

PROJECT PROCUREMENT RISK ASSESSMENT

I. INTRODUCTION

A. Overview

1. Under the proposed project, the Asian Development Bank (ADB), the World Bank and the government of Australia will support the development and operation of a submarine fiber optic communication cable system (SCS) linking Samoa to Fiji, where an existing international submarine cable network will provide cost-effective access to the rest of the world. The proposed project will also support reforms to strengthen the regulatory and legal environment for the information and communication technology (ICT) sector, and facilitate e-health investment.¹

2. The impact of the project is universal access to reliable and affordable ICT services. The outcome of the project is quality broadband services available at an affordable price and used for enhancing e-health.

3. Output 1 is the establishment of the SSCC, a special-purpose vehicle to procure, own, and operate the cable system; and it will be the sole wholesaler of the cable capacity to the retail service providers. The SSCC will be a limited liability company, with local shareholding comprising existing ICT service providers and three state-owned enterprises: the Samoa National Provident Fund, the Unit Trust of Samoa, and the Samoa Life Assurance Corporation. The Government of Samoa will onlend the grants from the financiers to the SSCC. The government will retain strategic control of the asset through covenants in the subsidiary agreement relating to dividend and capacity pricing policies as well as its consent to any major decisions that may impact the availability and affordability of capacity.

4. Output 2 is the construction and efficient operation of the SCS. This will comprise (i) the design, supply, and installation of the SCS to connect Samoa to Fiji; and (ii) construction of landing stations, terrestrial cable placement, and ancillary equipment in Upolu and Savai'i, and system connections in Suva. In Fiji, the cable will use an existing landing station where the Samoa cable is connected to the Southern Cross Cable Network.

5. Output 3 is an improved legal and regulatory environment for ICT. The proposed activities will deepen the regulatory capacity of the OOTR by (i) reviewing and developing effective regulation for the ICT sector with a focus on the wholesale market; (ii) establishing wholesale tariffs, including price and nonprice terms for access to all international fiber-optic bandwidth services; (iii) procuring spectrum management monitoring equipment; (iv) training the OOTR staff; and (v) conducting a nationwide consumer survey on the benefits of ICT and examining possible differences across demographic groups, including gender.

6. Output 4 supports investments in e-health solutions through a health information system. Activities include (i) validating the needs of the health sector and clearly defining the requirements for the system; (ii) conducting technical and financial due diligence; (iii) procuring the integrated health information system components; (iv) installing and configuring the system's hardware and software components; (v) connecting to all users; (vi) migrating data sets from existing systems and other sources; (vii) ensuring effective operations through comprehensive testing; and (viii) conducting training for users and system administrators.

¹ ADB provided technical assistance, complementing preparatory activities by the World Bank and the Government of Samoa (ADB. 2013. *Pacific Information and Communications Technology Investment Planning and Capacity Development Facility*. Manila).

II. PROCUREMENT

7. The project will require contracts for a submarine cable system and landing stations, contracts for a health information system, and consulting services for regulatory technical assistance and project management support. The procurement plan is presented in Section C.

A. Advance Contracting and Retroactive Financing

8. **Advance contracting.** To expedite project implementation, the government requested advance contracting of the SCS. Advance contracting allows the government to commence procurement activities, prior to signing of the grant agreement but does not allow for the award of contract until grants from all co-financiers have become effective. The steps to be concluded in advance include (i) preparation of bidding documents to procure materials, equipment and services; (ii) receiving bids through limited international bidding; and (iii) evaluation of bids. To ensure consistency with ADB's Procurement Guidelines, bidding documents for such advance contracting were submitted for prior review by ADB. The Government has been informed that approval of advance contracting does not commit ADB to finance the project.

9. **Retroactive financing.** No retroactive financing is envisaged for the submarine cable system contract.

B. Procurement of Goods, Works and Consulting Services

10. An SCS is an integrated system of plant, materials, equipment, civil works, and services. For technical reasons, consideration of economy and efficiency, management risks, and in view of the limited number of suppliers, the SCS is best procured as one contract. The contract will be financed by ADB and the World Bank, using limited international bidding. The borrower will undertake, in its financing agreement with ADB, to conduct all procurement in accordance with ADB's Procurement Guidelines (2015, as amended from time to time). ADB and the World Bank will enter into a memorandum of understanding that sets out detailed collaboration and coordination arrangements in relation to this procurement, and the project more generally. Pursuant to the memorandum of understanding, the World Bank's guidelines and standard bidding documents will be used, but all procurement decisions will be taken by mutual agreement. The World Bank's and ADB's procurement guidelines are largely harmonized, except for references to debarment lists. The final bidding documents will be agreed between ADB, the World Bank, and the government. ADB will be involved throughout the review process and exercise procurement oversight in accordance with its usual procurement procedures and practices to ensure that the procurement is also undertaken in accordance with ADB's Procurement Guidelines, and that no company on ADB's sanction list participated in the bidding process and is awarded the contract. The World Bank and ADB will use their best efforts to give effect to the other's eligibility requirements and debarment lists. Furthermore, contracts between the bidder and the borrower will contain a provision permitting the World Bank and/or ADB to inspect the project and to inspect and audit all records and accounts of any bidders, contractors, suppliers, or service providers as they relate to the project in accordance with their respective policies and procedures.

11. If no mutually agreed decision can be reached on any procurement matter, and given that the World Bank is the coordinating and lead financier, the World Bank's decision will prevail. ADB will have the right to take such actions as it reasonably considers necessary to (i) ensure compliance with its procurement and anticorruption policies and related procedures, the terms and conditions of its agreement(s) with the borrower; and (ii) realize the intended development objectives of the project.

12. A blanket waiver by ADB’s Board of Directors of member country procurement eligibility restrictions for operations funded by the Asian Development Fund applies to the procurement of the SCS, thereby permitting participation of bidders from non-ADB members and/or procurement of goods and services from non-ADB members.

13. The integrated health information system will include hardware, software, installation costs, testing, and training. The system will be procured as one contract. A consulting firm will be engaged to provide project management support to MOH to implement output 4. Both contracts will be fully financed by ADB, and procurement will be carried out in accordance with ADB’s Procurement Guidelines, (2015, as amended from time to time) and the firm will be engaged in accordance with ADB’s Guidelines for the Use of Consultants (2013, as amended from time to time).

14. An 18-month procurement plan indicating threshold and review procedures, goods, works, and consulting service contract packages is in Section C.

C. Procurement Plan

Basic Data

Project Name: Samoa Submarine Cable Project	
Project Number: 47320	Approval Number: xxxx
Country: Samoa	Executing Agency: Ministry of Finance
Project Procurement Classification: B	Implementing Agencies: Samoa Submarine Cable Project; Ministry of Health
Procurement Risk: Moderate	
Project Financing Amount: \$57.41 million ADB Financing: \$25.0 million Cofinancing (ADB Administered): n/a Non-ADB Financing: \$32.41 million	Project Closing Date: 31 December 2019
Date of First Procurement Plan: 15 April 2015	Date of this Procurement Plan: 15 September 2015

1. Methods, Thresholds, Review and 18-Month Procurement Plan

1.1 Procurement and Consulting Methods and Thresholds

19. Except as the Asian Development Bank (ADB) may otherwise agree, the following process thresholds shall apply to procurement of goods and works.

Procurement of Goods and Works		
Method	Threshold	Comments
International Competitive Bidding (ICB) for Works (Plant) ^a	≥ \$3.0 million	

^aIncluding limited international bidding.

Consulting Services	
Method	Comments
Quality and Cost Based Selection (QCBS)	For consulting firm

1.2 Goods and Works Contracts Estimated to Cost \$1 Million or More

20. The following table lists goods and works contracts for which the procurement activity is either ongoing or expected to commence within the next 18 months.

Package Number	General Description	Estimated Value	Procurement Method	Review [Prior / Post/Post (Sample)]	Bidding Procedure	Advertisement Date (quarter/year)	Comments
1	Main cable system	\$32.5 million	ICB	Prior	1S1E	Q3/2015	Prequalification of bidders: N Domestic Preference Applicable: N Document: Plant (ADB and World Bank financed)
2	Integrated health information system	\$6.0 million	ICB	Prior	1S1E	Q1/2016	Prequalification of bidders: N Domestic Preference Applicable: N Document: Goods

1.3 Consulting Services Contracts Estimated to Cost \$100,000 or More

21. The following table lists consulting services contracts for which the recruitment activity is either ongoing or expected to commence within the next 18 months.

Package Number	General Description	Estimated Value	Recruitment Method	Review (Prior / Post)	Advertisement Date (quarter/year)	Type of Proposal	Comments
1	Project management (output 4)	500,000.00	QCBS	Prior	Q1/2016	STP	Assignment: international Quality-Cost Ratio: 90:10

2. Non-ADB Financing

22. The following table lists goods, works and consulting services contracts over the life of the project, financed by Non-ADB sources.

Goods and Works				
General Description	Estimated Value (cumulative)	Estimated Number of Contracts	Procurement Method	Comments
Supply of Quality standards monitoring hardware for OoTR	250,000	1	S	WB
Supply of QoS software for OoTR	150,000	1	S	WB
Supply of IM software for OoTR	197,000	1	S	WB
Station construction – Apia	2,000,000	1	ICB	SSCC/DFAT
BMH construction – Savaii	100,000	1	NCB	SSCC
Duct route construction – Apia	250,000	1	NCB	SSCC
Duct route construction – Savaii	60,000	1	NCB	SSCC
Establish and condition Savaii and Suva	70,000	1	NCB	SSCC
Consulting Services				
General Description	Estimated Value (cumulative)	Estimated Number of Contracts	Recruitment Method	Comments
OoTR training international	210,300	1	QCBS	WB
Project Administration services	250,000	1	IC	WB
Technical implementation advisory services/transactional support	500,000	1	QCBS	WB
TA for OoTR – Establishment of new legal/regulatory framework	725,000	1	QCBS	WB
Development, conduct and analysis of consumer surveys and awareness campaigns	135,000	1	CQS	WB
Capacity building consultants	120,000	1	IC	WB
Technical implementation project management	750,000	1	QCBS	SSCC
Implementation legal advisory services	30,000	1	IC	WB

C. Assessment of Procurement Capacity of the Ministry of Finance

23. The assessment of MOF's procurement capacity needs to consider that the procurement requirements of the project are systems. In this context MOF's procurement capacity is considered adequate to undertake the procurement detailed above. The findings of the 2013 PFM Performance Report on transparency, competition and complaints methods in procurement are summarized in Attachment 2. The overall rating is B, up from C+ in the 2010 report.

24. Government procurement systems and procedures are well defined as detailed in the

recent ADB/OECD review of public procurement² and summarized below. Whilst some weaknesses have been identified in the implementation of public procurement, these have been addressed under the Public Financial Management Reform Program. MOF has an independent procurement unit which is aware of ADB's procurement processes. However, there is limited human resource capacity in the unit and support is needed for the larger procurement packages which require approval of the Tenders Board. For the project, a project management team has been engaged with support from the Government of Australia to provide such support to MOF to facilitate the procurement of the submarine cable system (output 2). ADB is providing similar project management support for the e-health component (output 4).

Laws and regulations related to government procurement, including those that give exemption to the standard government procurement rules.

25. Samoa has several instruments to provide legal coverage for public procurement such as: Treasury Instructions 1965 and 1977; Cabinet Directive 98 (19); Public Finance Management Act 2001; and Tenders Board Guidelines 2014. These documents are the result of the government efforts to improve the procurement environment as a whole. These efforts have led to increased perception of integrity in procurement as a result of more openness and transparency.

Allocation of tasks and responsibilities in the procurement process among centralized, decentralized and specialized authorities.

26. Samoa has significantly decentralized its procurement functions. The procurement processing responsibilities have been devolved to the various line ministries and departments, with set thresholds of approval authorities. The government's Tenders Board, chaired by the Minister of Finance is responsible for establishing rules and procedures related to procurement. This Board also has the responsibility for inviting bids and their public opening to ensure transparency.

27. The Public Finance Management Act 2001, under which the Tenders Board was formed, gives the ministries and state owned enterprises the responsibility for their procurement but the Tenders Board still holds the responsibility for inviting tenders for goods, works and services above a certain threshold and awarding contracts based on prescribed financial thresholds, as well as establishing rules and procedures relating to provisions contained in the Instructions and Regulations. For the proposed project, bidding documents will be prepared by relevant implementing agencies with project management support provided under the project. A general procurement notice is posted by the Procurement Unit of the Ministry of Finance who is the Secretariat to the Tenders Board. The bidding documents are issued by the Secretary of the Tenders Board with all tenders to be received by the Secretariat (Ministry of Finance as specified in the bidding documents for the project). A Bid Evaluation Committee will evaluate all bids and prepare the bid evaluation report which is submitted first for the approval of the Tenders Board and endorsement of Cabinet.

Procurement of goods and services

28. The Procurement Guidelines of the Tenders Board provide that the same procedures govern the procurement of goods and services. The basic principles explicit in the Guidelines underlining all procurement stipulate:

² Source: ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. Thematic review on provisions and practices to curb corruption in public procurement. Self-assessment report Samoa.

- Transparency to achieve economy and efficiency and to combat fraud and corruption.
- To achieve open and fair competition and value for money, the Tenders Board requires all Ministries and Corporations to obtain goods and works through public tender in accordance with the procedures stipulated under Treasury Instructions, Regulations and Operating Manuals.
- To achieve transparency, all tenders are to be opened by the Tenders Board in the presence of bidders or their representatives.
- To ensure safety and well-being of all citizens and to ensure contractors bidding for major works possess the requisite professional technical and administrative requirements, all Contractors and sub-Contractors must be approved Contractors registered by the Ministry of Works.

Sectors, areas or conditions subject to particular procurement rules (if applicable, e.g. military; local governments; state owned enterprises; urgency).

29. The Procurement Guidelines of the Tenders Board apply to all government Ministries using public funds. This is also applicable to state owned enterprises.

Model tender documents e.g. handbooks, model forms, model contracts, etc

30. The use of the Procurement Guidelines of the Tenders Board is mandatory. The bidding documents for projects financed by the World Bank and the ADB have been adapted for use under government funding; these bidding documents contain specific anti-corruption clauses. At present there are no standard bidding documents but has procurement/bidding templates which are accessible through the website.

Procurement methods

31. The Procurement Guidelines of the Tenders Board include different procurement methods: Open Competitive Bidding/Tendering (public tender); Local and International Shopping; Single Source; Limited Tendering (for Repeat Orders); and other methods at the discretion of the Tenders Board. The current practice is to conduct open tendering for contracts above ST 50,000. Other methods of procurement (from open competitive bidding) and the particular requirements for each tender are determined by the Tenders Board having regard to:

- the complexity or potential cost of the contract;
- any specific requirements of donor funded works or services;
- the unique or highly specialized nature of the works or services;
- the need to build local capacity to carry out the works or services urgently required; and increasing the utilization of local know-how and materials.

Pre-selection procedures

32. Pre-selection or pre-qualification of bidders may be used for most civil works contracts, and contracts for the supply of expensive and technically complex equipment, to ensure that only technically and financially capable firms will be invited to submit bids.

Contractor eligibility

33. The Procurement Guidelines of the Tenders Board allow a restrictive participation approach to the procurement of civil works, whereby contractors and even sub-contractors are required to be registered for bidding. The registration process is conducted twice a year. The criteria for registration are disclosed to firms and include technical experience; capabilities of resources; financial position; and past experience. Contractors are assessed in three categories for registration: Category A with capability to undertake contracts over ST 1.0 million; Category B from ST 0.5-1.0 million; and Category C below ST 0.5 million. In addition, to foster the growth of small/medium size contractors, the Guidelines prescribe that contractors from a higher category are not allowed to bid for contracts in the lower categories.

Bid security and/or performance guarantees

34. The Guidelines of the Tenders Board contain provisions for bid and performance securities at appropriate levels (two percent for bidding and maximum ten percent for performance).

Procedures for advertisement of procurement opportunities

35. All contracts for public tendering must be advertised in the country, and internationally where required by a donor financier. All invitations to bid and procurement notices must be advertised in a widely circulated newspaper. The submission period is determined by the nature and complexity of the contract but bidders are generally given a minimum of 14 days from the date on which bids were invited. A fee has to be paid to receive tender documents; normally no more than ST 100.

Selection and award criteria

36. Bids which conform to the technical specifications and are substantially responsive to the bidding documents are compared on the basis of their evaluated costs and the bid with the lowest evaluated cost, which may not necessarily be the lowest priced bid, may be selected for award. Bid evaluation must be consistent with the method, terms and conditions set forth in the bidding documents. Apart from the price, other relevant factors such as the efficiency of the equipment, including its operating costs, the time of completion of construction or delivery, and the availability of after-sales services or spare parts, shall be taken into account in determining the lowest evaluated bid to the extent and in the manner specified in the bidding document. For contracts for which prequalification is not required, information concerning the bidder's experience, financial position, and technical staff shall be required in the bidding documents.

Procedures for non-responsive tenders

37. The Tenders Board may reject all bids. Such rejection is justified when all the bids submitted are not substantially responsive, or when there is evidence of lack of competition, or where all bid prices substantially exceed the cost estimates. When all bids have been rejected, a rebidding may be called, and the Ministry or Corporation shall request for new bids from all who were supplied with bidding documents in the first instance. However, if there have been a sufficient number of bids in the initial bidding, the Ministry may consider inviting bids only from those who have previously submitted bids. If all bids have been rejected because of lack of competition or failure to meet the specifications, the Ministry shall examine the causes for rejection and consider, before calling for new bids, revision of the specifications or bidding

conditions. Where all bid prices substantially exceed the cost estimates the Ministry may, negotiate with the lowest evaluated bidder for a reduction of the bid price. If no satisfactory contract can be concluded and a rebidding is called, modification of the scope of the contract shall be considered.

Records of procurement process

38. All actions and decisions in the procurement process that come through the Tenders Board are recorded as Minutes of the Tenders Board and are accessible to the Controller and Chief Auditor. A quarterly report of contracts approved and awarded by the Board is submitted to the Cabinet. These records are not disposed without the prior approval of the Controller and Chief Auditor.

Announcement of awards

39. The full evaluation report and recommendation for award of contract is submitted to the Tenders Board for approval or recommendation to Cabinet where appropriate, in accordance with the provisions for Schedules of Authorities. The award of contract is made to the bidder whose bid has been determined to be the lowest evaluated substantially responsive bid and who meets the appropriate standards of capability and financial responsibility. The Ministry or Corporation will notify unsuccessful bidders promptly in writing. If, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address a request to the relevant Ministry or the Tenders Board.

Codes of ethics for procurement personnel

40. The Procurement Guidelines of the Tenders Board stipulate that all persons involved in assessing and/or evaluating and/or deciding on the award of a contract must declare any interest in any company or close family relationship to the principals of any company which has made a bid and shall be excluded from the evaluation and decision making process on that particular tender and shall not have access to any documents or information relating to that particular tender. The Public Finance Management Act, the Public Bodies Transparency and Accountability Act, the Public Service Act and the Treasury Regulations and Instructions also explicitly have provisions that address corruption risks and make mandatory the declaration of conflicts of interest. The Guidelines also stipulate that the process of bid evaluation is confidential until the award is notified. This is considered essential to enable the Ministry or Corporation and the Tenders Board to avoid either the reality or the perception of improper interference.

Training for procurement personnel

41. Specific training is provided by the Ministry of Finance, on the requirements of the Public Finance Management Act and to clarify procurement procedures in the Procurement Guidelines.

Penal and/or administrative sanctions applicable to procurement personnel for accepting or soliciting bribes

42. Employees suspected of a breach of the Code of Conduct are liable to be charged under the Public Service Act or under the PFMA. Under the PFMA, a person is liable for surcharge where it is established that that person has intentionally or recklessly “authorized or permitted a breach of procedures relating to the calling, considering or awarding of tenders.

Penal sanctions applied to a bidding company and its employees if it is found guilty of corruption related to the bidding procedure

43. A company may be boycotted from government procurement and the breach may proceed further to the Courts.

Authority to suspend, temporarily or permanently, from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official

44. Whilst not explicitly stipulated in any regulation, Cabinet may on the advice of the Tenders Board suspend temporarily or permanently an enterprise determined to have bribed a public official; this determination is made available to the enterprise and to all Ministries by Cabinet Directive.

Means employed to avoid insulation of procurement staff and to ensure mutual control (e.g. rotation of officers, decisions taken/validated by more than one actor, etc.)

45. The individual implementing agencies in the ministries and departments are fully responsible for the preparation of bidding documents and managing the procurement process. However, all public tenders are lodged with and opened publicly by the Tenders Board. The bids are then evaluated by an Evaluation Committee or Team which must have at least three people with one preferably from another Ministry. Approval for award of tenders is the mandate of the Tenders Board or the Cabinet in accordance with approved authorities. The government operates strict contract administration. Any variation in contracts must be approved by the Tenders Board.

Internal and external audits of procuring entities

46. Regular and systematic internal audits are done by the Ministry of Finance Internal Audit and Investigation Division. The Controller and Chief Auditor conducts an external audit annually of all Ministries although it has the mandate to conduct reviews regularly. In practice, the internal and external reviews of Ministries procurement are regular and consistently undertaken. The Controller and Chief Auditor's Annual Report is tabled in Parliament and made public thereafter.

Review and complaint mechanisms

47. The Procurement Guidelines provide a process for formal complaints by bidders against the bidding process in the first instance to the implementing entity and further to the Tenders Board, which may appoint an ad-hoc committee to address the complaint. A competing bidder may initiate a complaint procedure however any citizen may do so in writing. The decisions of the Tenders Board are binding once a matter has been fully investigated. The Tenders Board Guidelines have Confidentiality clauses which are strictly observed. The Tenders Board may decide, depending on the circumstances of the complaint to reopen a bidding.

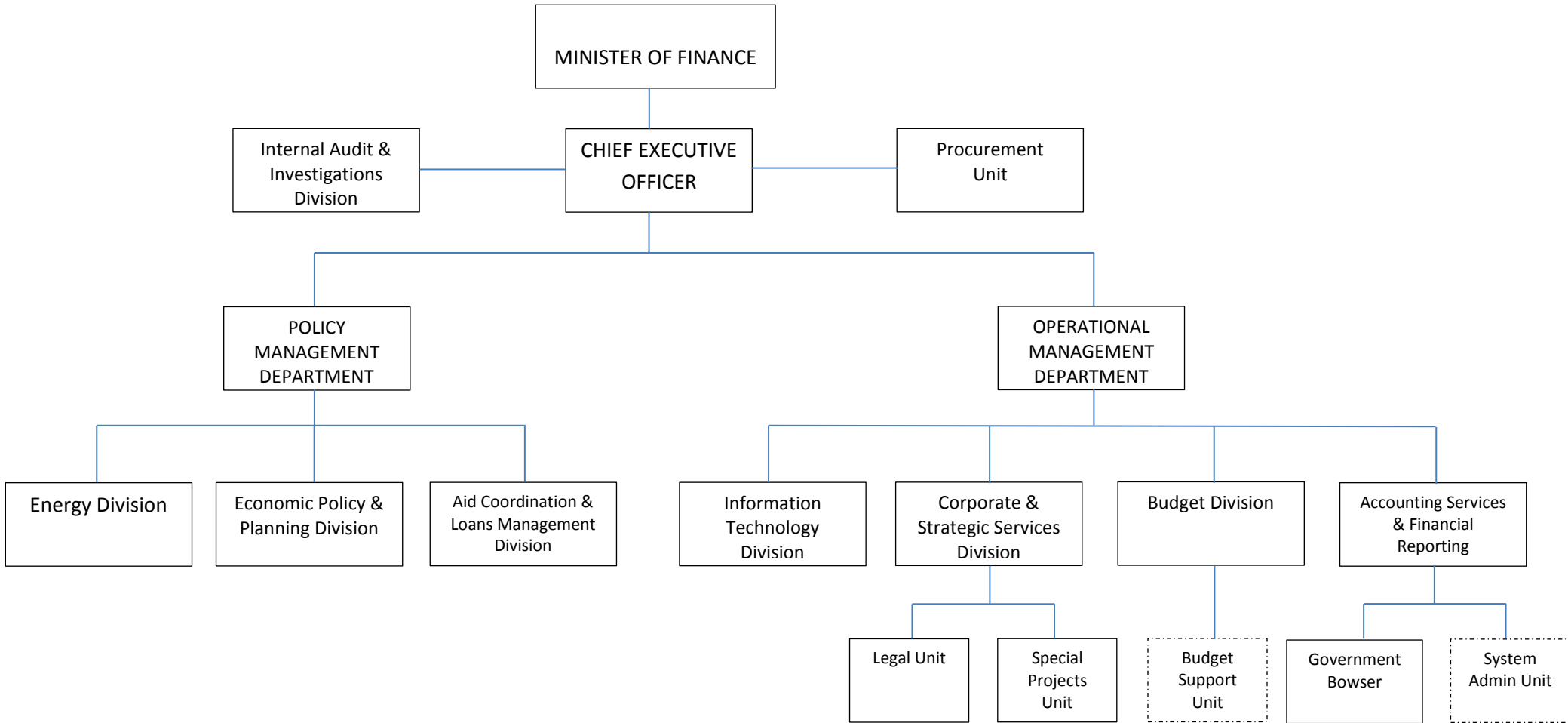
V. CONCLUSIONS AND RECOMMENDATIONS


48. Samoa has embarked on a sustained effort, with considerable development partner support, to strengthen its public financial management (PFM) and procurement systems. Whilst some weaknesses remain in implementation capacity in some of the line ministries, the systems themselves are basically sound and incorporate appropriate safeguards to ensure transparency

and value-for-money. On this basis, the risk level associated with Samoa's PFM and procurement systems are considered low. Auditing procedures are sufficiently rigorous to detect any irregularities. MOF is considered to have the capacity to oversight the project and to have adequate systems in place to adequately manage project funds.

Samoa Submarine
Cable Project
(RRP SAM 47320)

Attachment 1: Organization Structure: Ministry of Finance



 Proposed new unit

Samoa Submarine
Cable Project
(RRP SAM 47320)

Attachment 2: Transparency, Competition and Complaints Methods in Procurement

Source: 2013 PFM Performance Report

PI-19 Dimensions	2010	2013 Assessment
Method M2	C+	B
Transparency, comprehensiveness D↑ and competition in the legal and regulatory framework.		<p>B+</p> <p>The current legal framework for Procurement meets four of six requirements in this Dimension.</p> <p>The legal framework covers all procurements, and is recorded and organised in the PFM Act 2001 and the Treasury Instructions Part K. The Treasury Instructions give effect to the Two Procurement Guidelines: (a) for Goods and Works; and (b) for Consulting Services. These documents are all published and are accessible the Ministry of Finance website.</p> <p>Open Competition above a threshold amount is the default method used for procurement according to mandate as well as practice, and all contracts that are procured through less competitive methods are justified according to the Legal Framework.</p> <p>Requirement five is not met as there is no provision under the existing legal framework on Procurement Plans, however the Procurement plan initiative is at its finalisation stage.</p> <p>There is no independent complaint mechanism.</p>
Use of competitive procurement methods.	B	<p>A</p> <p>The value of contracts justified in accordance with the legal requirements when methods other than open competition are used is 100%.</p>
Public access to complete, reliable C and timely procurement information.		<p>C</p> <p>All Contract awards above SAT\$500,000.00 are posted on the Ministry of Finance Website. Based on the value of Contract awards, 75% of contract awards are posted on the MOF Website. Tender Opportunities are also advertised through media and MOF website; based on the value of contracts awarded, 99% of contracts are advertised through two (2) local Newspapers and are also posted on the MOF Website. Government Procurement Plans are in their finalisation stage. However Procurement Plans and Complaints Resolutions are not published for public information.</p>
Existence of an independent administrative procurement complaints mechanism.		<p>D</p> <p>A procurement complaints process is in place, but lacks ability to refer to a higher authority (other than the courts), is not well understood by the private sector and decisions are not published.</p>

PI-19 Dimensions	2010	2013 Assessment
		As a result of the MAPS Assessment 2013, undertaken by the Ministry of Finance, a Proposed Five Years Capacity Development Plan was established and the formulation of an independent Complaint Mechanism is a key element in this proposed Plan.

Assessment 2013

Dimension (i) The Procurement legal framework is adequately recorded and organized in the PFM Act 2001 and the Treasury Instructions. The Treasury Instructions gives effect to the two Procurement Guidelines (a) for Goods and Works and (b) for Consulting Services. The Act, Treasury Instructions and Guidelines are all published and are easily accessible on the Ministry of Finance Website.

Open Competitive Bidding is clearly defined in the Guidelines as the default method for Procurements above SAT 150,000 and all contracts above this size that are procured through less competitive methods are justified according to the Legal Framework.

The hierarchy of the legal framework for procurement is organized consistently. The PFM Act establishes the Tenders Board which is chaired by the Minister for Finance and consists of four other members. One member is from the private sector but this position was vacant at the time of this assessment. The Tenders Board covers procurement for the entire public sector - it also approves procurement tenders of the SOEs. The Procurement Division of MOF is the secretariat to the Tenders Board and makes recommendations to it. In almost all cases, the recommendations of the Secretariat are accepted by the Tenders Board. The Tenders Board has at times changed recommendations where the track record of the recommended bidder has not been satisfactory. The procedures for Tenders Board meetings are well understood. In separate discussions with them, the Ministry of Education confirmed that they understand the procurement processes. However, clear procedures for the identification and declaration of conflict of interest have not been established.

The government currently uses local capacity to assess all bids including those that are technically complex such as IT. At times of national emergency, the competitive tender requirements are waived in favor of more timely procedures due to the urgency to procure the services or equipment as soon as possible.

There is however, no provision under the existing legal framework on Procurement Plans and an Independent complaint mechanism.