

K.3.5. Restricted Bidding Method

- (1) Restricted bidding may be held when the goods, works or services are only available from a limited number of bidders.
- (2) In the case of restricted bidding, the procuring entity shall invite bids from all known potential bidders upon the approval of the Tenders Board.
- (3) The record of the procurement shall record the circumstances giving rise to a finding that the goods, works or services are only available from a limited number of bidders
- (4) In all other respects, the provisions of the competitive bidding method apply.

K.3.6. Limited Bidding Method-

- (1) Procuring entities may use the limited bidding method in the following cases:
 - (a) when no suitable or responsive bids have been submitted in response to a competitive or selective bidding procedure, provided that the requirements of the initial bid are not substantially modified;
 - (b) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;
 - (c) for reasons of extreme urgency brought about by events not attributable to and unforeseen by the procuring entity, the products or services could not be obtained in time by means of competitive or selective bidding procedures;
 - (d) for additional deliveries of goods or services by the original supplier where a change of supplier would compel the procuring entity to procure equipment or services not meeting requirements of interchange ability with already existing equipment or services procured under the initial procurement and such separation would cause significant inconvenience or substantial duplication of costs to the procuring entity;
 - (e) when a procuring entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;
 - (f) when additional services which were not included in the initial contract but which were within the objectives of the original bidding documents have, through unforeseen circumstances, become necessary to complete the services described therein provided that the total value of contracts awarded for the additional services shall not exceed 50% of the amount of the original contract;
 - (g) for new services consisting of the repetition of similar services which conform to a basic project for which an initial contract was awarded following an open or selective procurement

method, and for which the procuring entity has indicated in the notice of intended procurement that a limited bidding method might be used in awarding contracts for such new services;

- (h) for products purchased on a commodity market;
 - (i) for purchases made under exceptionally advantageous conditions which only arise in the very short term in the case of unusual disposals such as arising from liquidation, receivership or bankruptcy and not for routine purchases from regular suppliers; and
 - (j) for contracts below the thresholds in Instruction 1.3.
- (2) Under this method:
- (a) the procuring entity shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery;
 - (b) a bid shall be invited from either one, or where possible, more suppliers or contractors;
 - (c) where feasible, a time limit as may be given to the bidders to prepare and submit their bids or agreed by mutual agreement;
 - (d) the compliance of the offer or offers with the specifications, terms and conditions shall be considered; and
 - (e) negotiations to bring down the prices may be carried out if the prices offered are deemed to be excessive or substantially in excess of the prevailing market prices.

K.3.7. Request for Quotations Method

- (1) The request for quotations method may be used by any procuring entity for the procurement of goods and works:
 - (a) where the procurement is for readily available commercially standard goods, not specially manufactured to the particular specifications of the procuring entity; and
 - (b) when the estimated value of the procurement of works or services does not exceed the thresholds in Instruction 1.3.
- (2) Under this method, quotations shall be requested in writing from as many bidders as practicable, but from at least three bidders, using the standard documents issued by the Ministry of Finance and approved by the AGO.
- (3) A request for quotations shall contain a clear statement of the requirements of the procuring entity as to quality, quantity, terms and time to delivery, and any other special requirements.
- (4) Bidders shall be given adequate time to prepare and submit their quotations, provided that each bidder shall only submit one quotation which may not be altered or negotiated.

- (5) A purchase order shall be placed with the bidder that provided the lowest total cost and is able to meet all the terms and delivery requirements of the procuring entity.
- (6) A purchase order shall include the following details:
- (a) quoted price;
 - (b) contract number;
 - (c) name of the contractor or of the supplier;
 - (d) name of the officer of the contractor or of the supplier who signed the contract;
 - (e) terms; and
 - (f) date of delivery.

K.3.8. Framework Arrangement Method

- (1) Subject to the K.3.8 (2)-(5), Framework Arrangement (FA) is an arrangement or contract between a procuring entity and supplier(s) or contractor(s) for the provision of specified or unspecified good, services or works over a specified period of time not exceeding three (3) years.
- (2) Subject to Tenders approval, the Framework Arrangement Method is an alternative to the Local and International Shopping or Restricted Bidding/Tendering. The three (3) models of Framework Arrangement based on competition methods and subject to Guidelines on Framework Arrangements issued by the Financial Secretary, are as follows:
- (a) **Closed FA “Fixed Price”:** The procuring entity engages in open competitive bidding using predefined criteria for the selection of one or more contractor(s) or supplier(s) to provide goods, services or works at a fixed or “locked-in” unit price. The award is made to one or more suppliers or contractors (the ‘Panel’). Call-offs are then awarded to one or more panel members.
This model does not allow the procuring entity at the Call-offs to select from new suppliers or contractors other than the Panel for the duration of the arrangement term.
 - (b) **Closed FA “Market Price”:** This method is conducted in two (2) stages:
 - i. The first involves the procuring entity engaging in open competitive bidding using predefined criteria for the selection of one or more contractor(s) or supplier(s) to provide goods, services or works. The award is made to one or more substantially responsive suppliers or contractors (the ‘Panel’)
 - ii. The second involves a competition amongst the Panel and the Call Off is awarded to the lowest evaluated bidder based on the offered priced and delivery conditions
 - iii. This model does not allow new suppliers or contractors into the panel for the duration of the arrangement term
 - (c) **“Open Framework Arrangements”:** This model also follows the two-stage approach as in the Closed “Market Price” model, but at any time during the duration of the arrangement, the procuring entity may invite one or more suppliers or contractors to be considered as Panel member.
- (3) A procuring entity that intends to engage in the Framework Arrangement must:
- (a) obtain prior Tenders Board Approval;

- (b) once approved by Tenders Board, conduct and engage in the Framework Arrangement Method in accordance with the principles and procedures of Open Competitive Bidding Process.
- (4) The Framework Arrangement Method may be used by any procuring entity and are applicable for recurring procurement of the following:
 - (a) goods that can be procured off the shelf, or that are commonly used with standard specifications;
 - (b) simple general services that may be required from time to time by the same procuring entity or multiple procuring entities; and
 - (c) small value (minor) works in accordance with the threshold stipulated under the B4 schedule.(2).
- (5) The Framework Arrangement Method may be used in times of disasters or emergencies or other circumstances that the Tenders Board considers appropriate or may determine from time to time.

K.4. PROCUREMENT REQUIREMENTS AND CRITERIA

K.4.1. Object of procurement

- (1) The procuring entity's detailed requirements with respect to quality and quantity, including any certification, testing and test methods or other means for evaluating the conformity of the performance of the contract to these requirements shall be specified clearly in the bidding documents.
- (2) All relevant bidding and pre-qualification documents shall provide objective descriptive information that do not unnecessarily favour a particular bidder by stating the desired performance or output requirements of the object of the procurement wherever possible rather than design or descriptive characteristics.

K.4.2. Technical Specifications

- (1) Technical specifications shall include, where appropriate:
 - (a) the purpose and objectives of the object of procurement;
 - (b) a full description of the requirement;
 - (c) a generic specification to an appropriate level of detail;
 - (d) a functional description of the requirements, including any environmental or safety features;
 - (e) performance parameters, including outputs, timescales and any indicators or criteria by which satisfactory performance can be assessed;
 - (f) description of processes and materials;
 - (g) dimensions, symbols, terminology language, packaging, marking and labelling requirements;
 - (h) inspection and testing requirements; and
 - (i) any applicable standards.
- (2) References to standards shall, where possible, be references to international standards, or national standards incorporating international standards.

- (3) No requirement or reference is to be made in the technical specifications to a particular trademark or name, patent, design or type, specific original, producer or service provider, unless there is no other practical way of describing the procurement requirements, and words such as “or equivalent” are included in the specifications.

K.4.3. Eligibility and non-discrimination

Bidders shall not be excluded from participation in public procurement on the basis of nationality, race or any other criterion, not having to do with their qualifications or decisions taken against any bidder under Instruction 4.5 to 4.7.

K.4.4. Form of communication

All communications between bidders and procuring entities shall be in writing

K.4.5. Permitted Qualification criteria

- (1) Qualification criteria shall be limited to those criteria which are designed to demonstrate that a bidder possesses the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, business reputation and personnel, to perform the contract.
- (2) Qualification criteria shall not be unduly restrictive or designed to reduce competition and shall be prepared for each procurement requirement, taking into account the size, complexity and technical requirements of the proposed contract.
- (3) The procuring entity shall clearly state the qualification criteria in all bidding documents and shall, where it deems fit, require bidders to provide signed statements or documentary evidence to certify their eligibility and authenticity.
- (4) The procuring entity shall not impose any requirement as to qualifications in the invitation to bid other than a requirement specified in this Instruction.

K.4.6. Evidence of Qualification criteria

- (1) Subject to Instruction 4.6(2), the following evidence may be requested from bidders to satisfy the qualification criteria established in the bidding documents.
- (2) Evidence of the bidders' technical abilities may be furnished by one or more but shall not be restricted to any of the following means according to the nature, quantity or importance, and use of the goods, works or services, including evidence of:
- (a) experience and reliability;
 - (b) financial resources, equipment and other physical facilities;
 - (c) personnel;
 - (d) managerial capability;
 - (e) possession of the necessary professional and technical qualifications and competence; and
 - (f) subject to the right of the bidder to protect its intellectual property rights and trade secrets, possession of the requisite intellectual property rights or trade secrets.

- (3) Evidence of the bidder's legal capacity to perform the contract may be furnished by any of the following means, including but not limited to evidence that:
- (a) it has satisfied all the legal requirements to carry on business in Samoa and, if the bidder has its headquarters outside Samoa, of its entitlement to carry on business in that jurisdiction;
 - (b) the bidder is not insolvent, in bankruptcy, in receivership or under liquidation; and
 - (c) legal proceedings have not been taken and are not anticipated to be taken that would materially affect the ability or the legal capacity of the bidder to carry out the contract.
- (4) As applicable, evidence may be provided that the bidder is in good standing with the Government and has fulfilled its obligations, to pay taxes, statutory contributions, levies, license fees and other similar fees and charges.
- (5) All bidders shall provide evidence of their integrity to the effect that the bidder and any director, officer, manager or supervisor of the bidder has not been, within a period of 3 years preceding the date of issuance of the invitation to bid:
- (a) convicted of any criminal offence, whether in Samoa or elsewhere:
 - (i) relating to his or her professional conduct;
 - (ii) relating to the making of false statements or misrepresentations as to his or her qualifications to enter into a procurement contract;
 - (iii) involving dishonesty; or
 - (iv) under anti-corruption legislation; or
 - (b) suspended or disbarred by administrative or judicial proceedings from participating in procurements, whether in Samoa or elsewhere.

K.4.7. Disqualification

- (1) The procuring entity shall disqualify a bidder where it finds that the information submitted in a bid concerning its qualifications is false or misleading.
- (2) The procuring entity may disqualify a bidder where it finds that the information submitted in a bid concerning its qualifications is materially inaccurate or materially incomplete.

K.5. PROCUREMENT PROCESS

K.5.1. Invitations to bid

- (1) The Limited Bidding Method shall be conducted in accordance with Instruction 3.6.
- (2) The Requests for Quotations Method shall be conducted in accordance with Instruction 3.7.

- (3) In all other cases, bids shall be invited:
 - (a) through the publication of an announcement of bidding proceedings in the case of competitive bidding;
 - (b) from the list of pre-qualified bidders in the case selective bidding; or
 - (c) from a shortlist of bidders in the case of restricted bidding.

K.5.2. Publication of procurement notices

- (1) The notice of invitation to bid or to pre-qualify, as the case may be, shall be:
 - (a) published in at least one newspaper circulating widely in Samoa to reach sufficient bidders to ensure effective competition; and
 - (b) published on the procuring entity's website, including any website established by the Ministry of Finance.
- (2) Where international competitive bidding is used, the notice shall also be placed in at least two English language newspapers or other printed media with adequate circulation to attract foreign competition or on widely read internet websites.
- (3) Where the procuring entity considers it is necessary to ensure wide competition, it may send the notice directly to potential bidders after the date of publication of the notice. The procuring entity shall keep a record of any bidders to whom the notice is sent directly, which shall form part of the procurement record.
- (4) The invitation to bid or to prequalify shall include information regarding:
 - (a) the identity and address of the procuring entity and the contact details of the person from whom further information can be obtained;
 - (b) nature and time-frame of the procurement, including the place of delivery of goods or services, and the location of any works;
 - (c) manner of obtaining and the price of the bidding documents, or, if applicable, the prequalification documents;
 - (d) place and deadline for submission of bids, or of applications to prequalify; and
 - (e) such other matters as may be required by the Ministry of Finance.

K.5.3. Minimum bidding periods

- (1) The bidding documents shall be ready for distribution prior to the publication of the procurement notice.
- (2) The bidding period starts on the date of the first publication of the procurement notice and ends on the date of the bid submission deadline.
- (3) The minimum bidding periods are:

- (a) 30 days for competitive bidding (Instruction 3.2);
 - (b) 45 days for international competitive bidding (Instruction 3.3);
 - (c) 20 days for selective and restricted bidding (Instructions 3.4 and 3.5);
 - (d) 30 days for selective bidding, where the bidding is international; and
- (4) In selective bidding, bidders shall be given a minimum of 30 days following a notice to pre-qualify to submit their pre-qualification applications.
- (5) In determining the appropriate bidding period for each requirement, the procuring entity shall take into account, in addition to the minimum bidding periods:
- (a) the time required for preparation of bids, taking into account the level of detail required and the complexity of bids;
 - (b) any need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such documents;
 - (c) the location of potential bidders and the time required to obtain the bidding document and for the delivery and submission of bids to the procuring entity; and
 - (d) any restrictions relating to the time the goods, works or services are required.

K.5.4. Bidding documents

- (1) A procuring entity shall use standard bidding documents issued by the Ministry of Finance and approved by the AGO including any operational manuals or user guides pertaining to the standard bidding documents and issued by the Ministry of Finance.
- (2) The procuring entity shall provide, in an expeditious and non discriminatory manner, the bidding documents to all potential bidders that respond to the invitation to bid or, in the case of selective bidding, to all bidders that have been prequalified, and the price that may be charged for the bidding documents shall reflect only the cost of printing and distributing the documents.
- (3) The bidding documents shall provide bidders with all the information that they require in order to submit bids that are responsive to the needs of the procuring entity. In particular, the bidding documents shall inform bidders concerning:
- (a) the nature and time frame of the procurement, including, but not limited to the contractual terms of the procurement, and the manner of entry into force of the contract;
 - (b) in all cases other than selective bidding, bidder qualification requirements and the documentation required to satisfy those requirements which will require the bidder to show that it possesses the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience

- in the procurement object, business reputation and personnel, to perform the contract as specified in the standard bidding documents;
- (c) information as to site visits and pre-bid meetings;
 - (d) instructions for preparation and submission of bids, including the deadline for submission of bids, time and place of bid opening;
 - (e) components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
 - (f) the criteria and methodology for evaluation of bids and the selection of the successful bidder, which shall all be quantified in monetary terms or expressed in the form of pass or fail requirements, if possible, or, where not possible, by relative weights and when considering evaluation criteria, the procuring entity shall consider only the following:
 - (i) the bid price; and
 - (iii) the cost of operating, maintaining and repairing the goods, or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;
 - (g) the preference, if any, for domestic goods and contractors as required by the Ministry of Finance;
 - (h) any grouping of goods, works or services into lots and packages and the manner of evaluation of the lots and packages;
 - (i) whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;
 - (j) where suppliers are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;
 - (k) the required validity period of bids;
 - (l) the amount and acceptable forms of any required bid, performance or other security;
 - (m) the conditions of contract which will be entered into with the successful bidder;
 - (n) a notice of conflict-of-interest restrictions and anti-fraud and corruption rules;
 - (o) the manner in which bidders may obtain review of actions, omissions and decisions of the procurement unit; and
 - (p) such other matters as may be required in the Instructions, operating manuals and standard forms issued by the Procurement Division.
- (4) For the purposes of subsequent communications, the procuring entity shall make a record of the name, postal address, telephone, facsimile and email address of all persons to whom an invitation to bid is issued and shall file a copy of it in the procurement records.

K.5.5. Domestic preference

- (1) Where so indicated in the bidding document and strictly in accordance with any instructions or schemes for domestic preference issued by the Ministry of Finance, a margin of preference may be applied to eligible bids.
- (2) Any instructions or schemes issued under Instruction 5.5(1) shall clearly state the:
 - (a) eligibility for the margin of preference, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with local partners or any other relevant factor;
 - (b) documentation required as evidence of eligibility for the margin of preference; and
 - (c) percentage of the margin of preference and the manner in which it will be applied during the evaluation.
- (3) The percentage of preference in instructions or schemes issued by the Ministry of Finance shall be between 5% and 10%. The Procurement Division within the Ministry of Finance may review these percentages annually.

K.5.6. Cancellation of procurement proceedings or rejection of bids

- (1) The cancellation of procurement proceedings shall be avoided where possible, but is permitted where there is written finding that:
 - (a) the procurement need has ceased to exist or changed significantly;
 - (b) insufficient funding is available for the procurement;
 - (c) there is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the re-commencement of procurement proceedings is necessary;
 - (d) insufficient, or no responsive bids are received;
 - (e) there is evidence of collusion among bidders; or
 - (f) it is otherwise in the public interest.
- (2) If so specified in the bidding documents or in a request for proposals or a request for quotation a procuring entity, after obtaining the approval of the Head of a procuring entity, may reject all bids, proposals or quotations at any time prior to their acceptance.
- (3) Such grounds for rejection are justified when the bids, proposals or quotations submitted are not substantially responsive, or where there is evidence of lack of competition.
- (4) A procuring entity shall upon request by the bidder communicate the grounds for rejecting a bid.
- (5) A procuring entity is not liable to any bidders solely by virtue of its invoking this Instruction.

- (6) Notice of the rejection shall be given promptly to all participating bidders.
- (7) If a procuring entity decides to annul the procurement proceedings before the bid submission deadline, all bids received shall be returned unopened to the bidders that submitted bids.

K.5.7. Unsuccessful procurement

- (1) Where no responsive bids are received or procurement proceedings are otherwise unsuccessful, the procuring entity shall investigate the failed procurement proceedings and record in the procurement record the reasons why the procurement was unsuccessful and the course of action taken.
- (2) The investigation should consider all relevant issues, including whether:
 - (a) the bidding period was sufficient, considering the factors listed in Instruction 5.4(3);
 - (b) the requirements of the bidding documents and the terms and conditions of the proposed contract were clear, non-discriminatory, proportionate, reasonable and not so excessive as to deter competition;
 - (c) any invitation notice was published in an appropriate publication and on the required date;
 - (d) there was any delay in issuing the bidding documents;
 - (e) any amendments or clarifications to the bidding documents allowed sufficient time for bidders to take them into account in preparing their bids;
 - (f) there were other extraneous events or circumstances, which may have affected the ability of bidders to respond;
 - (g) the evaluation process was conducted in accordance with these Instructions and the bidding documents and whether officers responsible for the evaluation had adequate skills and resources;
 - (h) there is any suspicion of collusion between potential bidders; and
 - (i) the original choice of procurement method was appropriate.
- (3) The procuring entity shall take any appropriate action suggested by the cause or causes of failure which may include, but are not limited to:
 - (a) the use of an alternative method of procurement;
 - (b) amendments to the bidding documents, including bidding requirements, the type of contract or the terms and conditions of the proposed contract;
 - (c) alternative publication of any invitations to bid, similar notices or bidding documents; and
 - (d) the introduction of international competition.

K.6. BID SUBMISSION, BID OPENING AND AWARD

K.6.1. Submission of bids

- (1) A bid shall be submitted in written form, duly signed and in a sealed envelope at the place and time as indicated in the bidding documents.
- (2) Bids received after the deadline for submission of bids will not be accepted and shall be returned unopened.
- (3) Invitations for prequalification and bidding documents shall permit submission of applications to prequalify or bids by hand or mail or by courier at the option of the bidder.
- (4) Notwithstanding Instruction 6.1(3) and subject to any e-procurement policy of the Ministry of Finance, the bidding documents may authorise other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured, including the prevention of the opening and reading of bids by anyone until the opening of bids at the time set in accordance with Instruction 6.4.
- (5) Bids shall remain valid for the period of time indicated in the bidding documents and withdrawal of a bid during the bid validity period will result in forfeiture of the bid security.
- (6) The validity period of a bid may be deemed extended only on the basis of the agreement of the bidder concerned and a bidder that agrees to an extension of the validity period of its bid shall also obtain a corresponding extension of the bid security, where a security was required.

K.6.2. Bid security

- (1) Subject to Instruction 6.2(2), a procuring entity may require bid securities, when appropriate, in order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids.
- (2) A procuring entity shall require a bid security for any contract valued at least \$500,000 tala.
- (3) If a procuring entity requires a bid security under Instruction 6.2(1), the bidding documents shall state that requirement for a bid security.
- (4) The value of any required bid security shall be expressed as a fixed amount, which shall be between 1% and 2% of the estimated value of the contract.
- (5) In determining the amount of bid security required, the procuring entity shall take into account the following:
 - (a) the cost to bidders of obtaining a bid security;
 - (b) the estimated value of the contract;
 - (c) the risk of bidders failing to fulfil the conditions of their bids. The bid security shall be high enough to deter irresponsible bids, but not so high as to discourage competition.

- (6) The bidding documents shall state that bid securities shall be:
- (a) in accordance with the format and wording provided in the bidding document;
 - (b) in a form acceptable to the procuring entity, which may be:
 - (i) a certified Bank cheque;
 - (ii) a bank guarantee; or
 - (iii) any alternative form acceptable to the procuring entity, including any forms permitted under schemes issued by the Ministry of Finance to facilitate access to securities by small enterprises; and
 - (c) valid for the period specified in the bidding document, which shall normally be 28 days beyond the expiry of the bid validity period.
- (7) A bid security may be forfeited by the procuring entity only in the event of:
- (a) a modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
 - (b) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
 - (c) failure by the successful bidder to sign a contract in accordance with the terms specified in the bidding documents; or
 - (d) failure by the successful bidder to provide a security for the performance of the contract if required to do so by the bidding documents.
- (8) The procuring entity shall release bid securities promptly to unsuccessful bidders upon expiry of the term of the security or formation of a contract with the successful bidder and submission of any required performance security, whichever is earlier.
- (9) The bid security of the successful bidder shall not be released, until any required performance security has been received.

K.6.3. Amendment or withdrawal of bid

- (1) A bidder may amend or withdraw a bid by submitting a notice of amendment or withdrawal to the procuring entity not later than the date and time for the close of submission of bids.
- (2) The notice of amendment or withdrawal shall be submitted in an envelope identifying the invitation to bid and clearly labelled “Amendment of Bid or Proposal” or “Withdrawal of Bid or Proposal” and shall comply with any additional directions, if any, in the invitation to bid.

K.6.4. Bid opening

- (1) Bids shall be opened in public at the time and place indicated in the bidding documents, and the time of bid opening shall coincide with the deadline for submission of bids, or follow immediately thereafter, allowing a minimum time interval for logistical reasons.
- (2) Bidders or their representatives may attend the bid opening, where the name of the bidder, the total amount of each bid, any discounts or alternatives offered, and the presence or absence of any bid security, if required, and essential supporting documents shall be read out loud and recorded.
- (3) A copy of the record shall be made available to any bidder on request.
- (4) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the bid opening session.
- (5) Following opening of the bids and until the preliminary decision on award has been notified to the successful bidder, a bidder shall not make any unsolicited communication to the procurement entity or try in any way to influence the procuring entity's examination and evaluation of the bids.

K.6.5. Confidentiality

Notwithstanding any law to the contrary, information relating to the content of prequalification applications, bids or to the examination, clarification, evaluation and comparison of bids shall not before the award decision is final be disclosed to suppliers or contractors or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted.

K.6.6. Examination and evaluation of bids

- (1) Following the opening of bids, the Bid Evaluation Committee appointed under Instruction 2.4 shall first examine the bids in order to determine whether the bids are complete, signed, whether required documents to establish legal validity and required bid security have been furnished and whether bids are substantially responsive to the technical specification and contract conditions specified in the bidding documents.
- (2) Bids which are not complete, not signed, not accompanied by a bid security in the required form, where one is required, or not accompanied by essential supporting documents such as business registration certificates and business licences, or are substantially non-responsive to the technical specifications or contract conditions or other critical requirements in the bidding documents, shall be rejected and excluded from further evaluation and comparison.
- (3) In selective bidding, a bid received from any entity other than the prequalified bidders shall be rejected and excluded.
- (4) Bids not excluded from consideration under Instructions 6.6(2) and (3), shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.

- (5) The Bid Evaluation Committee may seek clarification in writing from any bidder to facilitate evaluation but shall neither ask nor permit any bidder to change the price or any other aspect of the bid and if a bidder amends its bid in any manner, such bid shall be rejected and its bid security forfeited.
- (6) In carrying out the evaluation, if there are minor deviations in any bid which did not merit rejection of the bid at the earlier stage, the cost of such minor deviation shall be ascertained, if possible, and the evaluated cost of such a bid shall then be compared to those of other bids to determine the lowest evaluated bid.
- (7) In selective bidding, the qualifications of the lowest evaluated bidder shall be verified again to take account of any change since the original prequalification.
- (8) In methods other than selective bidding, the qualifications of the lowest evaluated substantially responsive bidder shall be checked against the criteria specified in the bidding documents, if that bid fails, the same check shall be applied to the next ranked bid.

K.6.7. Prohibition of negotiation

- (1) Except as provided in Instruction 6.7(2)(b), there shall be no negotiation between the procuring entity and a supplier or contractor with respect to a bid submitted by the supplier or contractor.
- (2) If the lowest evaluated responsive bid exceeds the budget for the contract by a substantial margin, the Bid Evaluation Committee shall investigate the causes for the excessive cost and may:
 - (a) consider requesting new bids; or
 - (b) subject to approval by the Tenders Board or Head of the procuring entity, depending on the thresholds in Instruction 1.3, negotiate a contract with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope which can be reflected in a reduction of the contract price.

K.6.8. Contract award

- (1) The contract shall be awarded to the bidder having submitted the lowest evaluated and substantially responsive bid which meets only those evaluation criteria as specified in the bidding documents.
- (2) Prior to the expiry of the period of bid validity, the procuring entity shall notify the successful bidder of the proposed award, which shall specify the time within which the contract shall be signed, subject to any intervening complaints filed in accordance with Instruction 9.
- (3) In the case of contracts awarded by way of competitive bidding and in the case of any contract with a value in excess of the thresholds in Instruction 1.3, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 14 days have passed

following the giving of that notice.

- (4) If the bidder whose bid has been accepted fails to sign a written contract, when required to do so, or fails to provide any required security for the performance of the contract within the time limit specified in Instruction 6.8 (2), the procuring entity shall accept the next ranked bidder from among the remaining bids that are in force, but in selecting the next ranked bidder, the procuring entity shall comply with the provisions of this Instruction, as well as with the notice requirements provided in Instruction 6.8 (3).
- (5) Contracts shall be signed by the appropriate authority specified in Instruction 1.3, and shall come into effect as stated in the Contract Agreement.
- (6) For the elimination of doubt, a contract is not considered 'awarded' to a successful bidder until the written contract is executed between the procuring entity and the successful bidder.

K.6.9. Performance security

- (1) A procuring entity may request a performance security, where applicable, to secure the contractor's obligation to fulfil the contract and any requirement for a performance security shall be specified in the bidding documents and contract.
- (2) The value of any required performance security may be expressed either as a fixed amount or as a percentage of the contract value and shall be not less than 5% and no more than 10% of the contract value.
- (3) In determining the amount of performance security required, the procuring entity shall take into account the cost to the contractor of obtaining a performance security, the value of the contract, the risk of a contractor failing to fulfil his contractual obligations and the extent of protection offered to the procuring entity through alternative means, such as payment retentions.
- (4) Where appropriate, the value of the performance security may be progressively reduced, in line with the contractor's progress in delivering or completing the goods, works or services to which the security relates.
- (5) The bidding documents and contract shall state that the performance security shall be:
 - (a) in accordance with the format and wording provided in the bidding document;
 - (b) in a form acceptable to the procuring entity;
 - (c) from an institution acceptable to the procuring entity, where the security is issued by a financial institution; and
 - (d) valid for the period specified in the contract.
- (6) The conditions for forfeiture of the performance security shall be specified in the contract.

- (7) The procuring entity shall release the performance security promptly to the contractor upon completion of all the contractor's contractual obligations which are subject to the security or termination of the contract for a reason that is not attributable to any fault of the contractor.

K.7. PROCUREMENT OF CONSULTANCY SERVICES

K.7.1. Request for proposals method

- (1) The request for proposals method shall be used for the procurement of intellectual and professional services.
- (2) For procuring the services of a consultant, the procuring entity shall prepare a shortlist of 3 to 6 consulting firms after undertaking an evaluation, to the greatest extent feasible, comprising consultants of the same category, and similar capacity and business objectives, to which it shall provide the request for proposals for services, and the short-list shall be established from among those who have capacity to perform the required services, as demonstrated in their submissions.
- (3) When the estimated value of the procurement exceeds the threshold specified in Instruction 1.3, in order to establish the short-list, the procuring entity shall seek expressions of interest by publishing a notice in a local or international newspaper of wide circulation, and where appropriate, the notice may also be published in a relevant trade publication or technical or professional journal.
- (4) For assignments of a value lower than the threshold specified in Instruction 1.3, the short-list may be established from market knowledge or other sources of information.
- (5) The request for proposals shall provide shortlisted bidders with the information necessary to enable them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the procuring entity including, in particular the:
- (a) name and address of the procuring entity;
 - (b) nature, time frame and location of the services to be provided, terms of reference, required tasks and outputs;
 - (c) criteria to be used in evaluating and comparing proposals, and their relative weights as compared to price;
 - (d) contractual terms of the procurement, and the manner of entry into force of the contract;
 - (e) instructions for preparation and submission of proposals, and the place and deadline for submission of proposals;
 - (f) final selection procedures to be applied;
 - (g) notice of conflict-of-interest restrictions and anti-fraud and anticorruption rules, including the grounds for potential debarment from future participation in procurement of goods, services or works that may result from the assignment under consideration; and

- (h) such matters as may specified in the standard bidding documents issued by the Ministry of Finance.
- (6) The price of a proposal shall be considered by the procuring entity only after completion of the technical evaluation.

K.7.2. Methods of selection and conditions for use

- (1) The preferred methods of selection shall be:
 - (a) **Quality and cost based selection (QCBS):** This method uses a competitive process among short listed consultants that takes into account the quality of the proposal and the cost of the services in the selection of the successful consultant; or
 - (b) **Fixed Budget Selection (FBS):** This method shall be used when the assignment is simple and can be precisely defined, and when the budget is fixed; or
 - (c) **Quality Based Selection (QBS):** This method shall be used only to evaluate the quality of the technical proposals and negotiate the financial proposal as well as the contract with the consultant who submitted the highest ranking technical proposal. QBS can only be used for:
 - (i) complex and highly specialized assignment for which it is difficult to define precisely the terms of reference and the required input from the consultants, and for which innovation is to be demonstrated in the proposals;
 - (ii) 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
 - (iii) assignments that can be carried out in substantially different ways, such that proposals be difficult to compare.
 - (d) **Least cost selection (LCS):** This method is appropriate for assignments of a standard or routine nature (financial audits, architectural and engineering design for non-complex works, etc.) where well established practices and standards exist, and in which the contract amount is small.
- (2) The following methods shall only be used with the prior approval of the Tenders Board or the Head of a procuring entity depending on the thresholds in Instruction 1.3:
 - (a) **Selection amongst community service organisations (CSO):** This method may be used where involvement and knowledge of community needs, local issues, and community participation are paramount in the preparation, implementation and operation of community development projects;

- (b) **Single source selection (SSS):** This method does not provide the benefits of competition and shall be used only in exceptional cases, such as:
 - (i) for tasks as continuation of previous completed assignment that was awarded following a competitive procurement process;
 - (ii) where a rapid selection is essential (as in emergency);
 - (iii) for very small assignments and are for emergency situations;
 - (iv) when only one consultant is qualified or has experience of exceptional worth for the assignment; or
 - (v) owing to a catastrophic event there is an emergent need of the services.
- (c) **Selection of individual consultants (SIC):** This method shall be used when:
 - (i) the qualification and experience of the individual are the paramount requirement;
 - (ii) teams of personnel are not required; and
 - (iii) no outside professional support is required.

K.8. TRANSPARENCY AND INTEGRITY

K.8.1. Bidder debriefing

- (1) A procuring entity shall, upon request of the bidder, communicate promptly to a bidder the reason for the rejection of its application to pre-qualify, or of its bid.
- (2) Any debriefing shall be provided in writing, within a reasonable period of time of the receipt of the request.
- (3) The debriefing shall state at which stage of the evaluation the bid was rejected, provide brief details of any material deviation, reservation or omission leading to rejection of the bid or state that a bid was substantially responsive, but failed to offer the lowest evaluated price or highest score, as required.
- (4) The debriefing shall not provide details of any other bids, other than information that is publicly available from bid openings or published notices.

K.8.2. Contract award

The procuring entity shall promptly publish, and in any event within 1 month from award, a notice of all procurement contract awards in the same manner as for procurement notices under Instruction 5.2.

K.8.3. Prompt payment

A procuring entity shall ensure prompt payment of suppliers' invoices. At a minimum, invoices shall be paid at the time or times specified in the contract or earlier if possible.

K.8.4. Records and reports of procurement activities

- (1) The procuring entity shall maintain an individual record for each procurement requirement, which shall be marked with the relevant procurement reference number.
- (2) The record shall contain the originals and copies, where appropriate, of all information, documents and communications related to that procurement proceeding and shall also include at least the following:
 - (a) a description of the object of the procurement;
 - (b) a list of the participating bidders and their qualifications;
 - (c) bid prices;
 - (d) a summary of the evaluation of bids;
 - (e) summary of any review proceedings, and the related decisions;
 - (f) any requests for clarifications and any responses to the requests;
 - (g) a statement of the reason for choice of a procurement method other than competitive bidding or request for proposals; and
 - (h) any other information required to be recorded under these Instructions.
- (3) The record shall be prepared and disclosed in a manner that avoids disclosure of proprietary commercial information.
- (4) The record shall, on request, be made available to any person after a bid has been accepted, unless any portion of the record is required to be disclosed earlier pursuant to law, or by order of a competent court or a duly appointed arbitrator.
- (5) Procurement records shall be kept for a minimum period of 7 years following completion or termination of the contract or cancellation of the procurement proceedings.
- (6) Procuring entities shall submit report summaries on their procurement activities to the Ministry of Finance.

K.8.5. Conduct of procurement officers

An officer responsible for any aspect of the procurement of a procuring entity, including the requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of procurement contracts, shall, as a procurement officer:

- (a) ensure that each decision is based on adequate information in light of the circumstances, and is made in good faith, for a proper purpose in accordance with these Instructions and in the best interest of the Government;
- (b) assure fair competitive access by contractors to procurement proceedings and contract awards;

- (c) avoid circumstances in which he or she might personally benefit from a decision, either directly or indirectly through family and associates, from his or her official actions or that would give the appearance of the same;
- (d) not commit corrupt or fraudulent acts, such as the solicitation or acceptance of bribes; or
- (e) not reveal confidential information received in connection with procurement proceedings and bids, including bidders' proprietary information.

K.8.6. Misconduct by procurement officers

A breach by an officer involved in procurement of any of these Instructions is deemed to be a misconduct, which shall be dealt with:

- (a) for an officer in a Ministry – under the Public Service Act 2004, with relevant amendments; or
- (b) for an officer in a public body – under the provisions of the relevant public body's empowering legislation, where applicable, or in accordance with the public body's human resource policy and/or disciplinary procedure.

K.8.7. Suspensions and debarments

- (1) This Instruction shall not come into force until such time as the Procurement Suspensions and Debarments Procedure has been endorsed by the Tenders Board and approved by Cabinet.
- (2) Any person wishing to respond or a bidder responding to an Invitation to Bid under Instruction 5.1, or who is found to have committed an offence listed under Instruction 4.6(5) or during the submission of a bid in accordance with these Instructions, may be suspended or debarred from future procurement opportunities invited under these Instructions.
- (3) After reasonable notice is given to the bidder involved, and a reasonable opportunity has been given to such bidder to be heard, the Tenders Board may, for cause, suspend or debar a person for a term and in accordance with the procedure provided for in the Procurement Suspensions and Debarments Procedure.
- (4) A person or a bidder may be suspended or debarred for any of the following:
 - (a) conviction for an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity;
 - (b) conviction for an offence involving corruption;
 - (c) conviction for engaging in anti-competitive practices, whether or not involving collusion; or
 - (d) deliberate neglect or failure without good cause to perform a contract in accordance with its terms, if so serious in nature as to justify suspension or debarment.

- (5) A person or bidder may also be suspended or debarred for unethical conduct including:
- (a) offering or making a payment or offer of employment, or offering or giving a gratuity or other reward, in connection with a procurement;
 - (b) offering to pay or paying a bribe whether in the form of a payment, gratuity, offer of employment or otherwise by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a contract; and
 - (c) knowingly soliciting or obtaining confidential information, or attempting to obtain confidential information, in relation to a procurement for the purpose of obtaining an advantage over other persons who submit or might reasonably be expected to submit a bid, proposal, quotation or offer in relation to an emergency procurement.
- (6) A contract shall not be awarded to a person who is suspended or debarred.

K.9. COMPLAINTS AND APPEALS

K.9.1. Right to complain

- (1) Instruction 9 commences when the Ministry of Finance upon the approval of the Tenders Board prepares and issues the Procurement Complaints and Appeal procedure.
- (2) Subject to Instruction 9.1(1), a potential or actual bidder may complain to a procuring entity where it has been or risks being harmed by an alleged infringement of these Instructions.
- (3) A procuring entity shall:
 - (a) consider and respond promptly and impartially to a complaint received under Instruction 9.1(2);
 - (b) try to resolve a complaint in good faith; and
 - (c) deal with the complaint in a way that does not prejudice the complainant's ongoing or future participation in procurement, or affect any right of the complainant to a judicial review or other remedy.
- (4) A procuring entity shall make available to any authority competent to hear or review a complaint its procurement records and decisions.
- (5) Without limiting its legal rights, the procuring entity shall fully cooperate in any hearing or review of a complaint by a competent authority.

K.9.2. Right to appeal

A person who is aggrieved by a decision of the procuring entity made under Instruction 9.1(3) may appeal against the decision of the procuring entity to a competent authority.

K.10. AMENDMENTS AND SAVINGS

K.10.1. Amendments

These Instructions may be amended in writing by the Financial Secretary or Chief Executive Officer of the Ministry of Finance.

K.10.2. Savings

All proceedings for public procurement commenced before the commencement of these Instructions shall, notwithstanding the repeal of Treasury Instructions 1977, be disposed of in accordance with the provisions of those repealed Instructions, or any other instruments as if they have not been repealed.

K.11. PROCUREMENT GUIDELINES

K.11.1. Goods, Works and General Services (GWGS) & Consulting Services (CS)

The above Guidelines will further elaborate on the procurement of goods, works and general services and consulting services. Individual guidelines will provide comprehensive details and guide for each procurement.

K.12. DEFINITIONS

In these Instructions:

“**Act**” means the Public Finance Management Act 2001;

“**bid**” means, according to the type of procurement method being used, a bid, a proposal or a quotation submitted by a bidder in response to an invitation by a procuring entity;

“**bidder**” means a natural or legal person who submits a bid pursuant to solicitation by the relevant procuring entity;

“**Board**” means the Government Tenders Board established under section 88 of the Act;

“**Cabinet Directive**” means an instrument which documents a decision of Cabinet and prepared pursuant to Article 38(3) of the Constitution of the Independent State of Samoa;

“**consultant**” means the provider of intellectual and professional services for a specific project;

“**contractor**” means the provider for the construction of works;

“**days**” means calendar days;

“**goods**” means objects of every kind and description, including commodities, raw materials, products and equipment and objects in solid, liquid or gaseous form as well as services incidental to the supply of goods, if the value of these incidental services does not exceed that of the goods themselves;

“Head of the procuring entity” means the Chief Executive Officer, General Manager or Managing Director of a Government Ministry or a public body;

“intellectual and professional services” means assignments performed by consultants with outputs of advisory, design and transfer of know-how nature;

“Ministries” has the same meaning as in section 4 of the Ministerial and Departmental Arrangements Act 2003’;

“officer” means any person employed in the service of a Government Ministry or public body;

“procurement” means all activities that pertain to the solicitation and entering into a procurement contract by the Government for the supply of goods, works and services;

“procurement contract” means a formal agreement between Government and supplier, contractor or consultant resulting from procurement proceedings;

“procuring entity” means any Government Ministry or public body engaging in procurement;

“public body” has the same meaning as in section 2 of the Public Bodies (Performance and Accountability) Act 2005’;

“supplier” means the provider for the supply of goods and ancillary services, or for the provision of supply services;

“thresholds” means the financial limits endorsed by the Board and set down in a Treasury Circular issued by the Ministry of Finance or a Cabinet Directive;

“works” means all works associated with the construction, reconstruction, demolition, repair, maintenance or renovation of a building or structure, or any construction works such as railways, roads, highways, site preparation, excavation, installation of equipment and materials, decoration, as well as physical services incidental to works, if the value of those services does not exceed that of the works themselves.