

Samoa

Legal and institutional framework

Samoa's legal framework on public procurement can be found in the Treasury Instructions 1965 and 1977, the Cabinet Directive 98 (19), the Public Finance Management Act 2001 (PFMA), and the Tenders Board Guidelines 2003. The Tenders Board has issued Procurement Guidelines (PGs), which apply to all government ministries using public funds and to all state-owned enterprises in which the government holds more than half of the shares or voting rights. The key legal instruments are available on the Web site of the Ministry of Finance.

Samoa has decentralized its government procurement functions. Individual ministries and state-owned enterprises are responsible for administering procurements below WST50,000 (USD18,000). The Tenders Board assumes responsibility for procurements over this threshold. The Board is chaired by the minister of finance. It is also responsible for establishing procurement rules and procedures for all ministries and state-owned enterprises. In some cases, contract awards must be approved by the minister of finance or the Cabinet.

Procurement methods and procedures

The methods of procurement available in Samoa are open tendering, local and international shopping, single-source procurement, and restricted tendering (for repeat orders). In practice, contracts above WST50,000 (USD18,000) are awarded through open tendering. Other methods can be used only with the approval of the Tenders Board and under circumstances specified in the Procurement Guidelines. Procuring agencies are responsible for preparing tender documents. There are no standard bidding documents except those for projects financed by certain donor organizations. The minimum deadline for bid submission is 14 days. Prequalification based on stipulated criteria is mandatory for the procurement of works and expensive, technically complex equipment. Efforts are under way to develop standard procurement documents and explanatory manuals for procurement staff.

The advertisement of tender opportunities can increase participation and thus reduce the risk of corruption. All open tenders in Samoa must be advertised nationally in a widely circulated newspaper.

The handling and opening of bids is crucial. In Samoa, the Tenders Board keeps a register of all received bids. The Procurement Guidelines require prompt opening after the deadline for submission, but the Board

has discretion to act otherwise. To ensure that bids are not altered or destroyed and to detect manipulations at an early stage, the Tenders Board opens all tenders in the presence of bidders or their representatives. Integrity can also be enhanced when key decisions are made by panels rather than individuals. Thus, Samoa entrusts the evaluation of bids to a committee with at least three persons, one of whom is preferably not from the procuring agency. The bid with the lowest evaluated cost is chosen; price is one of several factors that may be considered in evaluating the costs. The evaluating committee submits a report and its recommendation for the approval of the minister of finance, the Tenders Board, or the Cabinet, depending on the value of the procurement. Once the award is made, the procuring agency notifies all bidders of the decision and renders the decision public. Bidders who wish to know the reason for the decision may inquire with the procuring agency or the Tenders Board. Failure of tendering arises in several situations. If none of the submitted bids is responsive, the procuring agency may consider modifying the scope of the contract before calling a new restricted tender. Those who received tender documents previously or, in some cases, those who submitted bids are invited. Tendering may also be declared failed if there is evidence of a lack of competition. In this case, the procuring agency will examine the causes for the failure and consider modifying the bidding conditions or specifications before calling a new tender. If a tender fails because all bid prices substantially exceed cost estimates, the procuring agency may negotiate with the lowest evaluated bidder for a reduction of the bid price.

Safeguarding and enforcing integrity

Codes of conduct for procurement personnel can encourage proper conduct and prevent corruption. The PGs specifically require all persons involved in evaluating bids or awarding contracts to declare any interest in a bidder or close family relationships with the principals of a bidder. Such persons are excluded from the evaluation and awarding process and denied access to any documents or information relating to the procurement. The PFMA, the Public Bodies Transparency and Accountability Act, the Public Service Act (PSA), and the Treasury Regulations and Instructions contain additional anti-corruption and conflict-of-interest provisions. The Ministry of Finance trains procurement personnel in integrity issues. Many countries require their procurement officials to report attempts to unduly influence procurement decisions, a requirement that improves the likelihood of detection of corruption.

In Samoa, the PSA and the PFMA require all public officials to report circumstances that lead them to believe that an offense may have occurred.

Measures targeting suppliers can also encourage proper behavior and reduce the risk of corruption in public procurement. Tender documents in Samoa generally require bidders to declare their abstention from any means that could improperly influence the procurement process or decision. Bidders are also required to disclose commissions, gratuities, or fees that have been or will be paid to individuals or subcontractors for their services, for instance in the preparation of a bid or the execution of the contract.

The PFMA imposes a fine against persons who intentionally or recklessly “authorized or permitted a breach of procedures relating to the calling, considering or awarding of tenders.” Other violations of the PSA or the PFMA may also result in sanctions. Sanctions against bidders are available as well. Notably, at the recommendation of the Tenders Board, the Cabinet may debar an enterprise from procurement. The decision to debar is communicated to all ministries by Cabinet Directive and to the enterprise concerned.

Review and complaint procedures can inspire public trust in the procurement process and discourage bidders or officials from engaging in corrupt conduct. Under the Procurement Guidelines, any person may complain in the first instance to the procuring agency. He or she may further complain to the Tenders Board, which may appoint an ad hoc committee to address the matter. The Tenders Board may decide to reopen a tender in some circumstances. Decisions of the Board are final.

Auditing can provide a further means to verify the integrity of the procurement system. In Samoa, the Internal Audit and Investigation Division of the Ministry of Finance conducts regular and systematic internal audits. The Controller and Chief Auditor conducts external audits of all ministries annually and reports to Parliament. The report is publicly available. Nongovernment organizations are not involved in audits.

Review and verification can be effective only if decisions in the procurement process are properly recorded. In Samoa, all actions and decisions of the Tenders Board are recorded in the Board’s minutes and are accessible by the Controller and Chief Auditor. Each quarter, the Board also reports to the Cabinet all contracts that it has approved and awarded. These documents can be disposed of only with the prior approval of the Controller and Chief Auditor.

A way forward

Samoa is encouraged to consider passing a comprehensive regulatory framework for public procurement. In this context, Samoa is invited to consider passing the constitutive elements of this framework at the level of a parliamentary law.

Relevant documentation

Web site of the Ministry of Finance: www.mof.gov.ws

World Bank Operational Procurement Review (June 2005)