



# GOVERNMENT OF SAMOA

Ministry of Finance

## TREASURY INSTRUCTIONS

Section 6

Procurement & Contracting

APRIL 2020

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## PART K: GOVERNMENT PROCUREMENT

### K.1. APPLICATION OF INSTRUCTIONS AND INSTITUTIONAL ARRANGEMENTS

#### K.1.1. Application of Instructions

- (1) The following procuring entities shall comply with the Instructions:
  - (a) a department as defined in the Act; and
  - (b) a public body
- (2) The procuring entities may be audited for compliance with the Instructions by the Controller and Auditor General under the Audit Act 2013
- (3) The Instructions apply to all procurements carried out by procuring entities using public funds, except activities which are excluded under the Operating Manual
- (4) Despite sub-clause (5), the Government Tenders Board may add or remove any service or activity that the Board may consider a non-procurement activity.
- (5) All procuring entities shall:
  - (a) conduct its procurement according to the procurement principles set out in Instruction K.2.1; and
  - (b) seek to achieve the best value for money, and not the lowest price, over the life of the contract, regardless of whether or not the Instructions apply.

### K.2. PROCUREMENT PRINCIPLES, PLANNING AND PREPARATION

#### K.2.1. Procurement 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 and effective competition to the extent practicable and ensuring professional approach is reflected in the process including ethical behavior and fair dealing (unless otherwise stated in these Instructions), free of corruption or collusion;
  - (b) **Wide participation by eligible parties:** procuring entities should endeavor to ensure that the procurement is widely disseminated to all eligible parties that/who can participate in the procurement;
  - (c) **Transparency:** procuring entities should endeavor to ensure that there is openness and clarity on procurement policy and its delivery;
  - (d) **Responsiveness:** the procuring entities should endeavor 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:** the cost of the procurement must represent value for money; considering both the cost and quality to meet the needs and requirement of the procuring entity;
  - (l) Promoting probity, quality assurance, ethics and integrity in procurement and contract delivery
  - (m) In respect of procurement of goods, the general rules of trade set out in the Competition and Consumer Act 2016 must be complied with to ensure that the goods supplied in trade are of acceptable quality, fit (or reasonably fit) for purpose, correspond with description, and correspond with sample or demonstration model.
- (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**

Procurement planning (including monitoring of procurement plan) shall:

- (a) be done using the Annual Procurement Plan template accompanying the budget template;
- (b) be submitted to MoF together with the budget envelope; and
- (c) be in accordance with any other requirements specified in the Operating Manual.

### **K.2.3. Procurement Preparation**

- (1) Procurement preparation shall be:
  - (a) be in the manner referred to in Instruction K.2.2;
  - (b) be done for each financial year; and

(c) include, but not be limited to, the information as specified in the Operating Manual.

- (2) Procuring entities must forward to MoF a summary of their completed annual procurement plans using the template referred to in Instruction K.2.2(a), for publication in accordance with requirements specified in the Operating Manual.

#### **K.2.4. Bid Evaluation Committee**

- (1) A Bid Evaluation Committee (and the evaluation process) must be arranged and out in accordance with the Operating Manual.
- (2) In addition to any requirements or restrictions that may be imposed in the Operating Manual in terms of clarifications sought during the evaluation process:
- (a) obvious mathematical or computational mistakes or manifest clerical errors and clarifications not changing the substance of the bid (including calculations) may be accepted;
  - (b) where the bid price of the potentially successful bidder appears so unreasonably low that it raises concerns in respect of the bidder's ability to perform the contract successfully, the procuring entity may reject the bid if, having sought written explanations of and the proposed price or costs from the bidder regarding amongst other things:
    - (i) the economy of the manufacturing process of the services provided or of the construction method;
    - (ii) the technical solutions chosen; or
    - (iii) any exceptionally favourable conditions available to the bidder for the supply of the products or services or for the executions of the works; or
    - (iv) the originality of the work, suppliers or services provided, it considers that the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

#### **K.2.5. Splitting or Dividing of Procurements**

Artificial splitting or division of procurement is prohibited, except as permitted in the Operating Manual.

### **K.3. PROCUREMENT METHODS AND FRAMEWORK ARRANGEMENT METHOD**

- (1) Public procurement of goods (or goods and related services), general services, works and consultancy services shall be undertaken at all times by means of an open competitive bidding (being the primary procurement method) to which equal access shall be provided to all eligible and qualified bidders.
- (2) Despite sub-clause (1), public procurement may be undertaken by using other alternative methods specified in the Operating Manual and with prior written approval of the Tenders Board.
- (3) A Framework Arrangement (FA):
- (a) is an arrangement or contract between one or more entities and one or more suppliers or contractors for purpose of which is to establish governing contracts to be awarded during a

given period of time not exceeding 3 years, in particular, with regard to price, and where appropriate, the quantity envisaged; and

(b) may be applied with prior written approval of the Tenders Board and in accordance with the procedures in the Operating Manual.

(4) Where a procuring entity seeks the Tenders Board's approval in sub-clauses (2) or (3), it must submit written justification to use an alternative procurement method.

#### **K.4. PROCUREMENT THRESHOLDS AND AUTHORITY**

The thresholds and authority for each type of procurement are as specified in the Operating Manual

#### **K.5. PROCUREMENT REQUIREMENT AND CRITERIA**

- (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 favor 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.
- (3) In addition to any other requirements that may be specified in the Operating Manual, technical specifications shall include, where appropriate:
  - (a) a full description of the requirement;
  - (b) a functional description of the requirements, including any environmental or safety features;
  - (c) performance parameters, including outputs, timescales and any indicators or criteria by which satisfactory performance can be assessed;
  - (d) inspection and testing requirements; and
  - (e) any applicable standards.
- (4) 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 "or equivalent" are included in the specifications.
- (5) Bidders shall not be excluded from participation in public procurement on the basis of nationality, race or any other criterion, except that if a bidder is or includes an individual who is a former employee of the procuring entity, that individual shall be subject to a stand-down period of 12 months from the date upon which his or her employment at the procuring entity came to an end, unless proven that there was no conflict of interest.
- (6) Bidders may bid independently or as a joint venture. In joint ventures, one of the member firms must be jointly and severally liable for contract performance. Firms shall not be required to form JVs with any specific firm or group of firms, but association to foreign firms with qualified

national firms in general may be encouraged by inclusion of an appropriate margin of preference approved by the Tenders Board.

- (7) Where a margin of preference is applicable:
  - (a) the prior written approval of the Tenders Board must be obtained; and
  - (b) any such instructions or scheme shall clearly state:
    - (i) eligibility for the margin of preference, in terms of origin of goods or services, origin of labour, raw materials or components, location of product facilities, extent of sub-contracting with local partners or any other relevant factor;
    - (ii) documentation required as evidence of eligibility for the margin of preference; and
    - (iii) percentage of the margin of preference and the manner in which it will be applied during the evaluation.

#### **K.6. BID DOCUMENTS AND BIDDING PERIODS**

- (1) A procuring entity responsible for a procurement must provide, in an expeditious and non-discriminatory manner, the bidding documents to all potential bidders that respond to the invitation to bid or, as the case may require, to all bidders that have been pre-qualified, and any price that may be charged for the bidding documents shall reflect only the cost of printing and distributing the documents
- (2) The bidding documents must:
  - (a) be in the standard bidding documents issued by MoF (and pre-cleared by AGO) for public procurement as referenced in the Operating Manual; and
  - (b) be ready prior to the publication of the procurement notice; and
  - (c) provide the bidders with all the information required and inform bidders concerning information as are specified in the Operating Manual.
- (3) The bidding periods are as specified in the Operating Manual

#### **K.7. BID SUBMISSION, AMENDMENT OR WITHDRAWAL OF BIDS, BID OPENING, BID SECURITY, BID SECURING DECLARATION, PERFORMANCE SECURITY, RETENTION MONIES**

- (1) The request for proposals method shall be used for the procurement of intellectual and professional services. The procedures and requirements applying to submission of bids, amendment or withdrawal of bids, and bid opening are as specified in the Operating Manual.
- (2) The manner and application of a bid security or bid securing declaration, performance security, and retention monies shall be as specified in the Operating Manual.

#### **K.8. CONTRACT AWARD AND NON-DISCLOSURE BEFORE THE AWARD DECISION**

- (1) A contract may be awarded in accordance with the requirements in the Operating Manual.

- (2) Despite anything 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.8A Suspensions and Debarments**

- (1) A contract shall not be awarded to a person who is suspended or debarred.
- (2) Grounds for suspension or debarment are as follows:
  - (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.
  - (e) for unethical conduct including:
    - (i) offering or making a payment or offer of employment, or offering or giving a gratuity or other reward, in connection with a procurement;
    - (ii) 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
    - (iii) 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.
- (3) The procedure for procurement suspensions and debarments shall be as approved by the Tenders Board.
- (4) MoF is to be responsible for maintaining a Register of debarred persons, firms or companies.

#### **K.9. PROCUREMENT INDEPENDENT COMPLAINTS AND REVIEW PROCEDURE (PICRP)**

The aim of PICRP is to set out a mechanism for reviewing any grievance or complaint lodged by an actual bidder who was/is part of a procurement proceeding at issue. The PICRP also aims to ensure that Government is

- (a) consider and respond promptly, within no more than 5 days, and impartially to a complaint received under Instruction 9.1(2); to sustain the integrity, transparency, accountability,



- credibility and legality of Government procurement systems and process; and
- (b) to sustain the confidence of all stakeholders with the Government procurement systems and processes; and
  - (c) to remove any perceived conflict of interest by the Government, particularly, the Tenders Board, in terms of decision-making;
  - (d) to ensure that bidders have access to a fair transparent mechanism for resolving complaints while also meeting the needs of Government procurement.

#### **K.9.1. Right to Complain**

- (1) An actual bidder in procurement proceedings who claims to have suffered, or is likely to suffer harm due to a breach of a duty imposed on a procuring entity under Part K of these Instructions, may lodge a complaint with the procuring entity under sub-clause (2).
- (2) A complaint must be made in writing and submitted before the end of 10 working days after the date of notification of award of contract. Any complaint received after the 10-day period shall not be considered.
- (3) Upon receipt of a complaint, the procuring entity shall:
  - (a) consider and respond promptly and impartially to a complaint received; and
  - (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 judicial review or other available remedy.
- (4) For the purpose of sub-clause (3)(a), "promptly" means within 5 working days of receiving the complaint so that, unless the complaint is resolved in good faith, the procuring entity shall:
  - (a) within the 5 day period issue a written decision to the complainant to try to resolve a complaint in good faith; and
    - (i) stating the reasons for the procuring entity's decision otherwise; or
    - (ii) in support of the grievances lodged and indicating the corrective measures to be taken; and
  - (b) under sub-clause (3)(c), suspend the procurement proceedings during that period unless it is satisfied that urgent public interest considerations require the procurement to proceed.

#### **K.9.2. Right to Review and Procedure**

- (1) If the procuring entity fails to issue its decision within the required timeframe specified or the complainant is dissatisfied with the decision under Instruction K.9.1(4), the complainant has the right to have their complaint reviewed by an Independent Adjudicator ("Adjudicator") appointed

- under Instruction K.9.4, for review of the procuring entity's decision and issuing of a final decision on the matter to which the complaint relates.
- (2) If a complainant exercises the right to review in sub-clause (1), the complainant must submit, in writing to the Secretariat of the Tenders Board ("Secretariat"), an Application for Review ("Application"). The Application must:
    - (a) be accompanied by the documents necessary for the Adjudicator's review (including a valid Power of Attorney in case of an agent acting for and on behalf of the complainant); and
    - (b) set out the grounds of the complaint, and stating whether the procuring entity has issued a decision to the complainant, or if the procuring entity has issued a decision, the reasons why the complainant remains dissatisfied.
  - (3) Within 5 working days after receiving an Application under sub-clause (2), the Secretariat shall:
    - (a) check that the Application is in order and if not, the Application shall be returned to the complainant with reasons for rejection and giving the complainant the opportunity to resubmit an Application that conforms to Instructions K.9.1 and K.9.2; and
    - (b) if the Application is in order, register receipt of the Application, assign a case reference number, and prepare a case file; and
    - (c) on the next working day, notify the procuring entity concerned with the Application (and referring a copy of the Application to the procuring entity) and requesting a response from the procuring entity in accordance with Instruction K.9.3.
  - (4) During the 5 day period in sub-clause (3), the procurement proceeding to which the complaint relates shall be suspended until the Adjudicator:
    - (a) makes his or her final decision; or
    - (b) upon hearing the parties, decides to cancel the suspension on the grounds that he/she is satisfied that urgent public interest considerations require the procurement to proceed.
  - (5) When a complaint reaches the Adjudicator, the procuring entity must cooperate and make available to the Adjudicator any procurement records or decisions regarding the matter to which the complaint relates.
  - (6) Any complaint referred to the Adjudicator under this Instruction K.9.2 shall not be entertained and is dismissed unless the Adjudicator is satisfied of the following:
    - (a) that the complainant is an actual bidder who was part of the relevant procurement proceedings in question; and
    - (b) that the complainant shows that he/she/it had suffered or is likely to suffer harm; and
    - (c) that the harm was due to a breach of a duty imposed on the procuring entity; and
    - (d) that the duty imposed on the relevant procuring entity is provided for under Part K of these Instructions; and
  - (7) The Adjudicator cannot consider a complaint:
    - (a) or element of a complaint that relates to an act, decision or determination made by a third party (which includes but is not limited to staff of the Ministry of Finance, Secretariat of the Tenders Board or the Attorney General's Office); or

- (b) relating to or arising from a contract or other arrangement involving Government other than contracts for the acquisition of goods, services and construction works through Government procurement procedures as prescribed or issued in accordance with the authority under the Act.

### **K.9.3. Reply to the Application and Procedure**

- (1) Unless an extension of time is requested on the basis of a legitimate delay confirmed with the Secretariat, the procuring entity must, within 3 working days of receipt of notification in Instruction K.9.2(3), submit to the Secretariat a response (“Reply”) including the following:
  - (a) a written explanation in response to the Application; and
  - (b) copies of documentary evidence relied upon in support of the Reply.
- (2) If a procuring entity submits a Reply in accordance with sub-clause (1), the Secretariat shall:
  - (a) insert, into the case file prepared under Instruction K.9.2(3), the Reply and any documentary evidence for referral to the Adjudicator; and
  - (b) register the commencement date of the case and provide to the complainant and procuring entity, copies of the case file and procedural instructions for the review.
- (3) If a procuring entity fails to submit a Reply to the Secretariat within the required timeframe specified in sub-clause (1) or an extension of time as confirmed with the Secretariat:
  - (a) the Secretariat shall proceed with referral of the Application and copy of the case file to the Adjudicator; and
  - (b) the Adjudicator shall, proceed with his or her review and deliberations on the basis of the evidence before him or her, and any decision to be issued by the Adjudicator based on such shall be binding on the procuring entity.
- (4) An extension of time under this Instruction K.9.3 shall not exceed 5 working days.

### **K.9.4. Independent Adjudicator**

- (1) An Adjudicator is to be appointed by the Tenders Board to review any Application referred to the Adjudicator for review of a procuring entity’s decision or issuing of a final decision on a matter to which a complaint relates, and taking into account the requirements in K.9.2(6) and (7).
- (2) An Adjudicator shall hold office for a term of 3 years and is eligible for reappointment.
- (3) Where an Adjudicator is absent, incapacitated, unable to perform his or her duties for good reason, or has a direct or indirect personal interest in a matter being considered or to be considered, he/she shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his or her knowledge, disclose the nature of his or her interest to the Secretariat of the Tenders Board (who shall inform the Tenders Board). In this case, the Tenders Board shall appoint from the pool of adjudicators pre-approved by the Tenders Board, another suitable person to assume the role as ‘Adjudicator’.
- (4) The identity and qualifications of the Adjudicator appointed at any given time shall be publicized

by the Ministry of Finance.

- (5) The Adjudicator is entitled to sitting allowance at a rate fixed by Cabinet and is to be paid from funds of the Ministry of Finance as appropriated for that purpose.
- (6) The Adjudicator may be removed or suspended from office by the Tenders Board, with concurrence of the Attorney General, for incompetence, mental disability, bankruptcy, neglect of duty or misconduct, or a conviction in Samoa or elsewhere of an offence punishable by death or imprisonment for 2 years or more.
- (7) The Adjudicator may resign from office by giving 1 month's written notice to the Tenders Board.

#### **K.9.5. Duties of the Independent Adjudicator**

- (1) The Adjudicator shall conduct the review independently and impartially in accordance with the procedure under Instruction K.9.2, and shall, in all respects relating to this role, be bound by the rules applicable to public servants.
- (2) An Adjudicator must disclose to the Secretariat any direct or indirect personal interest he/she may have in a matter being considered or to be considered, as soon as reasonably practicable after the relevant facts concerning the matter have come to his or her knowledge.

#### **K.9.6. Support by the Secretariat**

- (1) Without limiting the preceding Instructions, the Secretariat shall be responsible for the organization and management of complaints received for referral to the Adjudicator. The Secretariat's role includes but is not limited to the handling of all clerical matters arising out of the conduct of a review by the Adjudicator.
- (2) Any notices or correspondences addressed, or intended for referral, to the Adjudicator must also be copied to the Secretariat.
- (3) Copies of any forms or documents relating to the review procedure shall be made available at the place of work where the Secretariat is stationed, and may be sent by the Secretariat to interested parties upon request.

#### **K.9.7. Hearing**

- (1) The Adjudicator shall, taking into account his or her duties in Instruction K.9.5 and the nature of the matter at hand, determine the order, time and place of a hearing he or she intends to hold.
- (2) The procuring entity or complainant may request the Adjudicator to make his or her decision in the absence of a hearing. The Adjudicator may, if satisfied that a decision can be made on the information available without hearing the parties, proceed and issue their decision within the timeframe specified in Instruction K.9.8(1).
- (3) If a hearing is to take place, the Adjudicator, in determining the order and time of the hearing, shall proceed according to sub-clause (5) and give sufficient consideration to preventing the delay of the proceedings.

- (4) The Secretariat shall communicate to the procuring entity and complainant the Adjudicator's decision under sub-clause (2) or (3).
- (5) A hearing shall take place in a manner or form as determined by the Adjudicator.
- (6) A party to a hearing may appear in person or be represented by a lawyer or any other authorized person (as per a valid Power of Attorney submitted).
- (7) All relevant documentary evidence relied upon by the parties in support of their claims and responses shall be submitted to the Adjudicator before the hearing. Any further documentary evidence shall be admitted only where, in the opinion of the Adjudicator, it is relevant and only with the Adjudicator's consent. The Adjudicator may, at his or her discretion, request the submission of further documentary evidence from the parties or request the presence of other witnesses.
- (8) During the hearing, any party may submit oral evidence in support of the party's contentions by way of the voluntary appearance of witnesses.
- (9) If, despite having received notice of the hearing in Instruction K.9.7(4), the procuring entity or complainant fails to appear, the Adjudicator, if satisfied that the notification was received and either party is absent without good cause, shall commence the proceedings. A party who does not appear despite being notified is deemed to have waived their right to present evidence at the hearing.
- (10) A hearing shall be closed to the public unless the Adjudicator approves admission or presence of a person having a justifiable interest in the proceedings.
- (11) For each hearing, the Secretariat shall keep a record of minutes, recordings or transcripts which must include the time, place and the names of those attending, together with a summary record of the hearing.

#### **K.9.8. Conclusion of Proceedings**

- (1) The Adjudicator must ensure to deliver his or her decision to the Secretariat within 10 working days of receiving the case file, subject to any adjournment that proves necessary in the opinion of the Adjudicator which may not exceed a further 10 working days.
- (2) Having heard and considered all evidence submitted by both parties, the Adjudicator may conclude the proceedings and make the following orders:
  - (a) annul in part or whole an act or a decision of the procuring entity, including providing tender documents which breach Part K of these Instructions (other than an act or a decision bringing the contract into force) and ordering the procuring entity to begin procurement proceedings afresh; or
  - (b) make a declaration with respect to the rules and principles that apply to the decisions or actions of the procuring entity, and prohibit the procuring entity from reaching a decision or taking action based on a procedure that is found to have been inconsistent with Part K of these Instructions.

- (3) The Adjudicator's decision must be confined to issues raised in the Application which address the elements specified in Instruction K.9.2(6). A summary of the Adjudicator's decision shall be published on the Ministry of Finance's website.
- (4) A decision of the Adjudicator shall be final and binding on all parties involved in the matter to which a complaint relates, and is subject only to judicial review by the Supreme Court or other Court of Samoa.
- (5) The Secretariat shall immediately notify the Tenders Board and all parties concerned, of the Adjudicator's decision.

#### **K.9A. Variations to Contracts**

- (1) A contract may be varied or modified at any time before the expiration of the contract term and is effective and binding only when both parties have agreed to such, in writing.
- (2) The prior written approval of the Tenders Board (or Cabinet as the case may be) is required only for a variation that changes the cost of the contract, the scope of the contract, or time extension exceeding 1 month.
- (3) Despite sub-clause (2), where the total cost of a contract exceeds \$50,000, the Attorney General's clearance must be obtained.

#### **K.9B. Conflicts of Interests**

- (1) For purpose of any procurement, a 'conflict of interest' refers to any situation in which a person, who is in a position of trust, has a competing professional or personal interest that can make it difficult to fulfill his or her duties impartially.
- (2) A conflict of interest:
  - (a) exists even if no unethical or improper act arises; and
  - (b) must be disclosed to the appropriate parties before engaging in, or conducting any activity, or during the course, of the procurement process; and
  - (c) can create an appearance of impropriety that can undermine confidence in the procurement process or system, the procurement activity, and the profession.
- (3) Any person who has any form of a conflict of interest in a procurement proceeding or any stage of the procurement process which he or she is assigned to work on, shall immediately disclose to the relevant Chief Executive Officer or procuring entity, that person's interest and refrain completely from being involved in that procurement activity or process.

#### **K.9C. Confidentiality**

- (1) Unless there is a legal or professional obligation to disclose information, any information provided or required during the course of any procurement proceeding or any stage of the process must, at all times, be treated as confidential and used solely for the purpose of the procurement proceedings.

- (2) Any person involved in the procurement process must:
  - (a) be prudent in the use and protection of information acquired in the course of their duties; and
  - (b) not use information for any personal gain or in any manner that would be contrary to these Instructions or Operating Manual or detrimental to the legitimate and ethical objectives of a procuring entity.
- (3) Disclosure under sub-clause (1) may be for an investigation involving a suspected irregularity or fraud or a criminal investigation or prosecution.

#### **K.9D. Insurance and Indemnity**

- (1) In addition to any other requirements relating to insurance as may be specified in the Operating Manual, any person who is successfully awarded a contract is required to provide copies of relevant insurance policies, and any such policies must address the following:
  - (a) the issuer of the insurance policy must be a properly established and reputable insurer in Samoa, or as the case may be, abroad;
  - (b) the insured amount must properly cover the goods (or goods and related services), general services, works or consultancy services, as required by the contract;
  - (c) the policy must be valid for the entire period or duration specified in the conditions of contract (including Defects Liability Period) and may survive the expiration or termination of the contract depending on the high risk nature of a contract as determined by the procuring entity;
  - (d) the policy must be in the name of both the contractor and the Government of Samoa (being the Principal or Client) as jointly insured;
  - (e) that there should be written confirmation from the insurance company about the exact list of any exclusions and their applicability;
  - (f) that the deductibles are adequate and set a ceiling that the contractor could reasonably cover from its own resources;
  - (g) the terms and conditions attached to the insurance policies must adequately cover any circumstances or events that may arise (during and beyond the contract period (or any Defects Liability Period)), including whenever there are changes to the contract (including an extension, in which case the policy must properly be extended to cover such).
- (2) To further facilitate sub-clause (1), a procuring entity responsible for a procurement activity must ensure that the requirement for insurance policies to be provided by contractors is specified in the bidding documents or contract (including the requirements in sub-clause (1)), and that the contractor is responsible for the cost of any such insurance.
- (3) In addition to any other requirements relating to indemnity as may be specified in the Operating Manual, a bidder who is successfully awarded a contract must provide a written undertaking to indemnify the procuring entity (as required under contract) to cover the duration of the contract

period (including any Defects Liability Period) and for the same to survive the expiration or termination of the contract.

#### **K.9E. Taxes**

- (1) For any contract, there are 2 types of taxes that may be applicable, and which the contractor should be aware of from the outset: Value Added Goods and Services Tax (VAGST) and withholding tax.
- (2) The applicable taxes and duties (or any exemptions) shall be specified in the bidding documents and confirmed with the Ministry responsible for administration of taxes before finalization and signing of a contract.

#### **K.10. SAVINGS:**

At the commencement of the Treasury Instructions Amendment (No.2) 2019, all tenders, contracts or approvals issued, approved and entered into, or decisions made or any proceedings undertaken, under the previous Instructions continue to have full force and effect until expiry or termination or fully implemented as the case may be.



## K.11. DEFINITIONS

Unless the context otherwise requires, in these Instructions:

- (a) **“Act”** means the Public Finance Management Act 2001;
- (b) **“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;
- (c) **“bidder”** means a natural or legal person who submits a bid pursuant to solicitation by the relevant procuring entity;
- (d) **“Board”** means the Government Tenders Board established under section 88 of the Act;
- (e) **“consultant”** means the provider of intellectual and professional services for a specific project (particularly, assignments performed by consultants with outputs of advisory, design and transfer of know-how nature);
- (f) **“contractor”** means the provider for the construction of works;
- (g) **“days”** means calendar days;
- (h) **“department”** has the same meaning in the Act;
- (i) **“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;
- (j) **“procurement”** means all activities that pertain to the solicitation and entering into a contract for the supply or provision of goods (or goods and related services), works, general services or consultancy services;
- (k) **“procuring entity”** means any Government department, government agency or public body engaging in procurement;
- (l) **“public body”** has the same meaning as in of the Act;
- (m) **“supplier”** means the provider for the supply of goods and ancillary services, or for the provision of supply services;
- (n) **“thresholds”** mean the financial limits set by the Financial Secretary and endorsed by the Tenders Board, and specified in the Operating Manual.