

ANNEX 1 TOR



10th Pacific Islands Conference

**NATURE CONSERVATION
AND PROTECTED AREAS**

Nature Conservation Action for a Resilient Pacific

TERMS OF REFERENCE FOR A PILLAR ASSESSMENT OF AN ENTITY REQUESTING TO BE ENTRUSTED WITH IMPLEMENTATION OF THE EU BUDGET UNDER INDIRECT MANAGEMENT

SECRETARIAT OF THE PACIFIC REGIONAL ENVIRONMENT PROGRAMME (SPREP)

Entity requesting the assessment:	Secretariat of the Pacific Regional Environment Programme PO Box 240, Vailima, Apia
Country:	Samoa
Reference/date of request for services:	18 September 2020
Period subject to assessment:	The year (12-month period) ending on the day of the start of the field work (<u>on-site</u> procedures) for the assessment.
Start date of the assessment:	<u>Indicative</u> start date. The <u>estimated contractual</u> date of the assessment 19 October 2020.
End date of the assessment:	<u>Indicative</u> end date. The <u>estimated</u> date of receipt of the final report is no later than 20 December 2020

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1. INTRODUCTION

Context

Article 154 of the Financial Regulation¹ ('FR') applicable to the general budget of the European Union ('EU') sets out the methods of implementing the budget, including 'indirect management'. Under indirect management, the Commission can entrust the implementation of Union funds or budgetary guarantees to the countries, organisations and bodies (further referred to as 'entities') indicated in Article 62 of the FR. The following entities may be concerned:

- third countries or the bodies they have designated e.g. Ministry of Interior, Kingdom of Cambodia;
- international organisations and their agencies e.g. United Nations Development Programme (UNDP);
- public law bodies e.g. Kreditanstalt für Wiederaufbau (KfW);
- bodies governed by private law but with a public service mission, to the extent that they provide adequate financial guarantees e.g. Cassa Depositi e Prestiti (CDP).

When such entities manage EU funds, they are required to guarantee a level of protection of the EU's financial interests equivalent to that required under the FR. More specifically, they must meet requirements with regard to nine 'pillars'. These pillars relate to:

- 1) the internal control system ;
- 2) the accounting system;
- 3) an independent external audit;

as well as rules and procedures for:

- 4) providing financing from EU funds through grants;
- 5) procurement;
- 6) financial instruments²;

and also:

- 7) exclusion from access to funding;
- 8) publication of information on recipients;
- 9) protection of personal data.

Entities wishing to work with EU funds under the indirect management mode must therefore undergo a comprehensive **pillar assessment**. Based on the results of the pillar assessment, the Commission will decide whether: (i) it can entrust budget implementation tasks to the entity and; (ii) it can conclude specific agreements (i.e. indirect management contribution agreements) with the entity. However, if required by the legal base, these conditions can be specified in the agreement with the Commission, or by reference to guidance documents (e.g. the Guide for National Agencies in the case of Erasmus) to ensure harmonised implementation and equal treatment of beneficiaries of an EU programme in all participating countries.

¹ Regulation (EU) 2018/1046

² A reference to 'financial instruments' is deemed to also include budgetary guarantees.

The following are the terms of reference ('ToR') on which [full name and address of the Contracting Authority] agrees to engage the auditor to perform a **pillar assessment** of [name of the entity] and to report on this assessment. These ToR are annexed to the entity's [request for services; or equivalent document].

In these ToR and in Annexes 1 to 4, which form an integral part of these ToR, the following terms apply:

- **'Pillar assessment', 'assessment' or 'engagement'** refers to this assurance engagement. In this context, the **pillars** are the broad areas covered by this assessment; these include internal control, accounting, independent external audit, exclusion from access to funding, publication of information on recipients and protection of personal data. The entity will always need to be assessed to check it can meet the requirements in these areas. In addition to the six mandatory pillars listed above, there are three optional pillars, covering procedures and rules for grants, procurement and financial instruments. .
- *'Auditor'* refers to the audit firm contracted to perform this engagement and submit a report on it to the Commission. 'Auditor' can refer to the person or persons conducting the assessment, usually the engagement partner or other members of the engagement team. The engagement partner is the partner or other person in the firm who: (i) is responsible for the engagement and its performance, and for the report issued on behalf of the firm; and (ii) has the appropriate authority from a professional, legal or regulatory body.
- *'Entity'*, refers to the entity subject to the pillar assessment. The entity is generally³ the contracting authority for this assessment.
- *'Commission'* refers to the European Commission, which may be represented by the relevant service or unit in the relevant Commission Directorate General or an EU Delegation, as appropriate.

2. OBJECTIVES

The auditor is engaged to assess the systems put into place and the controls, rules and procedures applied by the entity for each pillar against the criteria set by the Commission for each pillar. The **objective** of this pillar assessment is to: (i) enable the auditor to report on whether the entity fulfils the requirements set out in points (a) to (f) of Article 154(4) of the Financial Regulation applicable to the General Budget of the European Commission and in Article 29(1) of the Financial Regulation applicable to the European Development Fund for each relevant pillar; and (ii) express a conclusion as to whether the entity:

- applies appropriate rules and procedures for **excluding third parties from access to funding** through procurement, grants and/or financial instruments;
- makes public **information on the recipients of funds** in an appropriate and timely manner;
- ensures **protection of personal data** equivalent to that referred to in Article 5 of the FR.

³ The Commission may be the contracting authority in duly justified cases.

3. STANDARDS AND GUIDANCE

The auditor who performs this pillar assessment must be governed by:

- The IFAC International Framework for Assurance Engagements and International Standard on Assurance Engagements ('ISAE') 3000 for Assurance Engagements other than Audits or Reviews of Historical Financial Information insofar as these can be applied in the specific context of this pillar assessment.
- The IFAC *Code of Ethics for Professional Accountants*, issued by IFAC's International Ethics Standards Board for Accountants (IESBA), which establishes fundamental ethical principles for auditors with regard to integrity, objectivity, independence, professional competence and due care, confidentiality, professional behaviour and technical standards;
- The IFAC *International Standards on Quality Control* (ISQCs), which establish standards and provide guidance on an auditor's system of quality control.

4. REQUIREMENTS FOR THE AUDITOR

4.1 General principles

The auditor must be an **independent external** auditor who is a registered member of a national accounting or auditing body or institution which in turn is a member of the International Federation of Accountants (IFAC) and who is certified to perform audits.

The auditor must be functionally independent of the entity concerned. Hence the internal auditor of an entity subject to assessment is not eligible to perform a pillar assessment.

By agreeing to these ToR the auditor confirms that s/he meets at least one of the following conditions:

- The auditor and/or the firm is a member of a national accounting or auditing body or institution, which in turn is member of the International Federation of Accountants (IFAC).
- The auditor and/or the firm is a member of a national accounting or auditing body or institution. Although this organisation is not member of the IFAC, the auditor gives a commitment to undertake this engagement in accordance with the IFAC standards and ethics set out in these ToR.
- The auditor and/or the firm is registered as a statutory auditor in the public register of a public oversight body in an EU Member State in accordance with the principles of public oversight set out in Directive 2006/43/EC of the European Parliament and of the Council. This applies to auditors and audit firms based in an EU Member State⁴.
- The auditor and/or the firm is registered as a statutory auditor in the public register of a public oversight body in a third country and this register is subject to principles of public oversight as set out in the legislation of the country concerned (this applies to auditors and audit firms based in a third country).

⁴ Directive 2006/43 of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts (amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253 EEC), as amended by Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014.

Where permitted by the underlying legal base (e.g. Erasmus), the auditor may be the Independent Audit Body as designated in accordance with Article 155(1) of the Financial Regulation.,

4.2 Qualifications, experience and team composition⁵

Qualifications and experience

The auditor must employ sufficient staff with: (i) appropriate professional qualifications and suitable experience with IFAC standards, in particular the ISAE 3000 for Assurance Engagements other than Audits or Reviews of Historical Financial Information; and (ii) with experience in performing institutional or compliance assessments and/or performing systems audits or equivalent engagements of entities comparable in size and complexity to the entity in question.

In addition, the engagement team as a whole shall have:

- Experience with institutional or compliance assessments and/or systems audits or equivalent engagements of EU funded programmes and projects funded by national and/or international donors and institutions. It is desirable that the leader of the fieldwork team i.e. either the manager (category 2) or the senior auditor (category 3) has experience with systems audits of EU funded external aid actions and / or other EU funded actions, and/or institutional or compliance assessments of organisations in the development aid sector and/or economic sector.

Team composition

The team of auditors required for this pillar assessment shall be composed of a category 1 auditor who has the ultimate responsibility for the assessment, and an engagement team composed of an appropriate mix of category 2-4 auditors. It is the responsibility of the auditor to propose and use an engagement team composed of an appropriate mix of auditors for this engagement.

The Commission distinguishes four categories of auditors.

Category 1 — Audit partner

An audit partner shall be a highly qualified expert with a relevant professional qualification and assuming or having assumed senior and managerial responsibilities in public audit practice.

That person should be a member of a national accounting or auditing body or institution, and must have at least 12 years' professional experience as a professional auditor or accountant in public audit practice. Experience with working with the recipient countries of EU external aid will also be taken into account.

An audit partner, or another person in a position similar to that of a partner, is the person in the audit firm who is responsible for the audit and its performance, and for the report that is issued on behalf of the firm. The audit partner has the appropriate authority from a professional, legal or regulatory body and is authorised to certify accounts by the laws of the country in which the audit firm is registered.

⁵ Where the audit body is not from the private sector, equivalent levels of seniority, qualifications and experience should be applied.

Category 2 — Audit manager

Audit managers should be qualified experts with a relevant university degree or professional qualification. They should have at least 6 years' experience as a professional auditor or accountant in public audit practice including relevant managerial experience of leading audit teams.

Category 3 — Senior auditor

Senior auditors should be qualified experts with a relevant university degree or professional qualification and at least 3 years' professional experience in public audit practice.

Category 4 — Assistant auditor

Assistant auditors should have a relevant university degree and at least 6 months' professional experience in public audit practice.

Curricula vitae (CVs)

The auditor shall provide the contracting authority with CVs of the partner or other person in the audit firm who is responsible for the pillar assessment and for signing the report, and also provide the CVs of the managers, senior auditors and assistant auditors proposed as part of the engagement team. CVs will include appropriate details on the type of engagements carried out by the staff, indicating capability and capacity to undertake the assessment, and will also include details on relevant specific experience. The contracting authority will examine the CVs before it signs an order form or other applicable contractual document for this engagement and reserves the right to reject them if they are not considered suitable for the requirements of the engagement.

5. Scope

5.1 Location and period covered by the assessment

This pillar assessment will be performed at **SPREP's office, Apia Samoa but will be carried out remotely**. The auditor should confirm the location(s) of the assessment with the contracting authority **prior** to the start of the fieldwork and ensure that relevant supporting documents as well as key staff will be available during the assessment. The auditor should take into account that the entity normally requires meetings to prepare the assessment and to discuss the draft report and that this may involve additional travelling (see Section 7).

The **period to be covered by the assessment** should normally be the year (i.e. 12-month period) ending on the day of the start of the assessment field work, i.e. the day on which the auditor effectively starts on-site (i.e. at the location where the entity is established) assessment procedures and tests.

5.2 Engagement context

Use of Annex 1 Engagement context — Key information for a pillar assessment

The auditor shall obtain a preliminary understanding of the **engagement context** on the basis of *Annex 1 Engagement context — Key information for a pillar assessment*. The understanding must be sufficient for the auditor to submit a meaningful offer to the contracting authority.

Use of Annex 2a Assessment questionnaire

The entity shall provide a completed *Annex 2a* to the auditor as soon as possible **after** the auditor has been contracted by the contracting authority but **prior to** the start of the auditor's assessment procedures.

In a second phase, *Annex 2a* will become a support tool to be used by the auditor when designing, planning and performing the assessment procedures and to take into account the criteria that the European Commission deems essential or important for the entity undergoing assessment to comply with.

The completed *Annex 2a* questionnaire is an essential source of assessment information and evidence for the auditor. However, it is by no means the only source to be used by the auditor to plan and perform assessment procedures and to draw conclusions. All information completed and provided by the entity is provisional, and is subject to the assessment procedures the auditor deems necessary. The auditor must not rely on information before having ensured through assessment procedures that information is sufficiently accurate and complete for the purpose of the assessment and for arriving at informed conclusions for key questions.

Hence the auditor can modify, complete and add information in the findings column as it sees fit. The auditor may also add additional questions if it considers this is necessary to arrive at an informed conclusion on key questions.

The auditor must take into account the specific engagement circumstances and apply professional judgement throughout the assessment process. The auditor remains fully responsible at all times for designing, planning and performing the assessment procedures it deems necessary in addition to the questions and procedures in the *Annex 2a* questionnaire.

The auditor will use the information in the *Annex 2a* questionnaire and the results of the assessment procedures to complete *Annex 2 Assessment questionnaire and criteria* (see Section 5.4 below) and to draw a conclusion for each pillar being assessed.

5.3 Nature, extent and timing of procedures and tests for each pillar

For each pillar, the auditor must assess the **design** of relevant systems, controls, rules and procedures. This means that the auditor should perform procedures and tests on the basis of which it should arrive at a conclusion whether the system, controls, rules and procedures are present i.e. existing.

Moreover, the auditor must assess the **operating effectiveness** of systems, controls, rules and procedures for all relevant pillars (see Section 2 — Objectives above) except for the 'independent external audit' pillar, for which the auditor only assesses the design of the procedures for external audit.

The design and operating effectiveness of relevant systems, rules and procedures must be assessed against the criteria defined by the Commission for each pillar (see Section 5.4 below). For this purpose, the auditor must use the questionnaires provided by the Commission.

The auditor determines the nature, extent and timing of all the procedures and tests it deems necessary to perform in order to arrive at a conclusion with regard to the design and operating effectiveness of systems, controls, rules and procedures.

5.4 Criteria and materiality

For each pillar there are three levels of criteria which have been defined by the European Commission through the formulation of (key) questions in *Annex 2 Assessment questionnaire and criteria* and in *Annex 2a Assessment questionnaire*).

To determine what is a material weakness or deficiency in systems, controls, rules and procedures, the auditor must take into account the criteria and the levels of importance (i.e. scoring thresholds) defined by the Commission as these factors might influence the Commission's decision to entrust budget implementation tasks under indirect management to the entity.

Level 1 (Financial Regulation)

For each pillar there is **one** overarching level 1 question (in *Annex 2 Assessment questionnaire and criteria*) set on the basis of the Financial Regulation. This question is fundamental. Only two types of conclusions are possible:

- The answer to the question at level 1 is 'yes'. This means that the entity complies with the requirements for the pillar concerned. The conclusion of the auditor must be formulated in the positive form, which is equivalent to an 'unqualified opinion'.
- The answer to the question at level 1 is 'no'. This means that the entity does not comply with the requirements for the pillar concerned. In this case, the conclusion must be formulated in the adverse form, which is equivalent to what is called an 'adverse opinion' under international standards.

Level 2 (Pillar key components)

Key questions at level 2 relate to criteria which the Commission considers essential. For this purpose, key questions and criteria are set for the key components of each pillar. Components are essentially 'sub-pillars', which in turn are composed of blocks of questions in *Annex 2a Assessment questionnaire*).

The auditor must apply professional judgement to **attribute a score on a scale of 0 to 10 to each level 2 component** in *Annex 2 Assessment questionnaire and criteria* based on the information and evidence obtained from applying *Annex 2a*.

Level 3 (Assessment questionnaire with blocks of questions)

Annex 2a Assessment questionnaire includes blocks of questions that relate to the pillar key components at level 2. These blocks of detailed questions are non-exhaustive. This means that the auditor should use at least these (blocks of) questions to determine a score for each component at level 2.

The auditor can formulate additional questions and perform additional tests and procedures, as it deems necessary or appropriate. The auditor fully applies professional judgement for all questions in *Annex 2a* in order to attribute scores to the pillar key components at level 2.

5.5 Limitations in the scope

The auditor will inform the contracting authority of any **limitations in the scope** of work identified before or during the assessment, and discuss with the contracting authority what action may be required and whether or how the assessment can be continued.

6. Assessment procedures

The auditor should perform the assessment in accordance with *Annex 3 Assessment procedures*, which cover documentation and evidence, planning, fieldwork and reporting. Annex 3 includes assessment procedures that the auditor should apply and procedures that the auditor may opt to use. The auditor's attention is drawn to the specific aspects set out in Sections 6.1 to 6.3 below. The auditor should exercise due professional care and judgement and determine the nature, timing and extent of assessment procedures to fit the objectives, scope and context of the assessment.

6.1 Documentation and evidence

The auditor should, in accordance with ISAE 3000, prepare documentation and obtain sufficient appropriate evidence to support assessment findings and to draw reasonable conclusions on which to base the conclusion of the assessment for each pillar. The auditor uses professional judgement to determine whether evidence is sufficient and appropriate (see Annex 3.1).

6.2 Planning and fieldwork

Start of the assessment

The assessment's official starting date is the date of signature of the contracting authority's order form or other applicable contractual document for the assessment. The auditor must then agree as soon as possible a date to start the fieldwork with the entity.

Preparatory meeting with the entity

The entity shall schedule a preparatory meeting with the auditor (see Annex 3.2.1), which will be held at [name and address of the entity]. The entity inform the Commission about this meeting, which may be attended by Commission representatives.

Procedures for assessment planning and fieldwork

The auditor's procedures should include obtaining an understanding of the engagement context, which is sufficient to design and perform further assessment procedures. This includes:

- obtaining evidence regarding the design of systems, controls, rules and procedures (Annex 3.3.1);
- performing tests of the operational effectiveness of systems, controls, rules and procedures (Annex 3.3.2);
- sampling and other means of selecting items for testing where appropriate (Annex 3.3.3);
- using the work of internal auditors where applicable (Annex 3.3.4).

6.3 Reporting

Use of the pillar assessment model report in Annex 4

The use of the model report for a pillar assessment in Annex 4 is compulsory.

Language

The report should be presented in English. An executive summary of the assessment report in English should be provided along with the report (See Annex 3.3.1).

Findings

There are two types of findings:

- **Main findings** are findings that relate to material weaknesses or deficiencies in systems, controls, rules and procedures. ‘Material’ means that the auditor considers that these factors are so important for the Commission that they might influence its decision to entrust budget implementation tasks under indirect management to the entity. Hence, where material findings are found for a pillar this must lead the auditor to express an adverse conclusion for that pillar.

Main findings also include cases where several findings which taken individually do not relate to a material weakness or deficiency but when taken in the aggregate involve a finding of material weakness or deficiency. The combined impact of such findings is so significant (i.e. material) that this must lead the auditor to the conclusion that the entity does not meet the requirements for the pillar concerned (i.e. the conclusion is ‘No’).

- **Other findings** are all non-material findings which the auditor believes should be brought to the attention of the entity. These findings relate to weaknesses and deficiencies in systems, controls, rules or procedures, which, individually or in the aggregate, involve a less immediate level of risk that objectives for the pillar concerned are not achieved.

Findings must be reported in accordance with the (table) formats specified in the model report for a pillar assessment in Annex 4. Main findings as well as other findings by the Auditor may be the basis for supervisory measures to be taken by the Commission in accordance with Article 154(5) of the Financial Regulation.

Recommendations

There are two types of recommendations:

- **Critical recommendations** relate to material weaknesses and deficiencies in systems, controls, rules or procedures and to cases where the Commission’s criteria and/or internationally accepted standards for pillars are not complied with (on a regular basis).
- **Other recommendations** relate to all other findings that are not of a material nature. In these cases, the weaknesses and deficiencies in systems, controls, rules or procedures have no major and immediate impact on the objectives of these systems, controls, rules or procedures. Nevertheless, it is relevant for the entity to implement the suggested measures, as this would give it an opportunity to improve its systems, controls, rules or procedures and to achieve greater effectiveness and/or efficiency.

Recommendations must be reported in accordance with the (table) formats specified in the model report for a pillar assessment in Annex 4.

Conclusions

The assessment report should include a conclusion for each pillar. There are two types of conclusions. Conclusions must either be formulated in the positive form (i.e. ‘has set up’, ‘uses’, ‘is subject to’ or ‘applies’) or by using an adverse formulation (i.e. ‘has not set up’, ‘does not use’, ‘is not subject to’ or ‘does not apply’).

The use of a conclusion of the qualified type (i.e. using the ‘except for’ formulation) is not possible in a pillar assessment.

Date of the assessment report

The date of draft and pre-final reports should be the date when these reports are sent for consultation. The date of the final assessment report should be the date when the final independent auditor’s report is signed (Annex 3.4.2).

Procedures and timetable for submitting draft and final assessment reports

The auditor should comply with the procedures and timetable for the consultation and submission of the draft and final assessment report, as set out in Annex 3.4.3 and 3.4.4.

The auditor’s attention is specifically drawn to the following:

- The auditor should submit a **draft report** to the entity within **14 calendar days after the day of the closing meeting** (i.e. the end of field work).
- The period between the **assessment closing meeting** and the submission to the entity of the **final assessment report** should **not exceed 30 calendar days or 4 weeks**. The auditor should explain and document any reporting delays in the working papers.

7. OTHER MATTERS

7.1 Information on practices for calculation and reporting of costs

Any information provided by an entity for the purposes of this assessment on the methodology used for the calculation and reporting of costs shall not be considered as approved by the Commission with regards to the budget of any specific action. Such approval is only possible where the specific procedures established in the Commission decision on the ex-ante assessment of unit costs and flat rates (also known as ‘Simplified Cost Options’) have been followed. In the absence of an ex-ante assessment of Simplified Cost Options, the eligibility of costs for any specific action shall be determined exclusively by reference to the provisions of the relevant Agreement(s) with the entity

7.2 Follow-up

The contracting authority may request that the auditor provide further assistance as part of the follow-up on the final assessment report. The contracting authority may also request that the auditor re-assess one or more pillars if the final assessment report concluded that the entity did not comply with the requirements for the pillar(s) concerned.

These ToR do not cover any further assistance provided by the auditor in connection with the contracting authority’s follow-up on the final assessment report; if such assistance is required the contracting authority will need to issue an addendum to the order form or to the other applicable contractual document for such an engagement.

7.3 Various matters

The following information is to be provided on the prices:

- i. -Breakdown of the professional fee
- ii. -Breakdown of reimbursable costs for travel & per diems and other incidentals.

The successful provider must supply the services to the extent applicable, in compliance with SPREP's Values and Code of Conduct

https://www.sprep.org/attachments/Publications/Corporate_Documents/sprep-organisational-values-code-of-conduct.pdf

Annexes

Annex 1 Engagement context — Key information for a pillar assessment

Annex 2 Assessment questionnaire and criteria

Annex 2a Assessment questionnaire

Annex 3 Assessment procedures

Annex 4 Pillar assessment report

IMPORTANT: Annexes 1 to 4 form an integral part of the present terms of reference.

These annexes can be downloaded from : https://ec.europa.eu/international-partnerships/audit-and-control_en

Note - the ToR is at the bottom of the page, under the heading: 'Commission decision establishing new terms of reference for the pillar assessment methodology – Annex'.