

Annex III

Samoa

1 Country context

1.1 Samoa in summary

Samoa is an island country in the central South Pacific Ocean, among the westernmost of the island nations of Polynesia. It is part of the Samoan archipelago and consists of two major islands, Upolu and Savaii, and seven small islands, two of which are inhabited. Prior to 1997 the country was named Western Samoa.

The following are some salient facts:

Area: 2,944 sq. km.

Population: 192,000 (2008 estimate)

Capital: Apia (on Upolu)

Official languages: Samoan and English

GDP: US\$537 million (2008 estimate at current prices)

Currency: Tala or Samoan dollar (ST) (T1 = approximately US\$0.40)

Samoa has a developing economy based mainly on agriculture, with some light manufacturing, fishing, lumbering and tourism.

In 2008 the principal destinations of its exports were Australia (81.7%), New Zealand (10.2%) and American Samoa (3.6%). Its main sources of imports were Australia (25.6%), New Zealand (22.8%) and the USA (12.5%).

Like many Pacific countries, Samoa also has a significant export trade in services, mainly tourism.

As this illustrates, Samoa's major trading relationships are with Australia and New Zealand, which administered the country as a UN Trust Territory prior to independence in 1962.

1.2 Regional affiliations

Samoa is a member of the following regional groupings:

The Pacific Islands Forum: The Forum is a political and economic policy organisation of 16 independent and self-governing states that meets regularly to discuss regional issues.

Forum members are: Australia, Cook Islands, Federated States of Micronesia (FSM), Fiji Islands, Kiribati, Nauru, New Zealand, Niue, Republic of the Marshall Islands (RMI), Palau, Papua New Guinea (PNG), Solomon Islands, Samoa, Tonga, Tuvalu and Vanuatu. New Caledonia and French Polynesia, previously Forum

observers, were granted associate membership in 2006. Current Forum observers include Tokelau (2005), Wallis and Futuna (2006), the Commonwealth Secretariat (2006) and the Asian Development Bank (2006), with Timor-Leste as a special observer (2002).

The Forum has taken an interest in government procurement and particularly in the scope for collaborative activity among its island members.

A current important Forum initiative is the Pacific Petroleum Project. Its objective is to develop a commercial contract for services that will allow signatories to the memorandum of understanding on the Pacific Petroleum Project to procure petroleum products collectively (or via sub-groupings) following a competitive tender process. This would be the first collaborative project of its kind. The PIF Secretariat has invited tenders for a consultancy to manage the first phase of this project including:

- (a) An assessment of national standards and requirements;
- (b) A procurement strategy;
- (c) A risk assessment;
- (d) A draft commercial contract for goods and services;
- (e) A final commercial contract incorporating agreed changes; and
- (f) All associated tendering documentation and services necessary for a successful tender process.

At the 40th PIF meeting in Cairns in August 2009, the leaders of member countries endorsed the project and urged members to give support to ensure its success.

Also under consideration is a proposal for a collective arrangement to procure pharmaceuticals, which has been discussed over many years. This was the subject in 2007 of a feasibility study by the World Health Organization, in collaboration with national counterparts.

Pacific Island Countries Trade Agreement: PICTA is a free trade agreement between Forum island countries (FICs) that came into force in 2003 and currently applies to goods only. The objective of PICTA is to promote regional integration and trade development in the island states through creation of a single regional market, as a precursor to their progressive involvement in the wider regional and world economy.

Implementation of the Agreement was delayed and it only became operational from 2007, when a number of island states indicated their readiness to commence preferential trade. As a result of the delay, the schedule for elimination of tariffs on intraregional trade now extends to 2021.

In Article 15 of PICTA, the parties commit to the objective of liberalising government procurement within the area as soon as possible and to conclude arrangements for detailed rules on government procurement within two years of the Agree-

ment coming into force. The issue has not, however, been given the priority envisaged by the Agreement.

A paper prepared by the Asian Development Bank in 2007 commented on PICTA as follows:¹¹⁰

A trade agreement among small developing states, such as PICTA or the MSG, is unlikely to be welfare-enhancing. In fact, it is more likely to set back the promotion of free trade within the FICs because of the propensity for trade diversion and tariff and investment diversion to the more advanced states, resulting in income divergence and increased antagonism against free trade.

Pacific Agreement on Closer Economic Relations: PACER is an agreement among members of the Pacific Islands Forum that provides a framework for the future development of trade co-operation. It was signed in Nauru on 18 August 2001 and entered into force on 3 October 2002.

The agreement does not contain substantive trade liberalisation provisions, but envisages a step-by-step process of trade liberalisation. This started with PICTA. PACER provides for programmes of trade facilitation and capacity building assistance to island country members.

PACER also foreshadows negotiations on Forum-wide reciprocal free trade (including Australia and New Zealand). It appears that these are to be brought forward as a consequence of the Pacific island countries' negotiation of an economic partnership agreement with the EU. This is because PACER contains a provision triggering negotiations with Australia and New Zealand if a Forum state begins negotiation of a free trade agreement with a developed country. The prospective successor agreement to PACER is referred to as 'PACER Plus'.

At the 40th Pacific Islands Forum Meeting in Cairns in August 2009, leaders approved a recommendation to commence PACER Plus negotiations, and agreed that Forum trade ministers should meet on the matter as soon as possible and not later than November 2009. An Office of the Chief Trade Adviser is being established, with substantial financial support from Australia and New Zealand, to provide independent support and advice to FICs during the course of the negotiations.

South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA): SPARTECA is a non-reciprocal trade agreement under which the two developed nation members of PIF, Australia and New Zealand, offer duty free and unrestricted or concessional access for virtually all products originating from the developing island member countries of the Forum.

Most Forum members signed SPARTECA at the Forum's 11th meeting in Kiribati on 14 July 1980. It came into effect for most FICs on 1 January 1981.

2 The Samoan procurement system

Statute law

Like Australia and New Zealand, Samoa does not have a procurement statute. Statutory provision for the regulation of public procurement is contained in the Public Finance Management Act 2001.

Part XII of the Act provides that all persons ‘entering into a contract for the acquisition, disposal or management of good, services and construction works’ on behalf of the Government of Samoa must comply with the processes and procedures that the Act prescribes.

Part XIII of the Act, which deals with public bodies,¹¹¹ provides that the Financial Secretary may issue procurement guidelines in the form of a treasury instruction that binds public bodies.

Part XII of the Act establishes a government Tenders Board chaired by the Minister of Finance and including the Minister of Works, the Attorney General and officials including the Financial Secretary and the Director of Works. The Act provides that the membership will include a private sector representative appointed by the minister. It has not been possible to determine whether a representative has been appointed yet.

The Board’s functions are to call for tenders, award procurement contracts or recommend them to Cabinet where the value is above the approved financial limits. It has similar functions in relation to disposal of surplus property. Finally, it is required to review and make recommendations to Cabinet on its own composition, functions and powers. Its powers for these purposes are as prescribed ‘by regulation, Treasury Instructions or Operating Manuals’.

Guidelines for procurement and contracting

The Ministry of Finance advises that in line with a recommendation from the World Bank’s *Operational Procurement Review* of May 2006 the Tenders Board has replaced a single set of guidelines issued in 2003 with two new procurement and contracting guidelines. These apply to all government ministries and to corporations in which the government has a greater than 50 per cent share or voting rights. They deal with:

- Procurement of goods and works (including the category of ‘non-consulting services’); and
- Procurement of consulting services.¹¹²

These new guidelines, copies of which were supplied to the consultant, align the Samoan regime more closely with World Bank guidelines and procedures.

The two sets of guidelines each cover:

- Procurement principles (five common principles of transparency, open and fair competition, value for money, accountability and ‘promoting integrity and combat-

ing corruption in procurement'. A sixth principle of 'ensuring high quality' appears in the case of consulting services only);

- Planning and preparation;
- Supplier eligibility requirements (including domestic preferences);
- Allowable methods of procurement or selection of suppliers, with an emphasis on competitive process;
- Inquiries and challenges;
- Exclusion of suppliers;
- Integrity in procurement;
- Contract administration.

At the time this report was written, the 2003 Tenders Board guidelines were still displayed on the Ministry of Finance website along with their replacements, which were still marked as drafts. The Ministry of Finance, however, assured the consultant that the new guidelines have been trialled and finalised and the 2003 version superseded.

Procurement manual

In addition to the guidelines, the Tenders Board has approved a procurement manual as 'an operational reference tool for those involved in procurement' and as a training aid. Essentially, this document, a copy of which was provided to the consultant, is a self-explanatory guide to the management of procurement transactions from planning through tender evaluation and contract award. It focuses on procedure and is quite prescriptive in its provisions, e.g. in relation to rating scales for use in tender evaluation.

Although the manual does not deal in detail with the management of procurement functions, it does make extensive provision for procurement planning at the organisational level. This includes the development of detailed organisational procurement plans for approval by management. The plans are intended to identify needs, consolidate related procurements, verify the availability of budgets and set timeframes. The preparation of these plans is to start at least three months before the launch of the first planned tender process. The approved plans are to be disclosed on organisational websites of procuring entities and published 'in the Samoan press having national circulation'.

While the manual, like the guidelines, stresses the importance of competition, it does not, for example, deal with how to prepare specifications or the value of functional and performance specifications in promoting competition. It appears to be presumed that, at least for complex and high value procurements, the necessary skills will be provided by technical experts, such as engineers and project managers.

The manual's provisions are not biased against foreign suppliers or products.

General eligibility requirements

Prospective bidders must meet several general requirements, including the possession of valid business licences (where applicable), solvency and legal capacity. They must also be up-to-date with tax payments and free from indictment or conviction within the preceding year of a ‘criminal offense involving corruption or other misconduct reflecting a lack of suitability to participate in government procurement’.¹¹³ Goods and works contractors also need ‘valid registration in the appropriate category’.

The guidelines provide that government procurements are ‘normally open to all qualified and eligible bidders regardless of nationality and without restriction as to the origin of their inputs’.

Preferences for domestic goods and services

There is provision for the Tenders Board to approve on a case-by-case basis a margin of preference for domestic manufactured goods and domestic works contractors. Any preference margin and the procedures for its application must be stated in the relevant bidding documents. The guidelines set upper limits for preference margins as follows:

- For goods, 15 per cent of the lowest evaluated EXW price offered by a foreign supplier;
- For contractors, 7.5 per cent of the lowest evaluated price submitted by a foreign contractor.

In the case of consultancy services, the guidelines provide that 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 must be described in the bidding documents.

Criteria for determining domestic status must also be stipulated. In no event will a preference margin exceed 10/100 available quality points.

As with goods, works and other services, any preference must be disclosed in the bidding documents

Bidding documents

The guidelines make extensive provision for the content of bidding documents, including the use of standard bidding documents (SBDs) required by donors or financiers as appropriate and the use of government SBDs for self-financed procurement, subject to any exemptions approved by the Tenders Board

None of the provisions relating to bidding documents discriminates against foreign suppliers.

The World Bank’s May 2006 *Operational Procurement Review (OPR)* recommended the development of SBDs, and the Ministry of Finance advised the consultant that this

had occurred. The ministry undertook to provide the copies of the SBDs but none had been received by the time of the completion of this report.

Bidding periods and bid opening

The standard bidding period is 30 days or 45 days when international bidding is anticipated. Extension of the bidding period is allowable where that would result in greater competition. Tenders must be submitted by hand to the Tenders Board tender box or by mail where that is specifically provided for.

For public tender processes the Tenders Board opens bids/tenders publicly in the presence of tenderers or their representatives, and salient details relating to the identity of tenderers and tender pricing are read out and recorded before the bids are delivered to ministries or corporations for evaluation.

In the case of consulting services, financial proposals are opened publicly.

Procurement methods

The *Procurement Manual* provides for a variety of methods in the procurement of goods and works and outlines the circumstances in which they may be applicable. The methods are:

- International competitive bidding
- Limited international bidding
- National competitive bidding
- Direct contracting
- Shopping – for low value off-the-shelf good, standard commodities and small simple works

The Tenders Board must approve the procurement method to be used in each case. Generally, an open tender process is to be used in the procurement of goods in the range \$ST50,000–500,000 except as approved by the Board. An open procedure is also to be used for works procurement in the range \$ST100,000–500,000.

Above this value range, the standard procedure for both goods and works involves pre-qualification.

Tenders Board approval is not required for small purchase transactions. This includes transactions above a value of \$ST5,000 and not more than \$ST50,000, for which at least three written quotations against a formal request for quotation (RFQ) are required.

The guidelines set out circumstances in which the Tenders Board will consider approving ‘local and international shopping’, direct purchase, ‘limited tendering or repeat order’ and divergence from open competitive bidding for minor works (up to \$ST100,000) and emergency procurement.

These provisions take account of the recommendations in the World Bank's 2006 OPR.

Advertising

Procurement guidelines require that all open invitations to pre-qualify or bid, and other procurement notices be advertised in 'a widely circulated newspaper', and internationally where required by a donor or financier or where this is advisable in the interest of maximising competition. In addition, electronic posting on government websites is encouraged. Invitations to bid and procurement notices are to be advertised in sufficient time to enable prospective bidders to prepare and submit bids. Bidding documents must be in English, but Samoan may be used as well.

Pre-qualification and post-qualification

Pre-qualification of bidders is used for works contracts and for the supply of technically complex equipment where the expected value is above \$ST500,000. Pre-qualification must be based entirely on the ability to perform the relevant work or supply the goods required, taking account of experience and past performance, capabilities¹¹⁴ and financial position. There is no limitation on the numbers of pre-qualified bidders and all of them must be invited to bid. Post-qualification is applied in a similar manner to verify the capability of the lowest bidder where pre-qualification does not apply.

Works contractors are required to be registered for the category of works involved, both for pre-qualification and for post-qualification.

Award criteria

The guidelines lay out a variety of methods for evaluating and choosing bids. For consulting services these are:

- Quality and cost-based selection (QCBS): This is the 'principal method of procurement' for other than for small consultancies and involves a competition among shortlisted firms, taking account of both cost and quality in accordance with the relative weights stipulated in a RFP.
- Quality based selection (QBS), where through a one- or two-stage proposal process a contract is awarded to the consultant who has submitted the best technical proposal.
- Selection under fixed budget (FBS), where a contract is awarded to the consultant that has the highest ranked technical proposal within the budget that has been disclosed in the RFP process.
- Lowest-cost selection (LCS), where in small and simple assignments the lowest price solution that has met a technical hurdle score is chosen.

- Selection based on consultants' qualification (CQS) for small assignments where the firm with the best qualifications and references is selected through an expression of interest process and is invited to submit a combined technical and financial proposal and to negotiate a contract.

For works and goods and non-consulting services, the rule for the selection of the first ranked tender is essentially that it should be the lowest responsive technically compliant offer within the maximum available budget. Technical compliance is assessed on a pass/fail basis and not scored.

Tender evaluation

The *Procurement Manual* includes provision for the establishment of evaluation committees to assess tenders and proposals, together with detailed provisions to ensure that they are free of conflicts of interest, act with impartiality, observe confidentiality and follow standard procedures.

Procedural transparency

There is an emphasis on transparency throughout the guidelines and associated documentation. This includes requirements for:

- The disclosure of relevant information to prospective bidders;
- Public opening of tenders and financial proposals;
- Supplier debriefing; and
- Public release of organisational procurement plans, as previously described.

Review mechanism

Unsuccessful bidders with concerns about a procurement process are expected to request a debriefing in the first instance from the procuring ministry or corporation.

An unsuccessful bidder not satisfied with a debriefing may submit a written challenge within seven days. This must be in writing and specify the basis of the challenge and the material facts relating to it. It must be addressed to the procuring ministry or corporation, with a copy to the secretary of the Tenders Board. If the challenge is unsuccessful, a bidder may submit a written request (with supporting reasons) for Tenders Board review

The Tenders Board is required issue a decision within 30 days of receipt of a bidder's request. The Board's decision will be final, but if the bidder believes that such decision is not consistent with the procurement guidelines or is otherwise contrary to law, it may appeal to court within six months of its receipt of the Tenders Board's decision.

'Whenever it is determined to be appropriate', an award or contract may be temporarily suspended pending decision on the award challenge. This may be imple-

mented 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.

The 2006 OPR recommended that provision be made in the interests of transparency for complaints to be referred to a fully independent authority such as the ombudsman or an independent review panel. This recommendation appears not to have been accepted. There also does not appear to be any appeal against the rejection of an application for pre-qualification.

Contract administration

Neither the guidelines nor the *Procurement Manual* deal in detail with contract administration.

Socio-economic policies

Apart from the provisions for preference, including limited preference for national providers of consulting services, there do not appear to be any socio-economic policies applied through procurement.

3 Effects of an improved procurement system

There does not appear to be any public information or planned review to assess whether at this stage the changes that have been made since 2006 have led to improvements in procurement performance or measurably improved the treatment of procurement risk.

In this context it is worth noting what the OPR found by way of risk assessment in 2006:

The general assessment of the OPR Team is that procurement risks in Samoa are average. The Team's main concern is the limited number of Government officials who have experience in handling procurement in general, and international procurement in particular. This risk can be mitigated through the training of Government officials and appointment of consultants to supplement them. With more capacity development, the need for such consultants would be reduced. Corruption is not generally perceived to be an issue.

The *Procurement Manual* was intended as a major contribution to capacity development. The *Manual* is a comprehensive document that undoubtedly provides considerable value for the government and users. It focuses, however, on the implementation of rules and procedures and does not attempt to address the broader body of professional procurement knowledge and skills. For that purpose it would be desirable for practitioners to have access to other sources of training and education and to mentoring and/or work experience that will provide other learning opportunities. Ideally, key personnel should be expected and assisted to achieve full professional status in procurement.

It is not clear whether the Samoan Government maintains statistics on its procurement. None are readily discoverable on the web and the consultant did not receive any response to a request for any statistics that might be collected, e.g. for Tenders Board purposes. Thus no detailed information was readily available on:

- The scale and composition of government purchases;
- The relative market shares of domestic and foreign products and suppliers;
- The number and outcome of procurement complaints; and
- Procurement performance overall.

It does, however, seem clear that the Samoan procurement regime is open, competitive and broadly aligned with international norms. Further, although not all of the OPR recommendations appear to have been implemented as yet, it does appear that there have been substantial reforms and that development is continuing.

Finally, an issue worth highlighting is the possibility that Samoa may become involved in collaborative procurement with other Forum countries, e.g. through the Pacific Petroleum Project. If the business case for such initiatives is persuasive and Samoa decides to participate in them, it may wish to adjust its procurement rules to make clear provision for them.