

**AN ACT CREATING THE  
PUBLIC PROCUREMENT AND CONCESSIONS COMMISSION**

**APPROVED: SEPTEMBER 8, 2005**

**PUBLISHED BY AUTHORITY**

**MINISTRY OF FOREIGN AFFAIRS  
Monrovia, Liberia**

**September 21, 2005**

## **ARRANGEMENT OF SECTIONS**

### **Sections**

#### **PART I - PRELIMINARY**

1. Scope and Application
2. Interpretation

#### **PART II - PROCUREMENT AND CONCESSIONS COMMISSION**

3. Establishment of Public Procurement & Concessions Commission
4. Object of the Commission
5. Functions of the Commission
6. Membership and Appointment
7. Tenure of Office
8. Meetings of the Commission and Election of Vice Chairperson
9. Filling of Vacancies
10. Complaints, Appeals and Review Panel
11. Power to Obtain Information
12. Confidentiality and Prohibition of Disclosure of Information
13. Disclosure of Interest
14. Administration of the Commission
15. Executive Director
16. Secretariat and Divisions of the Commission
17. Financing of the Commission
18. Accounts and Audit
19. Fiscal Year
20. Annual Reports and Answerability to the Legislature

#### **PART III - ENTITIES**

##### **Sub-Part 1 - Entities Generally**

21. Procuring and Concessions Entities
22. Decision of the Entity and Responsibility
23. Declaration of Procuring Entity
24. Use of Private Sector Practices By Entities
25. Non-application of Section 24 to Concession

## **Sub-Part 2- Procurement Structures**

26. Procurement Committees
27. Functions of the Procurement Committee
28. Meetings of Procurement Committees
29. Procurement Unit
30. Bid Evaluation Panel
31. Time For Entering Into Contracts

## **PART IV - GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS**

32. Qualification of Bidders
33. Clarification And Modification Of Bidding And Prequalification Documents
34. Description Of Goods, Works And Services
35. Deadline For Bids And Other Applications
36. Cancellation Of Proceedings For Rejection Of Bids
37. Public Notice Of Contract Awards
38. Debriefing Of Unsuccessful Bidders
39. Form Of Communications
40. Procurement Planning
41. Contract Administration Responsibility
42. Price Adjustment
43. Records And Reports Of Procurement
44. Debarment of Bidders and Suppliers
45. Margin of Preference

## **PART V - METHODS OF PROCUREMENT**

46. Choice of Procurement
47. Open Competitive Bidding
48. National Competitive Bidding
49. International Competitive Bidding
50. Restricted Bidding
51. Procedures For Restricted Bidding
52. Request For Proposals
53. Request For Quotations
54. Basic Procedures For Request For Quotation
55. Sole-Source
56. Basic Procedures For Sole-Source Procurement
57. Invitation to Bid
58. Bidding Documents

59. Submission of Bids
60. Bid Security
61. Bid Opening
62. Examination, Evaluation and Comparison of Bids
63. Non-disclosure of Evaluation Details
64. Prohibition of Negotiations
65. Award of Procurement Contract
66. Acceptance of Bid and Signature of Contract
67. Two-Stage Bidding
68. Request for Consultant's Services
69. Selection Based on Quality and Cost
70. Selection Based on Quality
71. Award of Consultancy Contract
72. Procurement Activity

## **PART VI – SPECIFIC PROCEDURES FOR PROCESSING CONCESSION AGREEMENTS**

### **Sub-Part 1 – Definition and Objectives of Concession Agreements**

73. Definition
74. Objectives of Concessions

### **Sub-Part 2 – Scope, Application and Disqualified Private Sector Entities**

75. Scope and Application
76. Concessions Entities
77. The Role of the Procurement Unit in Processing Concession Agreements
78. Engagement of Advisors
79. Preparation of Concession Procurement Plan
80. Concession Structures
81. Composition of the Inter-Ministerial Concessions Committee
82. Functions of the Inter-Ministerial Concessions Committee
83. Meetings of the Inter-Ministerial Concessions Committee
84. Disclosure of Interest
85. Quorum
86. Disqualified Private Sector Persons/Entities

### **Sub-Part 3 – The Concession Procurement Process Planning**

87. Inclusion In Economic Development Plan
88. No Concession Without Certificate
89. Criteria for the Issue of the Certificate for Concession

90. Presentation of Concession Option To The Public
91. Information At The Stakeholder Forum
92. Records Of The Concession Process
93. Inspection Of The Records
94. Specific Records To Be In Writing
95. Competitive Bidding
96. National Competitive Bidding
97. International Competitive Bidding
98. Domestic Industries To Participate In The International Competitive Bidding
99. Criteria for the Application of Margin of Preference in Concessions
100. Restricted Competitive Bidding
101. Sole-Source
102. Prior Approval of Commission

#### **Sub-Part 4 - Concession Documents Preparation**

103. Performance of Preliminary/Feasibility Studies
104. Concession Bid Documents
105. Scope of Concession Documents
106. Notification of General Notice of Investment Opportunity, Expression of Interest or Request for Proposals
107. Mode of Publication

#### **Sub-Part 5 - Pre-Bid Meeting, Bid Submission and Opening**

108. Pre-Bid Meeting
109. Particulars Of The Pre-Bid Meeting
110. Submission And Opening Of Bids

#### **Sub-Part 6 - Evaluation**

111. Evaluation
112. Certainty Of Evaluation Criteria
113. Minimum Contents Of The Evaluation Criteria
114. Prohibited Criteria In Evaluation

#### **Sub Part 7 - Post Evaluation**

115. Evaluation Report
116. Due Diligence
117. Form of Contract
118. Negotiations
119. Issues To Be Considered At The Negotiations
120. Confidentiality Agreement

121. Post-Contract Management
122. Regulations Pertaining to Mining and Petroleum Concessions

**PART VII - RULES ON DISPOSAL OF STORES,  
PLANT AND EQUIPMENT**

87. Authority to Dispose
88. Disposal Procedures

**PARTVIII - COMPLAINTS AND REVIEW PROCESS**

89. Right to Review
90. Further Review
91. Decision of the Complaints, Appeals and Review Panel
92. Rules Applicable To Review Proceedings
93. Suspension Of Procurement Proceedings

**PART IX - GENERAL PROVISIONS**

94. Code of Conduct
95. Conduct of Procuring Entities, Public Officials and Their Representatives
96. Conduct of Bidders and Suppliers
97. Records
98. Guidelines, Regulations, Manuals and Detailed Instructions
99. Modifications
100. Request For Information By The Board
101. Statutory Audits
102. Offences Relating To Procurement
103. Review Of Threshold Levels
104. Public Access
105. Repeals and Amendments
106. Transitional Provisions and Previous Acts
107. Unfinished Business
108. Coming Into Force

**SCHEDULE**

**A**

# **BILL**

## **ENTITLED**

### **THE PUBLIC PROCUREMENT AND CONCESSIONS ACT, 2005**

IT IS ENACTED by the National Transitional Legislative Assembly of the Republic of Liberia in Legislature Assembled as follows:

#### **PART I - PRELIMINARY**

##### **OBJECTIVES OF THE LAW**

THIS ACT regulates all forms of public procurement and concessions, establishes the Public Procurement and Concessions Commission, provides for institutional structures for public procurement and concessions, stipulates methods and procedures for public procurement and concessions and for purposes related thereto.

This Act is intended to:

- (a) Maximize economy and efficiency in procurement, and obtain best value for public expenditures;
- (b) Promote economic development of Liberia;
- (c) Build capacity of officials and institutions in public procurement;
- (d) Promote competition and foster participation in procurement proceedings and concession agreements by qualified suppliers, contractors and consultants;
- (e) Provide equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders;
- (f) Promote integrity, fairness, accountability and public confidence in the procurement process;
- (g) Achieve transparency in the procedures, processes and decisions relating to procurement and concession agreements;

- (h) Decentralize public procurement to procuring entities;
- (i) Promote the growth of indigenous Liberian Private sector;
- (j) Harness private sector financial, human and technical resources through concession agreements; and
- (k) Eradicate monopolies and promote competitiveness in the concession procurement process.

### **Scope and Application**

1. (1) This Act shall apply to the procurement of goods, works and services, financed in whole or in part from public funds including the disposal of government stores, plant and equipment and all concessions as defined under this Act.

(2) Notwithstanding the generality of sub-section (1) of this section, the Act shall apply to:

- (a) All executive agencies including Government ministries, commissions, bureaus, departments and agencies;
- (b) The Judiciary and the Legislature;
- (c) Subsidized - agencies;
- (d) Independent bodies and commissions set up by the State;
- (e) All public enterprises which are wholly owned by the State or in which the State has majority interest;
- (f) Counties, districts and local authorities;
- (g) Public universities, public schools, colleges and hospitals;
- (h) Financial institutions, public trusts, pension funds, insurance companies, building societies and similar institutions which are wholly owned by the State or in which the State has majority interest;
- (i) National security institutions subject to the provisions of sub-sections 3 (c), 5 and 6 of this Section;
- (j) Any private sector entity vested with the responsibility for the execution of activities using public funds;
- (k) Concession Entities as defined under Part VI of this Act;

### **Non-application**

(3) This Act shall however not apply to:



- (a) International agreements concluded between the Government of Liberia and other countries or international organizations for general or specific projects where these agreements provide for specified procurement rules and procedures.
- (b) Agreements executed by the Central Bank of Liberia relating to the implementation of monetary policy or procurement related to the production of coins or currency.
- (c) Procurement of military or national security equipment subject to sub-section 5 of this Section.

#### **Conditions Applicable To Exemptions**

(4) The government agency responsible for the execution of the agreements stated in sub-section 3 (a) and (b) of this section on behalf of the Republic of Liberia shall inform the head of the relevant entity of the provisions of such agreements.

(5) The following rules shall apply to sub-section 3(c):

- (a) Where the Minister responsible for Defense, or the head of any national security agency with the prior approval of Cabinet or the entity charged with the oversight responsibility for defense or national security, determines that any procurement related to national defense or national security requires the application of special procedures, the procedures set out in this Act may be modified by the Commission for the specific purpose, but the modification shall be governed strictly by considerations relating to defense or security.
- (b) For the purpose of subsection 3(c), procurement of items such as general stores, uniforms, stationery, office equipment and ordinary vehicles for the military or security agencies shall not be classified as related to national defense or national security procurement.
- (c) The Commission may, in consultation with Cabinet or the entity charged with the responsibility for defense or national security, make further procedures relating to military and national security procurement.

#### **Interpretation**

2. Except as otherwise stated under this Act, the following words shall have the meaning ascribed to them in this section:

(1) **“Bidder”** means a supplier of goods, services or works; or the applicant for the acquisition of government stores, plant or equipment being disposed of or an applicant submitting a bid for a concession.

(2) **“Bid Security”** means the security provided by a bidder to secure the obligation of the bidder participating in a bidding process, including the obligation to sign the procurement contract in accordance with the requirement of the bid.

(3) **“Certification for Concessions”** means a certification by the Minister responsible for Economic Planning that a project is qualified to be a subject of a concession procurement process.

(4) **“Close Relative”** means such close relatives as a parent, spouse, child, brother, sister, in-law, grandchild and grandparent.

(5) **“Collusive Practice”** means a scheme or arrangement between two or more bidders with or without the knowledge of the Procuring Entity, designed to establish prices at artificial non-competitive levels whether or not such collusive practice results in a contract.

(6) **“Commission”** means the Public Procurement and Concessions Commission established under this Act.

(7) **“Concession Information Memorandum”** means the information that is provided in the Concession Bid Documents about a government asset to be concessioned.

(8) **“Corporate Manner”** means the observance of rules and procedures statutory or otherwise governing decision making in a Procurement Entity.

(9) **“Corrupt Practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public officer in the selection process or in contract execution.

(10) **“Day”** means working days excluding Saturday, Sundays and public holidays.

(11) **“Domestic Business”** means a private sector entity or firm incorporated under the laws of the Republic of Liberia and operating in Liberia.

(12) **“Entity”** means either a Concession Entity or Procuring Entity or both of them.

(13) **“Fraudulent Practice”** means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract including collusive practices.

(14) **“Goods”** means tangible items in any form including raw materials, products, equipment and objects in solid, liquid or gaseous form, as well as services incidental to the supply of the goods where the value of those incidental services are insignificant in relation to the value of the goods.

(15) **“Liberian Business”** means a firm that has 51% or more ownership by Liberian citizens.

(16) **“Margin of Preference”** means the margin given to bidder on the basis of Section 45 or Section 99 of this Act.

(17) **“Minister”** means the Minister in charge of a Ministry.

(18) **“Performance Security”** means a financial instrument submitted by a bidder to secure the bidder’s obligations under a procurement or concessions contract including but not limited to a bank guarantee, insurance bond and financial deposit.

(19) **“Procuring Entity”** means an entity carrying out procurement of goods, works, services or disposal of stores, plant and equipment using public funds and/or assets under this Act.

(20) **“Public Funds”** means funds of the Republic of Liberia and other public funds as may be designated by the Legislature whether the source of such funds is from taxes, grants, gifts, loans or other sources.

(21) **“Public Interest”** means the interest that will inure to the people of Liberia.

(22) **“Public Officer”** means any person who is considered a public officer under the civil and public service law of the Republic of Liberia.

(23) **“Services”** means services which are of an intellectual, technical or advisory nature and include consultancy services;

(24) **“Subsidized Agency”** means an agency established by Government to provide public service but which may generate its own funds in addition to funds from public funds;

(25) **“Technical Services”** means services which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, aerial photography, surveys, seismic investigations, maintenance and/or construction of facilities or plant and similar operations;

(26) **“Works”** means work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, assembling, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a works contract.

## **PART II - PUBLIC PROCUREMENT AND CONCESSIONS COMMISSION**

### **Establishment of the Public Procurement & Concessions Commission**

3. (1) There is hereby established by this Act a body to be known as the Public Procurement and Concessions Commission, referred to in this Act as “the Commission”.

(2) The Commission shall have the oversight responsibility for all public procurement and concessions in accordance with this Act.

(3) The Commission shall have a distinct corporate identity with perpetual succession and a common seal and may sue and be sued in its corporate name.

(4) The Commission may acquire, hold, manage or dispose of any movable or immovable property in connection with the discharge of its functions and may enter into contracts and transactions that are directly or reasonably related to its functions.

### **Objects of the Commission**

4. The object of the Commission is to ensure the economic and efficient use of public funds in public procurement and to ensure that public procurement and concession processes are conducted in a fair, transparent and non-discriminatory manner.

### **Functions of the Commission**

5. In furtherance of its objects the Commission shall perform the following functions:

- (a) Monitor compliance with this Act by all parties and persons to whom the Act applies;
- (b) Disseminate information related to this Act and information related thereto;
- (c) Develop rules, instructions, regulations and related documentation on public procurement and concessions, including formats in furtherance of the Act;
- (d) Formulate, promote, support and implement human resource development programs in furtherance of the aims of this Act;
- (e) Review procurement and concessions documents and/or inspect records as and when necessary to prevent corruption of the process or any intended process;
- (f) Formulate policy and prepare standards for procurement and concessions, including forms of contract;
- (g) Assess the operations of the public procurement and concession processes and make improvements as and when necessary;
- (h) Present an annual report to the Legislature on the public procurement and concessions;
- (i) Hold an annual procurement forum on the status of its work in relation to this Act;
- (j) Publish a quarterly Public Procurement and Concessions Bulletin which shall include as applicable, procurement notices above a specified threshold, notices on concessions, notices of invitation to bid and contract award information above a specified threshold and a list of complaints received and the outcome of the procurement or concession dispute resolution process;
- (k) Advise Government on issues related to this Act;
- (l) Investigate and debar business entities and bidders who have seriously neglected their obligations under a public procurement or concessions contract or done anything in contravention of this Act from participating in public procurement in accordance with this Act;
- (m) Maintain a list of suppliers, contractors, consultants and prospective bidders who have been debarred from public procurement and communicate the list to procurement entities on a regular basis;
- (n) Conduct independent reviews of complaints and appeals related to the procurement and concessions process and make decisions thereon.
- (o) Perform such other functions as are incidental to the attainment of the objects of this Act.

## **Membership and Appointment**

6. (1) The Commission shall comprise seven (7) persons who shall be nominated by the President in accordance with subsections (2) and (3) of this section and shall be vetted and approved by the House of Senate.

(2) The President shall not later than ninety (90) days after the coming into force of this Act nominate seven (7) persons to constitute the Commission as follows:

- (a) A chairperson who shall be knowledgeable about public procurement and concessions and who shall not be in the public service and have no conflict of interest with the activities of the Commission;
- (b) Three (3) persons nominated from the public sector as follows:
  - i. a lawyer from the office of the Attorney General other than the Attorney General, who shall be nominated on the advise of the Attorney General;
  - ii. two (2) persons, at least one of whom shall be a woman and each of whom shall have experience in public procurement and/or concessions and/or be familiar with governmental and multi-lateral agency procurement procedures;
- (c) Three (3) persons nominated from the private sector who have experience in procurement and/or concessions.

(3) In furtherance of subsection 2(c) of this section, the President shall, ensure that the nominations from the private sector includes at least two (2) nominees representing the interest of associations, including but not limited to technical services associations, whose members frequently deal with procurement and/or concessions and the business community.

(4) The President shall ensure that in making the nomination of the seven (7) persons to the Commission or in the filling of any vacancy under Section 11 of this Act, the experience of the nominees shall as much as possible be evenly spread over the scope covered by this Act.

## **Tenure of Office**

7. (1) A member of the Commission shall hold office for a term of four (4) years and shall be eligible for re-appointment for only one other term of four (4) years whether or not the second term is successive.

(2) A member shall cease to be a member of the Commission or may be removed from office only with the prior approval of the House of Senate on any of the following grounds:

- (a) The person's inability to perform the functions of office, by reason of infirmity of mind or body;
- (b) Proven misconduct;
- (c) The person is convicted of an offence involving fraud or dishonesty;
- (d) The person is absent from seven (7) consecutive meetings without any valid reason as determined by the Commission provided that at least three (3) of the meetings are monthly meetings required under Section 8 (3) of this Act;

(3) Other than as set out in subsection (2) of this section, a person may also cease to be a member of the Commission if the person resigns from office by written notice to the President with a copy to the House of Senate.

### **Meetings of the Commission and Election of Vice Chairperson**

8. (1) The Chairperson shall ensure that not later than thirty (30) days after the members have been approved by the House of Senate, the Commission shall have its first meeting for the dispatch of its business.

(2) At its first meeting the Commission shall nominate one of its members, other than the Chairperson, as a Vice Chairperson.

(3) The Commission shall meet for the dispatch of business at such times and at a regular place fixed by the Commission for its meetings and shall meet at least once every month.

(4) In the event that the Commission is unable to meet at its regular meeting place the Chairperson shall fix an alternative meeting place provided members receive the notice of the new venue at least three (3) clear days in advance of the meeting.

(5) The Chairperson shall preside at meetings of the Commission and in the absence of the Chairperson, the Vice-Chairperson shall preside and in the absence of both, the members shall elect one of their numbers to preside.

(6) The quorum for a meeting of the Commission shall be five (5) and the Executive Director, who is the non-member Secretary to the Commission, shall not be counted for the purposes of determining a quorum.

(7) Each member shall have one vote but in case of an equality of votes, the Chairperson whether substantive or in acting capacity shall have a casting vote.

(8) The Commission may co-opt any person to act as advisor at a meeting of the Commission, except that a co-opted person shall not have the right to vote on any matter being considered by the Commission.

(9) The validity of the proceedings of the Commission shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(10) Except as otherwise expressly provided, the Commission shall determine the procedure for its meetings.

### **Filling of Vacancies**

9. (1) Where the Chairperson or a member of the Commission ceases to be a member the following actions shall be taken within thirty (30) days of the person ceasing to be Chairperson or member:

- (a) The members of the Commission shall, in the case of the Chairperson, elect one of their members to act as Chairperson until such time as the Chairperson resumes his/her office or another person is nominated by the President and approved by the House of Senate as the Chairperson.
- (b) In the case of a Vice Chairperson, the members shall within thirty (30) days of the occurrence of the vacancy elect one of their members to fill the vacancy.
- (c) In all other cases of vacancy the Chairperson shall, within thirty (30) days of the occurrence of the vacancy report to the President to nominate a new person to fill the vacancy.

(2) The President shall, within sixty (60) days of receiving a request to fill a vacancy or the vacancy coming to the notice of the President, nominate a new person for the approval of the House of Senate to fill the vacancy.

(3) A person nominated and approved to fill a vacancy, shall subject to Section 7 of this Act, hold office for the term of four (4) years and



shall not be considered as continuing the unfinished term of the member who has ceased to be a member of the Commission.

### **Complaints, Appeals and Review Panel**

10. (1) Not later than one hundred and twenty (120) days after the Commission is constituted, the Commission shall constitute a Complaints, Appeals and Review Panel with the sole purpose of reviewing complaints and appeals to the Commission made pursuant to the provisions of Part VIII of this Act.

(2) The Complaints, Appeals and Review Panel shall consist of seven (7) persons at least three (3) of whom shall be qualified lawyers and not more than one (1) of whom shall be a member of the Commission.

(3) The members of the Panel shall elect one of their members other than the member who is also a member of the Commission, as Chairman of the Panel.

(4) For the purposes of performing its functions under this Act, not less than five (5) members of the Panel shall constitute a quorum.

(5) The panel shall be appointed for a term of three (3) years, and a member may be reappointed to the Panel.

(6) The Complaints, Appeals and Review Panel shall hear and review complaints in accordance with this Act with particular reference to Part VIII of this Act.

(7) Neither the Commission nor any agency of government shall interfere with the complaints and review functions of the Complaints, Appeals and Review Panel.

(8) The decision of the Complaints, Appeals and Review Panel shall be final and shall be forwarded to the Commission and the Procuring Entity for its information, records and action.

### **Power to Obtain Information**

11. (1) Both the Commission and the Complaints, Appeals and Review Panel shall have power, in performing their functions under this Act to the following:

- (a) By notice in writing, to require any bidder or party to a procurement or concession proceedings or contract in the private or public sector to furnish information in such form and manner and within such time as may be

specified in the notice, for the purposes of the Commission ensuring compliance with this Act;

- (b) To interview any bidder or party to a procurement or concessions proceedings or contract and request him/her to furnish such particulars as the Commission may require for the performance of the Commission's functions;

(2) A notice referred to in subsection (1) shall state that it is served in exercise of the powers conferred by this section and shall include a general statement of the purpose for which the information or response is required.

(3) When a requirement to furnish information or particulars under this Act is made, the response shall be furnished by the party concerned not later than the time specified in the notice or such extension as the Commission may grant.

(4) A person who fails to furnish information requested by the Commission or the Complaints, Appeals and Review Panel made in accordance with this Act, or who knowingly provides misleading or false information or materials or willfully obstructs the Commission, the Complaints, Appeals and Review Panel, any officer, agent or employee of the Commission in the performance of any of the Commission's functions under this Act, commits an offence and shall be liable upon conviction to the applicable penalty under this Act.

### **Confidentiality and Prohibition of Disclosure of Information**

12. Any member, official, employee or agent of the Commission or any person whether in the private or public sector who commits any of the offences in this section shall be liable upon conviction to the applicable penalty under Section 11 of this Act.

- (a) Disclosure of any data or information obtained under Section 11 to a person not authorized to receive the information; or
- (b) Use of data or information obtained under Section 11 directly or indirectly for commercial purposes including the purpose of speculating in any stock, bond or other security or any goods or services.

### **Disclosure of Interest**

13. (1) A member of the Commission or a person appointed/co-opted by the Commission who has any interest, direct or indirect, in any matter to be considered by or on behalf of the Commission shall disclose the nature of his/her interest to the Commission and such disclosure shall be recorded in the minutes of the Commission

(2) A member with any interest shall not take part in any deliberation or decision of the Commission relating to that matter, and a member who contravenes this section shall be guilty of misconduct and liable to be removed from the Commission and/or suffer any penalty that may be applicable under this Act.

### **Administration of the Commission**

14. (1) The Secretariat spelt out under Section 16(1) of this Act shall provide administrative, secretarial and other support services for the Commission and the Secretariat shall be headed by the Executive Director appointed in accordance with Section 15 of this Act.

(2) The functions of the Executive Director shall include but not be limited to the day-to-day administration of the Commission, implementing the decisions of the Commission, keeping accurate records of proceedings and decisions of the Commission and such other functions as the Commission may direct.

(3) The Commission may engage staff and such consultants and advisers as it may require for the proper and efficient discharge of the functions of the secretariat and its general function under this Act.

(4) The Executive Director may delegate functions of his or her office to any officer of the Secretariat but shall not be relieved of the ultimate responsibility for the discharge of the delegated function(s).

(5) Subject to Section 15(4) the Executive Director shall hold office on such terms and conditions as may be spelt out in the letter of appointment to his office or may be prescribed by the Commission.

### **Executive Director**

15. (1) The Commission shall appoint an Executive Director in accordance with this section, who shall be the Chief Executive of the Secretariat and a non-member secretary to the Commission.

(2) The Executive Director shall be selected on the basis of a competitive recruitment process in accordance with this Act.

(3) The Commission shall ensure that the Executive Director is appointed not later than sixty (60) days after the Commission is constituted.

(4) The Executive Director may be appointed for any number of years that the Commission may determine, pursuant to the results of annual performance appraisals.

(5) The Executive Director may resign from office by a notice to the Chairperson of the Commission or may be removed from office for any of the reasons spelt out under Section 7 (2) (a) (b) (c) or (d) of this Act.

### **Secretariat and Divisions of the Commission**

16. (1) The Commission shall have a Secretariat with such divisions and units as are necessary to perform the functions of the Commission.

(2) The divisions and units shall be responsible for at least the following functions:

- (a) Compliance and monitoring,
- (b) Policy making
- (c) Development of procurement standards
- (d) Establishment of rules and regulations
- (e) Training
- (f) Information dissemination and communication

(3) Divisions of the Commission shall be staffed by the secretariat appointed by the Executive Director in consultation with the Civil Service Agency.

(4) The Commission shall constitute sub-committees for the efficient discharge of its functions.

(5) Each sub-committee of the Commission shall consist of not more than three (3) persons and may include persons co-opted by the Commission but each sub-committee shall include at least one (1) member of the Commission who shall chair the sub-committee.

(6) Apart from the sub-committees set out under subsection (4) and (5) of this section, the Commission may for the discharge of its functions, appoint special committees of the Commission comprising members of the Commission or non-members or both members and non-members and may assign to the committee such functions as the Commission may determine except that a committee composed entirely of non-members may only advise the Commission.

## **Financing of the Commission**

17. (1) The activities of the Commission shall be financed by a fund consisting of:
- (a) Money appropriated for the purposes of the Commission through the national budget process.
  - (b) Application fees paid by appellants who file appeals to the Commission.
  - (c) Proceeds of the Procurement Bulletin and other publications by the Commission.
  - (d) Grants, gifts, and donations made to the Commission but which shall not include grants, gift and donations from private sources.
  - (e) Other sources of income for the Commission as approved by the Legislature.

(2) In imposing the fees and charges under subsection 1(b) and (c) of this section, the Commission shall ensure that the charges are minimal and the Commission shall not use any charges or fees to deter persons from making appeals to the Commission or to make profit from the sale of the Commissions publications.

## **Accounts and Audit**

18. (1) The Commission shall keep proper books of accounts and proper records in relation to them and the accounts, books and records of the Commission shall be in the form prescribed by the law governing management of records for the time being in force.

(2) The books and accounts of the Commission shall be audited annually by the Auditor-General or by an auditor appointed or authorized by the Auditor-General.

## **Fiscal Year**

19. The fiscal year of the Commission shall be the same as the fiscal year of the Government of Liberia.

## **Annual Reports and Answerability to the Legislature**

20. (1) The Commission shall be answerable to the Legislature.

(2) The Commission shall not later than one (1) calendar month after the end of the fiscal year, submit to the Legislature and publish a written report which shall include the following:

- (a) The Commission's activities and operations for the previous year
- (b) Copy of Audited Accounts.
- (c) A report on the complaints, appeals, administrative reviews for the year and their outcome.
- (d) Recommendations for improvement of specific areas of goods, works, services, disposals and concessions and the planned program for the implementation of the recommendations.
- (e) Report on the annual procurement forum held by virtue of Section 5 (j) in the previous year.
- (f) General and specific recommendations.

## **PART III - ENTITIES**

### **Sub-Part 1 - Entities Generally**

#### **Procuring and Concessions Entities**

**21.** (1) Any entity to which this Act applies shall be a Procuring Entity or Concessions Entity as the context may require under this Act.

(2) Every Procurement or Concessions Entity shall be responsible for procurement or concessions carried out by the Entity.

(3) In the performance of its functions under this Act, the Entity shall be subject to the provisions of this Act and to such other conditions as may be laid down in regulations and administrative instructions issued by the Commission in accordance with this Act.

(4) The head of the Entity and/or any person to whom responsibility is delegated in accordance with this Act shall be held responsible and accountable for any action taken in pursuit of his/her responsibilities.

#### **Decisions of the Entity and Responsibility**

**22.** (1) The decisions of any entity in respect of its function under this Act shall be taken in a corporate manner and any internal units concerned shall contribute to the decision making process.

(2) The head of an Entity shall be responsible for ensuring compliance with the provisions of this Act and shall not be absolved from accountability or responsibility because he/she delegated such functions.

### **Declaration of Procuring Entity**

**23.** In addition to the scope of entities covered by Section 1 of this Act, the Commission may, in consultation with the appropriate authority of the Legislature, by notice in the Gazette, declare any entity to be a Procuring Entity.

### **Use of Private Sector Practices by Entities**

**24.** (1) Subject to further guidelines and the approval by the Commission, a Procuring Entity but not a Concession Entity, may undertake procurement in accordance with established private sector or commercial practices if all the following are present:

- (a) The Procuring Entity is legally and financially autonomous and operates under commercial law;
- (b) The proposed procurement method will ensure value for money, provide competition and transparency to the extent possible;
- (c) It has received the written approval of the Commission.

(2) The Commission may make regulations to guide this section.

### **Non-Application of Section 24 to Concessions**

**25.** The provisions of Section 24 shall apply to procurement only and shall not under any circumstance apply to concessions.

## **Sub-Part 2 - Procurement Structures**

### **Procurement Committees**

**26.** (1) A Procurement Committee is hereby established in every entity to which this Act applies.

(2) The Procurement Committee shall upon the coming into force of this Act consist of at least five (5) persons constituted by the head of the entity as follows:

- (a) The head of the Procuring Entity, as Chairperson
- (b) Two other senior officials of the entity, one of whom shall be the head of finance of the entity
- (c) A representative of the concerned end-user department who shall be a rotating member
- (d) Any member co-opted for the purpose

(3) The Head of the Procurement Unit spelt out in Section 29 shall also be a non-member secretary to the committee.

(4) The Head of the Entity shall ensure that the Procurement Committee holds its first meeting within thirty (30) days after the coming into force of this Act.

(5) The Procurement Committee may co-opt non-members for its meetings.

### **Functions of the Procurement Committee**

27. The Procurement Committee shall:

- (a) Review procurement plans in order to ensure that they support the objectives and operations of the entity and comply with the national budget process;
- (b) Review the schedules and specifications for procurement and also ensure that the procurement procedures to be followed are in strict conformity with the provisions of the Act, its operating regulations and guidelines;
- (c) Oversee all the procurement functions of the Procuring Entity.
- (d) Ensure compliance with this Act and its operating guidelines by the Procuring Entity.
- (e) Review the activities of each step of the procurement cycle leading to the selection of the lowest responsive evaluated bid by the Procuring Entity;



- (f) Give approval to the Bid Evaluation Panel or otherwise to enable the Procuring Entity or Procurement Unit to continue with the procurement process;
- (g) Provide the Commission with reports as required, including quarterly reports;
- (h) Confirm the range of acceptable cost of items to be procured in line with the available funds and approved budget;
- (i) Facilitate contract administration and ensure compliance with all reporting requirements under this Act;
- (j) Ensure that stores and assets are disposed of in compliance with the provisions of this Act.
- (k) A Procurement Committee may engage the services of such consultants and advisers, or co-opt persons with specialized expertise as may be required for the proper and efficient discharge of its functions.

### **Meetings of Procurement Committees**

**28.** (1) The Procurement Committees shall meet as and when required to review a bid or perform related functions but shall in any event meet at least once every quarter.

(2) A notice in respect of its quarterly meetings shall be given at least seven (7) days prior to the scheduled date of the meeting.

(3) The quorum of a meeting of the Procurement Committee shall be at least four (4), comprising the chairperson or the acting head of the entity who shall act as chairperson and at least three (3) other persons.

### **Procurement Unit**

**29.** (1) A Procurement Unit is hereby established in each Procuring Entity under this Act.

(2) The Procurement Unit shall be staffed with persons trained and knowledgeable in procurement and charged with carrying out, on an ongoing basis, functions related to procurement.

(3) The head of the Procuring Entity shall determine the composition of the Procurement Unit but every Procurement Unit shall consist of not less than two (2) officials charged with the responsibility of budgeting, expenditure, and the administration of public procurement for the entity.

(4) The Head of the Procuring Entity shall ensure that the Procurement Unit is provided with adequate resources.

(5) The functions of a Procurement Unit shall include:-

- (a) Planning of procurement
- (b) Preparation of invitations to bid and of bidding documents
- (c) Publication and distribution of invitations to bid
- (d) Receiving and safeguarding of bids
- (e) Conducting bid opening procedures in accordance with Sub-Section 5 of Section 61 of this Act
- (f) Performance of secretarial services for the respective procurement committees
- (g) Administering the implementation and monitoring of contracts
- (h) Assessment of the quality of the procured goods, works and services
- (i) Sourcing and profiling of all suppliers, contractors and consultants, and the maintenance of a database for that purpose
- (j) Such other functions as may be conferred by any other enactment

(6) Appointment of staff to the Procurement Unit may be made subject to certification and qualification requirements that shall be instituted by the Commission with advice from the Civil Service Agency.

(7) The Procurement Unit shall operate under the supervision of the Procurement Committee.

### **Bid Evaluation Panel**

30. (1) Each Procurement Committee shall constitute a Bid Evaluation Panel with the required expertise as and when required

(2) The Bid Evaluation Panel shall be responsible for the evaluation of bids in accordance with the predetermined and published evaluation criteria as outlined to bidders in the bid documents in accordance with this

Act and shall prepare and submit an evaluation report for the consideration of the Procurement Committee.

(3) The Commission may make rules to regulate the composition and activities of the Bid Evaluation Panel.

### **Time For Entering Into Contracts**

31. Except in the case of emergency and with the prior approval of the Commission, no entity shall enter into a procurement contract above a threshold specified by the Commission unless a minimum of fourteen (14) days have lapsed since the notification to award a contract was sent to the Commission.

## **PART IV - GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS**

### **Qualification of Bidders**

32. (1) In order to participate in procurement proceedings, a bidder must qualify by meeting the criteria set by the Procuring Entity, which may include:

- (a) Professional and technical qualifications;
- (b) Equipment availability, where applicable;
- (c) Past performance;
- (d) After sales service, where applicable;
- (e) Spare parts availability;
- (f) Legal capacity;
- (g) Financial resources and condition;
- (h) Assessment by the internal revenue authority to ascertain payment of taxes; and
- (j) Payment of social security contributions, where applicable.

(2) The qualification criteria set under subsection (1) shall be applied by examining, through investigation and collaboration with other relevant agencies, whether or not the bidder meets the qualification criteria

and not by using a point system for comparing the relative level of qualifications of participating bidders.

(3) The Procuring Entity shall be entitled to demand from potential bidders and applicants for prequalification documentation reflecting their qualification data.

#### **Disqualification for Inaccurate Information**

(4) A Procuring Entity shall disqualify a bidder if it finds at any time that the information submitted concerning the qualifications of the bidder was materially inaccurate or materially incomplete.

#### **Prequalification**

(5) Any requirement established pursuant to this section shall be set forth in the prequalification documents, if any, and in the bidding documents, and shall apply equally to all bidders without discrimination; and only these criteria stated in such documents shall be applied.

(6) When prequalification proceedings are held, the Procuring Entity shall -

- (a) Provide to all bidders responding to the invitation to prequalify, prequalification documents which shall provide bidders with the information required to enable them prepare and submit their applications for prequalification;
- (b) Make available to each applicant the results of the assessment of the prequalification and all applicants that meet the minimum criteria for prequalification shall be invited to bid.
- (c) Allow bidders adequate time to purchase, prepare and submit prequalification documents. The period so allowed shall not be less than the period allowed for bidders to submit bids under National Competitive Bidding and International Competitive Bidding respectively.

(7) All applicants who meet the minimum criteria for prequalification shall be invited to bid.

(8) Where prequalification proceedings are not conducted, post-qualification, in which the Procuring Entity verifies the qualifications of the bidder selected for award against the criteria stated in the bid documents, shall be used.

### **Clarification and Modification of Bidding and Prequalification Documents**

33. (1) The Procuring Entity shall respond within three (3) working days to any request by a bidder for clarification of the bidding documents, or the prequalification documents, submitted to the Procuring Entity within the time specified in the bidding documents or in the prequalification documents.

(2) Responses to requests for clarification and responses from a pre-bid conference as well as any modification or any other clarifications of the bidding documents or of the prequalification documents shall be communicated to all bidders participating in the procurement proceedings without delay, so as to allow bidders an opportunity to take the clarifications or modifications into account in preparing their submissions and if necessary to allow bidders to do so, the Procuring Entity shall extend the deadline for submission of bids or applications to prequalify.

### **Description of Goods, Works and Services**

34. (1) To the extent possible, any specifications, plans, drawings, designs and requirements or descriptions of goods, works or services shall be based on the relevant objective technical and quality characteristics, and performance of the goods, works or services to be procured; but there shall be no requirement for or reference to a particular brand, trademark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, works or services to be procured and provided that words such as “or equivalent” are included.

(2) Any descriptions of the technical or quality characteristics of the goods, works or services to be procured, and requirements as to testing, packaging, marking, labeling, or conformity certification, or symbols and terminology, that are irrelevant to the performance of the goods or create unjustified obstacles to participation by qualified bidders, and unnecessarily and without justification limit competition, shall not be included or used in the prequalification documents, or bidding documents.

(3) The Procuring Entity shall where applicable prepare descriptions of procurement requirements in conformity with the applicable environmental protection legislation and Regulations as well as international conventions and standards.

## **Deadline for Bids and Other Applications**

35. The Procuring Entity shall set the deadline for submission of bids, applications for prequalification and expressions of interest so as to allow sufficient time for their preparation and submission, with a view to maximizing competition, in accordance with the minimum periods set in sections 50 and 51.

## **Cancellation of Proceedings for Rejection of Bids**

36. (1) A bid may be rejected only in accordance with this Act and regulations made thereunder.

(2) A Procuring Entity may -

- (a) Reject all bids at any time prior to the acceptance of a bid;
- (b) Cancel the procurement proceedings where -
  - (i) The procurement need has ceased to exist or changed significantly;
  - (ii) Insufficient funding is available for the procurement;
  - (iii) There is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the recommencement of proceedings is necessary;
  - (iv) Insufficient, or no responsive bids are received;
  - (v) There is evidence of corruption, fraud, coercion or collusion among bidders; or
  - (vi) Cancellation is deemed to be in the interest of national security.

(3) Before rejecting all bids or canceling any procurement proceedings, the Procurement Unit shall prepare a written request for approval of the cancellation for submission to the Procurement Committee, which shall clearly state -

- (a) Detailed reasons for recommending cancellation;
- (b) The status of the procurement proceedings, including in particular, whether bids have already been opened under bidding methods; and
- (c) Whether new procurement proceedings are recommended and, if so, the modifications recommended.

(4) The reason for rejecting all bids, and for canceling the procurement proceedings, shall be noted in the record of the procurement proceedings, and promptly communicated to the bidders.

(5) A Procuring Entity shall not be liable to a bidder by reason only of rejection of all bids or cancellation of procurement proceedings under subsection (2).

(6) If a decision to cancel the procurement proceedings is taken before the deadline for submission of bids, any bid received shall be returned unopened to the bidder.

(7) In the event of cancellation or the rejection of all bids in accordance with subsection (2) of this section, the procurement shall not be re-bid to the same specifications and contract conditions unless the cancellation of the initial proceeding is for budgetary or other reasons unrelated to the specifications and contract conditions, but if the procurement is to be repeated, the reasons for the cancellation of the initial proceeding shall be examined and the technical specifications or contract conditions, or both may be suitably modified prior to re-bidding.

### **Public Notice of Contract Awards**

37. The Procuring Entity shall promptly publish in the Procurement Bulletin, Gazette and any newspaper of wide national circulation notice of each contract award in which the price of the contract exceeds the threshold set in the Schedule, indicating the contract price and the name and address of the successful bidder.

### **Debriefing of Unsuccessful Bidders**

38. The Procuring Entity shall upon the request of any unsuccessful bidder, inform the bidder of the reasons for which the bid was unsuccessful.

### **Form of Communications**

39. (1) Subject to this Act, documents, notifications, decisions and other communication referred to in this Act to be submitted by the Procuring Entity to a bidder or by a bidder to the Procuring Entity, shall be in writing.

(2) The Commission may authorize Procuring Entities to use other forms of communication, including electronic communication for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts, and payments but any such other means of communication shall be such as can preserve a record of the content of the communication, provide an adequate level of security, and does not unduly

restrict bidders' access to the procurement proceedings, and that other requirements in this Act and regulations, and other applicable legislation are met.

### **Procurement Planning**

40. (1) All Procuring Entities shall undertake procurement planning, with a view to achieving maximum value for public expenditure and the other objects of this Act.

(2) The procurement plan to support the Procuring Entity's approved program and budget shall indicate -

- (a) Contract packages
- (b) Estimated cost of each package
- (c) The procurement method
- (d) Processing steps and time schedules

(3) A Procuring Entity shall not divide a procurement order into parts or lower the value of a procurement order to avoid the application of the procedures for public procurement prescribed in this Act.

(4) The Procurement Unit shall, where necessary and on a quarterly basis, review and update their procurement plans and notify any modifications to the head of the entity and ministry responsible for Finance.

### **Contract Administration**

41. The Procuring Entity shall be responsible for the administration and monitoring of contracts entered into by the Entity.

### **Price Adjustment**

42. (1) Price adjustment is not permitted unless provided for in the procurement contract to take into account changes in economic circumstances.

(2) If the procurement contract provides for the possibility of price adjustment, it shall stipulate the conditions, such as increases or decreases in the cost of materials, labor, transportation and energy, in which price adjustment would be permitted; the formulas, and indices to be referred to in order to determine whether economic conditions have altered to a significant enough degree to justify a price adjustment and to identify the amount of increase or decrease; the frequency with which price adjustments may be implemented; and procedures to be followed.



(3) The procurement contract may provide that, when the application of the price adjustment formula leads to a price modification exceeding a stipulated percentage of the initial price or a stipulated percentage of the balance of the contract, the Procuring Entity may terminate the contract.

(4) Any price variation shall be subject to approval by the respective Procurement Committee.

### **Records and Reports of Procurement**

43. (1) The Procuring Entity shall preserve all documentation relating to the procurement proceedings in accordance with applicable rules concerning archiving of Government documentation, but at a minimum it shall be kept for a period of six (6) years following the date of final completion of the procurement contract, or from the date of rejection of all bids or cancellation of the proceeding, as the case may be.

(2) In addition to the documentation referred to in subsection (1), the Procuring Entity shall prepare and maintain a summary report of the procurement proceedings, including to the extent applicable -

- (a) A description of the object of the procurement;
- (b) A list of the participating bidders, their profile and qualifications, and the qualification criteria applied;
- (c) Bid prices;
- (d) The bid evaluation criteria;
- (e) A summary of the evaluation of bids;
- (f) Summary of any review proceedings and decisions thereon;
- (g) Requests for clarifications and responses thereto;
- (h) Statement of grounds for cancellation of procurement proceedings pursuant to Section 15;
- (i) Statement of grounds for choice of a procurement method other than open bidding or request for proposals for services;
- (j) Statement of grounds for reduction of bid preparation periods;
- (k) Information concerning rejection of bids;
- (l) Such other information as may be required by the regulations made under this Act.

(3) The portion of the record referred to in paragraphs (a), (b), (c), (d) and (g) of subsection (2) shall, on request, be made available to a person after a bid, proposal, offer or quotation has been accepted or after

procurement proceedings have been terminated without resulting in a procurement contract.

(4) The portion of the record referred to in paragraphs (e), (h) and (i) of subsection (2) shall, on request, be made available to suppliers, contractors or consultants that submitted bids, proposals, offers or quotations, or applied for pre-qualification, after a bid, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.

- (5) The Procuring Entity shall not disclose -
- (a) Information, if its disclosure will -
    - (i) be contrary to law,
    - (ii) Impede law enforcement,
    - (iii) Not be in the public interest,
    - (iv) Prejudice legitimate commercial interests of the parties, or
    - (v) Inhibit fair competition under this Act;
  - (b) Information relating to the examination, evaluation and comparison of bids, proposals, offers or quotations, other than the summary referred to in subsection (2) (e) of this section.

(6) Records and documents maintained by procuring entities on procurement shall be made available for inspection by the Commission, Anti-Corruption Commission and Auditor-General upon request; and where donor funds have been utilized for the procurement, donor officials shall also have access, upon request, to procurement files for the purpose of audit and review.

### **Debarment of Bidders and Suppliers**

**44.** (1) The Commission may subject to the conclusion of its investigations exclude a bidder from participation in public procurement for a minimum period of one year and a maximum period of six (6) years after -

- (a) Consultation with the affected Procuring Entity to consider all the facts of the case;
- (b) Reasonable notice to the bidder or supplier involved of the cause of the proposed actions; and
- (c) Reasonable opportunity to the bidder or supplier to respond to the proposed action.

(2) A potential bidder shall only be debarred from participation in procurement on the following grounds: -

- (a) Provision of false information supplied in the process of submitting a bid;
- (b) Collusion between the bidder and another bidder or a bidder and a public officer concerning the formulation of any part of the bidding documents or supply of information in the bid proceedings;
- (c) Connivance to interfere with the participation of competing bidders;
- (d) Misconduct relating to the submission of bids, including corruption, collusion, price fixing, a pattern of underpricing of bids, breach of confidentiality, and any other misconduct implied under this Act or under any part of this Act;
- (e) Non-performance of contractual obligations under a contract deemed serious enough to warrant debarment, provided that the non-performance was not due to circumstances beyond the control of the supplier;
- (f) Conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract;
- (g) Non-settlement of tax obligations after assessment by the National Revenue Authority or the evasion of tax by any means; or
- (h) Conviction of a crime related to business or professional activities.

(3) Nothing in this section shall derogate from the powers of the Complaints, Appeals and Review Panel under Section 10 of this Act.

### **Margin of Preference**

45. (1) A Procuring Entity may grant a Margin of Preference to Domestic Businesses or Liberian Businesses, as defined under this Act, in accordance with Regulations to be made by the Commission.

(2) The Margin of Preference shall be subject to the provisions of Sub-Section 4 of this Section and shall be reflected in the record of the procurement proceedings;

(3) The Commission shall by Regulation set or adjust the minimum benchmarks for the application of the Margin of Preference as it may deem necessary.

(4) Notwithstanding the generality of Sub-Sections (1), (2) and (3) this section, the Regulations on the Margin of Preference issued by the Commission shall include the provision that no bidder shall enjoy the Margin of Preference unless:

- (a) In the case of supply of goods, the goods are manufactured in Liberia and a minimum quantity of its inputs, specified by the regulations, in terms of material or labor or both is derived from Liberia.
- (b) In the case of procurement of works, services or consultancies, the bidder' business is a Liberian Business or a Domestic Business.

## **PART V - METHODS OF PROCUREMENT**

### **Choice of Procurement**

**46.** (1) Public procurement shall be undertaken by means of advertised open bid proceedings, to which equal access shall be provided to all eligible and qualified bidders without discrimination, subject only to the exceptions provided under this Part.

(2) It is not permitted artificially to divide procurement with the intention of avoiding the monetary thresholds established under this Act or other instruments issued for the purposes of this Act.

(3) If the Procuring Entity uses a method of procurement other than advertised open competitive bidding, it shall note in the record of the procurement proceedings the grounds for the choice of the procurement method.

(4) Where the participation of the procurement end-user or beneficiary community may result in enhancing the economy, quality or sustainability of the service to be procured, or the very objective of the project is to create employment and involvement of the beneficiary community, such end-user or community may participate in the delivery of services under procedures to be defined in the regulations.

(5) In the cases referred to in subsection (4), procurement may be carried out by force account, in which the procurement is carried out with self-supervision, utilizing the Procuring Entity's own personnel and equipment or those of another Government institution.

(6) The cases in which force account may be utilized include, separately or in combination with any activity –

- (a) That, in view of its size, nature, location or scattered locations, financing or high demobilization costs for outside suppliers, does not attract bidders, at least not at a reasonable price;
- (b) That cannot be calculated, or determined in detail in advance or both such that, if it were carried out by a private sector entity, it would have to bear a great risk;
- (c) Where the risk of unavoidable work interruptions is better borne by the Procuring Entity than by a private sector person;
- (d) Where it has been demonstrated that force account is the only practical method for constructing and maintaining works under special circumstances;
- (e) For a pilot project of a particular nature for development of a technology or work method or both that cannot yet be carried out by a supplier; and
- (f) For works that must be carried out without disrupting existing operations by the Procuring Entity's crew familiar with those operations.

(7) Where any procurement of goods, sub-contracted works or services is required to supplement the force account activity, that procurement shall be carried out in accordance with the relevant provisions of this Act.

### **Open Competitive Bidding**

47. (1) The open bid proceedings may include a prequalification stage or the application of a post qualification procedure.

(2) The open bid may be carried out in a single stage or in two stages, but use of the two-stage method is appropriate in the circumstances outlined in subsection (3); of this section.

(3) An open bid may be held in two stages in the following cases:-

(a) When it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; and

(b) When, because of the complex nature of the goods, works or services to be procured, the Procuring Entity wishes to consider various technical or contractual solutions, and to discuss with bidders the relative merits of those variants before deciding on the final technical or contractual specifications.

### **National Competitive Bidding**

**48.** (1) In procurement proceedings in which the Procuring Entity decides that only domestic suppliers or contractors are likely to be interested in submitting bids, the Procuring Entity may employ national competitive bidding procedures.

(2) The Procuring Entity is not required to employ national competitive bidding procedures if the estimated contract amount is lower than the value threshold specified in the Schedule.

(3) The Procuring Entity may stipulate in the bidding documents that bidders must quote only in the local currency and payments shall be made wholly in the local currency.

(4) At least four (4) weeks shall be allowed for submission of bids in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit bids.

### **International Competitive Bidding**

**49.** (1) The Procuring Entity shall employ international competitive bidding procedures when the estimated contract amount is higher than the value threshold specified in the Schedule.

(2) International competitive bidding may be used whenever open competitive bidding is used and effective competition cannot be obtained unless foreign firms are invited to bid.

(3) International competitive bidding shall be in accordance with the relevant procedures prescribed in this Act together with the following:-

- (a) The invitation to bid and bidding documents shall be in English;
- (b) The invitation to bid shall be placed in a newspaper with adequate circulation to attract foreign competition as provided in this Act;
- (c) At least six (6) weeks shall be allowed for submission of bids in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit the bids;
- (d) Technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade and in particular shall conform to the provisions of this Act;
- (e) Bidders shall be permitted to express their bids, as well as any security documents to be presented by them, in their respective domestic currencies, or in a currency widely used in international trade and stated in the bidding documents;
- (f) General and special conditions of contract shall be of a kind generally used in international trade.

### **Restricted Bidding**

50. Subject to approval by the Procurement Committee, restricted bidding may be held in the following cases:-

- (a) When the goods, works or services are only available from a limited number of bidders;
- (b) When the time and cost of considering a large number of bids is disproportionate to the estimated value of the procurement.

### **Procedures for Restricted Bidding**

51. (1) When restricted bidding is employed on the grounds referred to in Section 52 (a) all known suppliers capable of supplying the goods, works or services shall be invited to bid.

(2) When restricted bidding is employed on the grounds referred to in Section 52 (b) the Procuring Entity shall solicit bids from a minimum number of five (5) bidders, if possible.

(3) The procedures for bidding proceedings, as set forth in this Part shall apply to restricted bidding, except to the extent that they are modified by this section.

### **Request for Proposals**

52. Request for proposals for services is the method to be used for the procurement of consultant services, subject only to the exceptions provided in sections 70 and 71 of this Act.

### **Request for Quotations**

53. The request for quotations method may be used for the procurement of goods, works and services –

- (a) Where the procurement is for readily available commercially standard goods, not specially manufactured to the particular specifications of the Procuring Entity and the estimated value does not exceed the amount set in the Schedule;
- (b) When the estimated value of the procurement of small works, does not exceed the amount set in the Schedule;
- (c) When the estimated value of the procurement of services does not exceed the amount set in the Schedule.

### **Basic Procedures for Request for Quotation**

54. (1) Quotations shall be requested for in writing from as many bidders as practicable, but from at least three (3) bidders.

(2) The request shall contain a clear statement of the requirements of the Procuring Entity as to quality, quantity, terms and time of delivery, as well as any other special requirements.

(3) Bidders shall be given adequate time to prepare and submit their quotations, but each bidder shall be permitted one quotation, which may not be altered or negotiated.

(4) A purchase order shall be placed with the bidder that provided the lowest-priced quotation meeting the delivery and other requirements of the Procuring Entity.

### **Sole-Source**



55. (1) Public procurement by means of the sole-source procurement method is permitted only in the following circumstances -

- (a) When only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured and no suitable alternative is available;
- (b) For additional deliveries of goods by the original supplier which are intended either as parts replacement for existing goods, services or installations, or as the extension of existing goods, services or installations where a change of supplier would compel the Procuring Entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;
- (c) When additional works, which were not included in the initial contract, have through unforeseeable circumstances, become necessary and the separation of the additional works or services from the initial contract would be difficult for technical or economic reasons;
- (d) In cases of extreme urgency, provided the circumstances which gave rise to the urgency were neither foreseeable by the Procuring Entity nor the result of dilatory conduct on its part;
- (e) When the services require that a particular consultant be selected due to his/her unique qualifications, or when it is indispensable to continue with the same consultant.

(2) Use of sole-source procurement on the grounds referred to in paragraphs (b), (c), (d), and (e) of Section 1 is subject to prior approval by the Procurement Committee.

### **Basic Procedures for Sole-Source Procurement**

56. (1) When the Procuring Entity engages in sole-source procurement on the grounds referred to in subsection 57 (1) (b), (c), (d) and (e), it shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery; and shall request submission of a bid or proposal in writing or both and shall be free to negotiate with the sole bidder.

(2) Publication in the Procurement Bulletin, Gazette, a newspaper of national circulation and, when feasible on the internet, of a notice of the holding of sole-source procurement proceedings is required when the estimated value of the procurement exceeds the threshold set in the Schedule.

### **Invitation to Bid**

57. (1) The invitation to bid, or an invitation to prequalify, shall be published in the Procurement Bulletin, Gazette, national print media of wide circulation and electronic media, when feasible, and, in the case of international competitive bidding, also in selected international media.

(2) Whenever feasible, and in accordance with the regulations, invitations to bid or to apply for prequalification shall be published on the internet and the publication of the invitation shall run at least for the period of time specified in the regulations.

(3) An **international** bid, in which the participation of foreign bidders is invited, shall involve publication in the English language of the invitation to submit bids, or to apply for prequalification, and the bidding and contract documents are also to be made available in the English language, shall be held in the following cases:-

- (a) When the estimated value of the procurement exceeds the threshold set in the Schedule; or
- (b) When there is no response to a national bidding proceeding.

(4) The invitation to bid or, as the case may be, the invitation to prequalify, shall include information on -

- (a) The identity and address of the Procuring Entity;
- (b) The nature and time-frame of the procurement, including the place of delivery of goods or services, and the location of any works;
- (c) The manner of obtaining and the price of the bidding documents, or, if applicable, the prequalification documents;
- (d) The place and deadline for submission of bids, or of applications to prequalify;
- (e) Such other matters as may be prescribed in the regulations and standard forms issued by the Commission.

### **Bidding Documents**

58. (1) Unless provided otherwise under the regulations, Procuring Entities shall use the standard bidding documents published or approved by the Commission.

(2) The Procuring Entity shall provide, in an expeditious and non discriminatory manner, the bidding documents to all potential bidders that respond to the invitation to bid or, in the case of prequalification proceedings, to all bidders that have been prequalified, and the price that may be charged for the bidding documents shall reflect only the cost of printing and distributing the documents.

(3) The bidding documents shall inform bidders of -

- (a) The nature and time frame of the procurement, including, but not limited to the technical specifications or drawings as the case may be, terms of reference, the contractual terms of the procurement, and the manner of entry into force of the contract;
- (b) Bidder qualification requirements if a prequalification procedure was not followed;
- (c) Information as to site visits and pre-bid conferences;
- (d) Instructions for preparation and submission of bids, including the deadline for submission of bids, time and place of bid opening;
- (e) Components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
- (f) The criteria and methodology for evaluation of bids and the selection of the successful bidder, which shall all be quantified in monetary terms or expressed in the form of pass or fail requirements, if possible, or, where not possible, by relative weights and when considering evaluation criteria, the Procuring Entity shall consider only the following:-
  - (i) The bid price, subject to any Margin of Preference applied pursuant to Section 47;
  - (ii) the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;

- (iii) the effect that acceptance of a bid would have on the environment, the extent of local content, including local manufacture, labor and materials, in goods, works or services being offered by bidders, the transfer of technology and the development of managerial, scientific and operational skills;
- (g) The preference, if any, for domestic goods and contractors as outlined in regulations;
- (h) Any grouping of goods works or services into lots and packages and the manner of evaluation of the lots and packages;
- (i) Whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;
- (j) If suppliers are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;
- (k) The required validity period of bids;
- (l) The amount and acceptable forms of any required bid, performance or other security;
- (m) The conditions of contract which will be entered into with the successful bidder;
- (n) Notice of conflict-of-interest restrictions and anti-fraud and corruption rules;
- (o) The manner in which bidders may obtain review of actions, omissions and decisions of the Procuring Entity; and,
- (p) Such other matters as may be required in the regulations, manuals and standard forms prescribed by the Commission.

### **Submission of Bids**

59. (1) Subject to subsection (3) of this section, a bid shall be submitted in writing, duly signed and in a sealed envelope; and bids received after the deadline for submission of bids shall be returned unopened.

(2) Invitation for prequalification and bidding documents shall permit submission of applications to prequalify or bids by hand or mail or by courier at the option of the bidder.

(3) Subject to the policy laid down by the Commission, the bidding documents may authorize other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured,

including the prevention of the opening and reading of bids by anyone until the opening of bids at the time set in accordance with Section 61 of this Act.

(4) Bids shall remain valid for the period of time indicated in the bidding documents, but modification or withdrawal of a bid during the bid validity period is subject to forfeiture of the bid security.

(5) The validity period of a bid may be deemed extended only on the basis of the agreement of the bidder concerned and the bidder that agrees to an extension of the validity period of its bid shall also obtain a corresponding extension of the bid security, if such a security was required.

### **Bid Security**

60. (1) The bidding documents may require bidders to submit a bid security, which shall be applied to all bidders, and which set in accordance with the regulations.

(2) Forfeiture of a bid security may be imposed only in the event of

-

- (a) A modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
- (b) Refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
- (c) Failure by the successful bidder to sign a contract in accordance with the terms set forth in the bidding documents; or
- (d) Failure by the successful bidder to provide a security for the performance of the contract if required to do so by the bidding documents.

### **Bid Opening**

61. (1) Bids shall be opened at the time and place indicated in the bidding documents, and the time of bid opening shall coincide with the deadline for submission of bids, or follow immediately thereafter, allowing a minimum time interval for logistical reasons.

(2) Bidders or their representatives may attend the bid opening, where the name of the bidder, the total amount of each bid, any discounts or alternatives offered, and the presence or absence of any bid security, if required, and essential supporting documents shall be read out loud and recorded, and a copy of the record shall be made available to any bidder on request; and any documents with financial implications must be signed by the Chairperson and two other members of the bid opening committee.

(3) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the bid opening session.

(4) Following opening of the bids, and until the preliminary decision on award has been notified to the successful bidder, no bidder shall make any unsolicited communication to the Procuring Entity or try in any way to influence the Procuring Entity's examination and evaluation of the bids.

### **Representation of Procurement Committee at Bid Opening**

(5) All bids shall be opened in the presence of the Chairperson of the Procurement Committee or a member of the Procurement Committee designated by the Chairperson.

### **Examination, Evaluation and Comparison of Bids**

62. (1) Following the opening of bids, the Procuring Entity shall first examine the bids in order to determine whether the bids are complete, signed, whether required documents to establish legal validity and required bid security have been furnished and whether bids are substantially responsive to the technical specification and contract conditions set forth in the bidding documents.

(2) Bids which are not complete, not signed, not accompanied by a bid security in the prescribed form, if one is required, or not accompanied by essential supporting documents such as business registration certificates, business licenses and tax receipts, or are substantially non-responsive to the technical specifications or contract conditions or other critical requirements in the bidding documents, shall be rejected and excluded from further evaluation and comparison.

(3) If a prequalification procedure was applied, a bid received from any entity other than the prequalified bidders shall be rejected and excluded.

(4) Bids not excluded from consideration under subsections (2) and (3) of this section, shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.

(5) The Procuring Entity may seek clarification from any bidder to facilitate evaluation but shall neither ask nor permit any bidder to change the price or any other aspect of the bid and if a bidder amends its bid in any manner, such a bid shall be rejected and its bid security forfeited.

(6) If there is an arithmetical error, such an error shall be rectified and the bidder notified but if the bidder refuses to accept such correction, its bid shall be rejected and the bid security forfeited.

(7) If there is a discrepancy between figures and words, the amount in words shall prevail unless the discrepancy is due to misplacement of decimal point, in which case the mistake shall be rectified and the bidder notified.

(8) In carrying out the evaluation, if there are minor deviations in any bid which did not merit rejection at the earlier stage, such minor variation shall be costed, if possible, and the evaluated cost of such a bid shall then be compared to those of other bids to determine the lowest evaluated bid.

(9) If the process included a prequalification, the qualifications of the lowest evaluated bidder shall be verified again to take account of any change since the original prequalification.

(10) If there was no prequalification, the qualifications of the lowest responsive evaluated bidder shall be checked against the criteria specified in the bidding documents; if that bid fails, the same check shall be applied to the next ranked bid.

(11) The Procuring Entity shall prepare an evaluation report detailing the examination and evaluation of bids and identifying the recommendation for award of contract in accordance with the evaluation criteria specified in the bidding document.

### **Non-Disclosure of Evaluation Details**

63. Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders 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, except as permitted under this Act.

### **Prohibition of Negotiations**

64. (1) Except as provided in subsection (2) (b) of this section, no negotiations shall take place between the Procuring Entity and a supplier or contractor with respect to a bid submitted by the supplier.

(2) If the lowest evaluated responsive bid exceeds the budget for the contract by a substantial margin, the Procuring Entity shall investigate the causes for the excessive cost and may -

- (a) Consider requesting new bids; or
- (b) Subject to approval by the Procurement Committee and guidelines issued by Commission, negotiate a contract with the lowest evaluated bidder to try to obtain a

satisfactory contract through a reduction in the scope which can be reflected in a reduction of the contract price.

### **Award of Procurement Contract**

65. (1) The contract shall be awarded by the Procuring Entity to the bidder that submitted the lowest evaluated and most responsive bid which meets the evaluation criteria as specified in the bidding documents.

(2) Prior to the expiry of the period of bid validity, the Procuring Entity shall notify the successful bidder of the proposed award and shall specify the time within which the contract must be signed, subject to any intervening complaints filed in accordance with Part VIII of this Act.

(3) Where the value of the contract exceeds the levels set in the regulations, notice shall be given to the other bidders and the Commission specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least fourteen (14) calendar days have passed following the giving of that notice.

(4) If the bidder whose bid has been accepted fails to sign a written contract, when required to do so, or fails to provide any required security for the performance of the contract within the prescribed time limit, the Procuring Entity shall accept the next ranked bidder from among the remaining bids that are in force.

### **Acceptance of Bid and Signature of Contract**

66. (1) Where the bid documents require the bidder whose bid has been accepted to sign a written procurement contract conforming to the bid, the Procuring Entity and the bidder shall sign the procurement contract within thirty (30) days after the notice referred to in subsection 65(2) and 65 (3).

(2) The procurement contract shall come into force when the contract is signed by the bidder and by the Procuring Entity.

(3) Except as otherwise provided under this Act, a procurement contract in accordance with the terms and conditions of the accepted bid shall enter into force when the notice is dispatched to the bidder.



(4) Contracts shall be signed by the head of a Procuring Entity, but he or she may delegate signature of small contracts to the head of Procurement Unit or other senior official of the Entity.

### **Two-Stage Bidding**

67. (1) Where a procurement is to be done by a two stage bidding, the bidding documents shall, in the first stage, call upon bidders to submit initial bids without a bid price, and may solicit initial proposals relating to the technical, quality or other characteristics of the goods, works or services, as well as to contractual terms and conditions of the proposed contract, and, where relevant, the professional and technical competence and qualifications of the bidders.

(2) The Procuring Entity may engage in discussions with any or all bidders whose proposals satisfy the conditions set forth in the bidding documents with a view to understanding the proposals or to indicate changes required to make them acceptable and to seek the bidder's willingness to make such changes; minutes of these discussions shall form part of the procurement records.

(3) At the end of the first stage, the Procuring Entity may -

- (a) Reject those bids which do not, and cannot be changed to meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non responsive;
- (b) Modify the technical specifications, evaluation criteria, and contract conditions, while seeking to maximize competition and articulate appropriate evaluation methodology.

(4) In the second stage, the Procuring Entity shall invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents.

(5) A bidder, not wishing to submit a final bid, may withdraw from the bidding proceedings without forfeiting any bid security that the bidder may have been required to provide, and the final bids shall be evaluated and compared in accordance with the criteria and methodology included in the revised bidding documents.

(6) The procedures for bidding set forth in this Part shall apply to two-stage bidding proceedings, except to the extent that they are modified by this section.

## **Request For Consultant's Services**

68. (1) For the purposes of procuring the services of a consultant, the Procuring Entity shall prepare a shortlist of three (3) to six (6) consulting firms as determined by subsections (2) and (3) of this section and to the greatest extent feasible, comprising consultants of the same category, and similar capacity and business objectives, to which it shall provide the request for proposals for services; and the short-list shall be established from among those who have the capacity to perform the required services, as demonstrated in their submissions.

(2) When the estimated value of the procurement exceeds the threshold set in the Schedule, in order to establish the shortlist, the Procuring Entity shall seek expressions of interest by publishing a notice in the Procurement Bulletin, Gazette, in national print media of wide circulation, and whenever feasible, on the internet, and where appropriate, the notice may also be published in a relevant trade publication or technical or professional journal.

(3) For assignments of a value lower than the threshold set in the Schedule, the shortlist may be established from market knowledge or other sources of information but in the case of assignments which have an estimated value above that threshold, or are particularly complex, an advertisement shall also be utilized.

(4) The request for proposals shall provide short listed bidders with the information necessary to enable them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the Procuring Entity including, in particular:

- (a) The name and address of the Procuring Entity;
- (b) The nature, time frame and location of the services to be provided, terms of reference, required tasks and outputs;
- (c) The criteria to be used in evaluating and comparing proposals, and their relative weight as compared to price;
- (d) The contractual terms of the procurement, and the manner of entry into force of the contract;
- (e) Instructions for preparation and submission of proposals, and the place and deadline for submission of proposals;
- (f) The final selection procedures to be applied;
- (g) Notice of conflict-of-interest restrictions and antifraud and corruption rules, including the grounds for potential debarment from future participation in procurement of

- goods, services or works that may result from the assignment under consideration; and
- (h) Such other matters as may be prescribed in the regulations and standard documents issued by the Commission.

(5) The price of a proposal shall be considered by the Procuring Entity only after completion of the technical evaluation.

### **Selection Based on Quality and Cost**

69. (1) The selection of the successful proposal shall be based either: -
- (a) On the technical quality of the proposal, the consultant's relevant experience and the expertise of its staff, and the proposed work methodology, as well as the price of the proposal; alternatively,
  - (b) On the quality of the technical proposal submitted within a predetermined fixed budget; or
  - (c) On the basis of the best financial proposal submitted by the candidates, having obtained an acceptable technical score pre-disclosed in the request for proposals.
- (2) Detailed procedures shall be set forth in the regulations.

### **Selection Based On Quality**

70. When the services are of an exceptionally complex nature or of a considerable impact on future projects or national economy or when they may lead to the submission of proposals which are difficult to compare, the consultant may be selected exclusively on the basis of the technical quality of his or her proposal; the use of which method should be approved by the Procurement Committee subject to the approval of the Commission.

### **Award of Consultancy Contract**

71. (1) The contract may be negotiated with the selected consultant but negotiations may not be simultaneously held with several consultants.

(2) The Procuring Entity shall notify its proposed award to all short-listed consultants and the Commission at the same time it notifies the selected consultant, but where the value of the contract exceeds the levels set in the regulations, the contract shall not be signed until at least fourteen (14) calendar days have passed following the giving of that notice.

(3) The selected consultant shall not be permitted to substitute key staff, unless both parties agree that undue delay in the selection process makes such changes unavoidable or that such changes are critical to meet the objectives of the assignment.

(4) The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

### **Procurement Activity**

72. Notwithstanding any procurement proceedings or activity, no Procuring Entity shall sign a procurement contract or permit a contract to come into force unless the Head of the Procuring Entity has ascertained that:

- (a) The activity has been duly budgeted for by the entity.
- (b) The budget has been properly subjected to the budget process and been duly approved.
- (c) The budget for the activity has been provided for and approved under the national budget.

## **PART VI - SPECIFIC PROCEDURES FOR PROCESSING CONCESSION AGREEMENTS**

### **Sub-Part 1 - Definition and Objectives of Concession Agreements**

#### **Definition**

73. (1) Concession means the grant of an interest in a public asset by Government or its agency to a private sector entity for a specified period during which the asset may be operated, managed, utilized or improved by the private sector entity who pays fees or royalties under the condition that the Government retains its overall interest in the asset and that the asset will revert to the Government or agency at a determined time. Under this Act, the term concession shall comprise of all its variants including but not limited to the following:

- (a) **“Build/Refurbish/Modernize-Operate-Transfer (BOT)”**: Where a private entity finances the development of infrastructure/facility/utility and operates it for a specified period after which the project is handed over to the Government/public entity free of lien or at a cost to the public entity.

- (b) **“Build/Refurbish/Modernize-Transfer-Operate (BTO)”**: Where the Government/public entity contracts a private entity to build or complete a facility the ownership of which is transferred to the Government/public entity on completion after which the facility is leased back to the private entity for a fixed or renewable term.
- (c) **“Build/Refurbish/Modernize-Own-Operate-Transfer (BOOT)”**: Where the private entity obtains a franchise for a fixed period, whether exclusive or not, to develop, operate, maintain, manage and collect user fees for a public facility over a fixed period at the end of which title to the facility reverts to the public entity/Government.
- (d) **“Build/Refurbish/Modernize-Own-Operate (BOO)”**: Where the Government/public entity either transfers ownership and responsibility for a public facility or contracts with a private entity to build, own and operate a new facility is subject to terms and conditions laid down by the Government/public entity for the operation of the facility.
- (e) **“Joint Ventures”**: Where the Government/public entity shares investment, profits, losses and/or control of the operations of a facility with the private entity.
- (f) **“Management Contract/Service Contract”**: Where a private entity is engaged as an agent of the Government/public entity, to perform a public function on behalf of the Government/public entity for a fee in whatever form, with or without performance incentives regardless of whether the public entity retains responsibility for the acts of the private entity agent or not.
- (g) **“Outsourcing”**: Where the Government/public entity contracts a private entity for the continuous provision of an otherwise public service paid for by the public entity.
- (h) **“Partial Privatization”**: The partial disposal of Government interest to a private entity other than through the Stock Exchange.
- (i) The Commission may identify other business arrangements that shall be defined as concessions.

## Objectives of Concessions

74. The objectives of every concession shall be to promote one or more of the following:

- (a) Increased Government revenue from concessions.
- (b) Harnessing of private sector financial, human and technical resources for economic development
- (c) Competition in the provision of services, supplies, goods or infrastructure and reduce monopolies.
- (d) Accelerate the development of infrastructure, human capacity and the provision of services
- (e) The growth of the Liberian private sector
- (f) Partnerships between the public and private sectors

## **Sub-Part 2 - Scope, Application and Disqualified Private Sector Entities**

### **Scope and Application**

75. (1) This part shall apply to all activities relating to concessions and shall in particular apply to the following:

- (a) The implementation of concessions including, but not limited to the:
  - i. Identification and certification for Concessions
  - ii. Planning of the process for concession agreements
  - iii. Preparation of concession bid documents
  - iv. Invitation and evaluation of bids, negotiations and signing of concession agreements
  - v. Implementation, supervision and monitoring of concession agreements
- (b) The grant of concessions of whatever form in all sectors including but not limited to:
  - i. Mineral exploration and mining
  - ii. Fishing
  - iii. Timber
  - iv. Telecommunications
  - v. Electricity, water and other utilities
  - vi. Forestry
  - vii. Agricultural concessions including plantations
  - viii. Oil exploration and extraction

- ix. Development of public infrastructure including but not limited to airports, terminals, toll roads/bridges, shopping malls, etc.
  - x. The grant of special licenses including licenses for imports, exports, services, works or for the performance of functions on behalf of the public sector
  - xi. Other sectors as determined by the Minister responsible for Economic Affairs.
- (c) All Concession Entities or Government institutions and agencies legally mandated to undertake concessions
  - (d) All private sector entities that participate in concessions.

### **Concession Entities**

76. (1) Any entity that is issued with a Certificate for Concessions in accordance with Sections 88 and 89 of this Act shall be a Concession Entity for the purposes of this Act and shall be responsible for the concession process.

(2) The head of the Concession Entity shall be held accountable and responsible for any action taken in pursuit of his or her responsibilities under this Part and shall not be absolved from accountability because he or she delegated the function.

### **The Role of the Procurement Unit in Processing Concession Agreements**

77. (1) The Procurement Unit set up under Section 29 of this Act shall be responsible for the performance of the following concessions functions under the oversight of the Procurement Committee.

(2) In respect of concessions the Procurement Unit shall perform the following functions:

- (a) Prepare the Concession Procurement Plan
- (b) Plan and administer concession up to but excluding evaluation and award of concession contracts
- (c) Prepare concession bid documents in collaboration with technical experts
- (d) Receive and safeguard bids received
- (e) Conduct bid opening procedures in accordance with Section 110 of this Act
- (f) Perform secretarial services for the Concession Entity
- (g) Such other functions as may be conferred by the head of the entity in accordance with this Act

## **Engagement of Advisors**

78. (1) A Concession Entity and/or the Inter-Ministerial Committee may where it is conducive to the national interest, engage private sector entities or experts to advise on any of the processes of concessions other than approvals and such experts shall work with the Procurement Unit for the purposes of the specific concession.

(2) The selection of a private sector entity or individual for the purposes of subsection (1) of this section shall be made in accordance with the procedure for the selection of consultants set out under Sections 70 and 71 of this Act.

## **Preparation of Concession Procurement Plan**

79. (1) The Concession Procurement Plan shall include the following details:

- (a) The allocation of responsibilities and deadlines for all pre-implementation activities necessary for the concession procurement process including the engagement of consultants to advise at any stage of the concession process;
- (b) Arrangements to ensure co-ordination with other institutions where necessary;
- (c) The method to be employed in the procurement of the concession indicating whether it is a National Competitive Bidding or an International Competitive Bidding and the reasons for same;
- (d) The proposed dates for the General Notice of Investment Opportunity, Expression of Interest, Invitation to Bid, evaluation, negotiation and all processes leading to the concession agreement.

(4) The Commission shall, where necessary to ensure compliance with this Act, request for changes in the Concessions Procurement Plan within the twenty-one (21) days of receipt of the Concessions Implementation Plan.

## **Concession Structures**



80. There is hereby established under this Act the Inter-Ministerial Concessions Committee and the Concession Bid Evaluation Panel.

### **Composition of the Inter-Ministerial Concessions Committee**

81. (1) The Inter-Ministerial Concessions Committee shall consist of seven (7) persons constituted on ad hoc basis as required in accordance with subsection (2) of this section.

(2) The Inter-Ministerial Concessions Committee shall be responsible for the review of a concession and approval of the report of the Concessions Bid Evaluation Panel and the preparation of the annual concessions plan for submission and approval by Cabinet.

(3) The Inter-Ministerial Concessions Committee shall comprise the following:

- (a) The chairperson of the National Investment Commission who shall be the chairperson of the committee
- (b) The Minister of Justice
- (c) The Minister responsible for Finance
- (d) The Minister responsible for Economic Affairs
- (e) Two other Ministers appointed by the President representing the collective interest of various sectors of the economy connected with the concession other than the minister responsible for the sector
- (f) The head of the Concession Entity

(4) The Head of the Procurement Unit of the specific Concession Entity shall serve as the non-member secretary to the Inter-Ministerial Concessions Committee for the purposes of its work for the Concession Entity.

(5) The Inter-Ministerial Concessions Committee may co-opt experts to its meetings for a particular concession under review for advisory purposes.

### **Functions of the Inter-Ministerial Concessions Committee**

82. (1) The Inter-Ministerial Concessions Committee shall perform the following functions:

- (a) Review and approve concession bid documents prior to the invitation of bids.
- (b) Review the evaluation reports to ensure that procedures were in strict conformity with the criteria, the Act and

relevant regulations, approve or otherwise, the evaluation reports to enable the Concession Entity to continue with the next step of the process.

- (c) Approve the minimum benchmarks for the negotiations with the concessionaire as proposed by the Concession Entity.
- (d) If negotiations breakdown, and if acceptable, authorize the Concession Entity to negotiate with the next highest ranking bidder.
- (e) Constitute the Concession Bid Evaluation Panel and the Negotiations Team.
- (f) Make recommendations to the head of the Concession Entity and the Commission as and when necessary.

(2) No entity other than the Inter-Ministerial Concessions Committee set up under Sections 80 and 81 of this Act shall perform the functions of the Inter-Ministerial Concessions Committee and the purported performance of the functions of the Inter-Ministerial Concessions Committee by any other person or entity shall be void.

### **Meetings of the Inter-Ministerial Concessions Committee**

83. (1) The Inter-Ministerial Concessions Committee shall be convened at the instance of the Head of the Concession Entity through a written request submitted to the President and the Chairperson of the National Investment Commission.

(2) The President, on receipt of the request from the Head of the Entity, shall nominate two (2) persons under subsection (3) (e) of Section 81 for the specific purpose and the chairperson of the National Investment Commission, shall on receipt of the notice of the President's nominees convene a meeting of the committee for the purposes of the specific concession.

(3) Apart from the Chairperson and the Ministers responsible for Finance, Justice and Economic Affairs, no person shall have permanent representation on the Inter-Ministerial Concessions Committee.

(4) When the concession contract is entered into, the Inter-Ministerial Concessions Committee shall be deemed to be dissolved for the purposes of the particular concession.

(5) No member of the Committee shall delegate his role as a member. Where absolutely necessary any of the persons mentioned under subsection (3) of Section 81 may send a Deputy Minister as a proxy to represent the member at a meeting of the Committee. The member shall be responsible for any decisions made by the proxy.

### **Disclosure of Interest**

**84.** (1) A member of the Inter-Ministerial Concessions Committee or a person appointed/co-opted by the committee who has any interest, direct or indirect, in any matter to be considered by or on behalf of the Commission shall disclose the nature of his or her interest to the Commission and such disclosure shall be recorded in the minutes of the committee.

(2) A member of the Inter-Ministerial Concessions Committee with any interest shall not take part in any deliberation or decision of the committee relating to that matter, and a member who contravenes this section shall be guilty of misconduct and liable to be removed from the committee and/or suffer any penalty that may be applicable under this Act.

### **Quorum**

**85.** The Inter-Ministerial Commission Committee shall not be properly constituted for its work without the presence of the ministers responsible for Finance, Economic Affairs, Justice, the head of the Concession Entity or in the absence of any of them the duly authorized deputy.

### **Disqualified Private Sector Persons/Entities**

**86.** The following private sector entities, whether local or foreign, are disqualified from participating in any concession process.

- (a) Partnerships
- (b) Sole Proprietorships
- (c) Natural Persons
- (d) Not-for-profit entities or Non-Governmental Organizations
- (e) Unincorporated Associations

## **Sub-Part 3 - The Concession Procurement Process Planning**

### **Inclusion In Economic Development Plan**

87. (1) The Minister responsible for Economic Affairs shall develop an annual concessions plan for sectors of the economy in which concessions may be promoted for approval by Cabinet.

(2) The role assigned the Minister responsible for Economic Affairs under subsection (1) of this section shall only be exercised in consultation with all Ministers and head of Entities that may be affected by the annual concessions plan.

(3) The head of a Concession Entity shall, prior to commencing any activity for the purpose of implementing a concession, request the Minister responsible for Economic Affairs to issue a Certificate for Concession for the specific concession.

#### **No Concession without Certificate**

88. (1) Every concession implementation process shall commence with the issue of a Certificate for Concession and no concession shall be implemented unless the proposed project has been issued with a Certificate for Concession.

(2) The Ministry responsible for Economic Affairs shall have the sole responsibility to issue the Certificate for Concession.

#### **Criteria for the Issue of the Certificate for Concession**

89. (1) Prior to issuing the Certificate for Concession under Section 88 of this Act, the Ministry responsible for Economic Affairs shall ensure that:

- (a) The concession falls within the area of the economy in which concession arrangements may be carried out in furtherance of national economic objectives.
- (b) The proposed concession has not already been allocated with public funds for the same purpose envisaged under the proposed project.
- (c) The barriers or bottlenecks that need to be addressed prior to or in the course of the concession procurement process have been clearly identified by the Concession Entity or by the Ministry responsible for Economic Affairs and brought to the knowledge of the Entity.

(2) The functions of the Ministry responsible for Economic Affairs under subsection (1) of this section shall be performed with prior consultation with the head of Concessions Entities affected by specific concession.

## **Presentation of Concession Option to the Public**

90. A Concession Entity shall pursuant to the receipt of the Certificate for Concession undertake public stakeholder consultations as part of the concession implementation process.

## **Information at the Stakeholder Forum**

91. At the stakeholder forum, the Concession Entity shall at least provide information on the following:

- (a) The strategic importance of the Project
- (b) The extent of investment or private resources i.e. financial, human, etc. to provide the needs of the community
- (c) The technical and financial feasibility of the Project
- (d) Measures instituted and/or may be instituted to address any environmental challenges and adverse externalities for the population
- (e) Any other reason that may justify choosing the concession option

## **Records of the Concession Bidding Process**

92. In furtherance of transparency and accountability every entity involved in any concession process shall maintain a written record of all proceedings in accordance with Section 43 of this Act.

## **Inspection of the Records**

93. The records shall be made available for inspection by the Commission and the Auditor-General or any person(s) duly authorized by the Commission or relevant Government authority.

## **Specific Records to Be In Writing**

94. Without limiting the generality of this part or any subsection of this part the following shall at all times be in writing:

- (a) General Notice of Investment Opportunity
- (b) Request for Expression Of Interest

- (c) Instructions to Bidders
- (d) The Request For Proposals
- (e) The Evaluation Report together with attachments
- (f) All documents related to the award of contracts
- (g) Concession Information Memoranda

### **Competitive Bidding**

95. Concessions bidding proceedings shall be on the basis of open competitive bidding unless otherwise stipulated under this Act.

### **National Competitive Bidding**

96. (1) An Entity shall use National Competitive Bidding where it is concluded that:

- (a) There is the availability of adequate technology in Liberia for the object of the concession.
- (b) The expected capital outlay is capable of being raised by local businesses
- (c) The concession project is not likely to be of interest to foreign investors
- (d) The concession falls within the area of the economy which is by law restricted to Liberians

(2) Where National Competitive Bidding is used only domestic firms shall be invited to participate in the particular bid.

### **International Competitive Bidding**

97. (1) International Competitive Bidding shall be used where one or more of the following conditions may prevail:

- (a) The project requires international expertise
- (b) The project requires technology not available in Liberia
- (c) The project requires capital outlay not ordinarily available in Liberia

(2) Bidders shall be allowed not less than six (6) weeks to prepare and submit bids.

### **Domestic Firms to Participate In the International Competitive Bidding**

98. In all instances of International Competitive Bidding, domestic businesses which meet the minimum criteria for participation shall, without restrictions, be qualified to participate either solely or in association with foreign entities.

### **Criteria for the Application of Margin of Preference In Concessions**

99. (1) Where a concession is awarded on the basis of International Competitive Bidding, a Concession Entity may allow for Margin of Preference for Domestic and Liberian Businesses as defined under this Act and the Commission shall establish a criteria for the Margin of Preference to be applicable to concessions in that respect.

(2) Notwithstanding the generality of sub-section (1) of this section, the Commission shall ensure that the criteria for the Margin of Preference applicable to concessions shall, as much as possible, be consistent with the provisions of Section 45 of this Act.

### **Restricted Competitive Bidding**

100. Subject to the approval of the Commission, Restricted Competitive Bidding shall be employed where the Concessions Entity has pre-qualified bidders in accordance with the provisions of this Part of this Act.

### **Sole-Source**

101. Subject to the approval of the Commission a concessionaire may be sole sourced if one or more of the following conditions prevail:

- (a) The Concession requires specialized expertise that is available only to one specific bidder.
- (b) The Concession involves an innovation the patent for which is held by one particular bidder.
- (c) The Concession requires specialized research, or experiment that only one person is prepared to undertake
- (d) The Concession is in respect of strategic national interest or national defense and security and it is not in the national interest to have more than one bidder

### **Prior Approval of Commission**

102. In all instances other than National Competitive Bidding and International Competitive Bidding, the method to be used shall receive the express prior approval of the Commission.

#### **Sub-Part 4 - Concession Documents Preparation**

##### **Performance of Preliminary/Feasibility Studies**

103. (1) A Concession Entity shall undertake preliminary or prefeasibility studies to determine the feasibility of a proposed project and the prefeasibility studies may be carried out in consultation with the Minister responsible for Economic Affairs and other experts whether from the private or public sector as appropriate.

(2) The selection of any private sector entity or individual as a consultant to assist the Concession Entity shall be in compliance with Section 70 and 71 of this Act.

##### **Concession Bid Documents**

104. (1) Prior to issuing a Request for Expression of Interest or Invitation to Bid, the Procurement Unit shall prepare the full set of the concession bid documents and shall submit same to the head of the Concession Entity for review and approval by the Inter-Ministerial Concessions Committee.

(2) The Inter-Ministerial Concessions Committee shall establish the appropriate technical team to review the concession bid documents and based on their recommendations approves or otherwise the concession bid documents.

##### **Scope of Concession Documents**

105. The concession bid documents shall, at a minimum include the following:

- (a) Project information memoranda which shall cover, but not limited to the following:
  - i. the background of the Project
  - ii. objectives of the proposed concession
  - iii. expected improvements or deliverables
  - iv. outline of expected project outcome and benchmarks for measuring the attainment of Project objectives
- (b) The invitation to bid as applicable



- (c) Instructions to bidders which shall include the following:
  - i. An indication of whether or not there will be a pre-bid meeting and if so the date, time and venue.
  - ii. Criteria for examination or evaluation of bids
  - iii. Criteria for award of concessions
  - iv. Form of Agreement
  - v. Form of Bid
  - vi. Form of Bid Security and Performance Security
  - vii. Time and Venue for submission and opening of bids
  - viii. Form of Financial Proposal to be submitted separately
  - ix. All relevant forms necessary for preparation of bids
- (d) General and specific conditions of contract/agreement.

### **Notification of General Notice of Investment Opportunity, Expression of Interest or Request for Proposals**

106. Upon approval of the concession bid documents, the Procurement Unit shall publish as required, a General Notice of Investment Opportunity, Expression of Interest, Request for Proposals or all of them in successive order as the context may require in accordance with the provisions of this Act.

### **Mode of Publication**

107. The Commission may issue guidelines regarding publications of the General Notice of Investment Opportunity, Expression of Interest or Request for Proposal.

## **Sub-Part 5 - Pre-Bid Meeting, Bid Submission and Opening**

### **Pre-Bid Meeting**

108. Where necessary, a pre-bid conference may be organized to give prospective bidders the opportunity to seek clarification and to obtain additional information on the requirements of the concession or clarify issues set out in the Concession Bid document.

## **Particulars of the Pre-Bid Meeting**

**109.** The date, time and venue of the pre-bid meeting shall be specified in the Concession bid documents and shall in any case not be less than fourteen (14) days after publication of the invitation to bid.

## **Submission and Opening of Bids**

**110. (1)** All responses to the Expression of Interest and/or Invitation to Bid whether submitted by a bidder earlier or on the same day slated for the Bid Opening shall be opened at the same time and place and in the presence of the bidders, their representatives or agents in attendance.

(2) The bid submission and opening shall observe the rules of bid submission and opening under Sections 61, 62 and 63 of this Act.

(3) In the case of two envelope bidding, the Concession document shall specify the procedure for opening of the technical and financial envelopes.

## **Sub-Part 6 - Evaluation**

### **Evaluation**

**111. (1)** Evaluation of concession bids shall be undertaken by a Concessions Bid Evaluation Panel that shall be constituted by the Inter-Ministerial Concession Committee.

(2) The Procurement Unit may make recommendations to the head of the Entity regarding the composition of the Concessions Bid Evaluation Panel and the head of the Entity may direct that specific persons with expert knowledge on the subject be co-opted for the effective evaluation of bids.

(3) For the avoidance of doubt the Bid Evaluation Panel to be constituted under Section 30 of this Act for procurement shall not be construed to be the same as the Concessions Bid Evaluation Panel referred to in this section.

(4) Notwithstanding subsection (3) of this section, nothing in this Act shall prevent a person who is a member of the Bid Evaluation Panel under Section 30 of this Act, from being appointed a member of the Concessions Bid Evaluation Panel provided the person possesses the requisite qualification to serve in that capacity.

(5) The Concessions Bid Evaluation Panel shall be an ad hoc body and shall be deemed to be dissolved once its report is approved by the Inter-Ministerial Concessions Committee.

### **Certainty of Evaluation Criteria**

**112.** No criteria shall be used for evaluation that was not set out in the Concession bid documents made available to bidders and a Concession Entity shall not change the evaluation criteria after the bids have been received.

### **Minimum Contents of the Evaluation Criteria**

**113.** The evaluation shall:

- (a) In respect of an Expression of Interest take into consideration the particular requirements of the Project and the nature of the expertise required for the proper implementation of the Project which must have been set out in the request for Expression of Interest.
- (b) In respect of a Request for Proposals take into account the criteria set out in the Request for Proposals which shall in any event be designed to attain the objects of the concession and shall include at least the following:
  - i. technical feasibility of the proposal
  - ii. effectiveness of the methods and resources to be deployed
  - iii. planned improvement over the concession period
  - iv. the effect of the proposal on the overall strategic objectives and national development plan spelt out by the Ministry responsible for Economic Affairs
  - v. technology transfer
  - vi. expected effect of the concession on national income, employment of Liberians, the environment, related industries and other sectors of the economy
  - vii. application of Margin of Preference, where applicable in accordance with Section 99 of this Act.

### **Prohibited Criteria in Evaluation**

**114.** The criteria for the selection of responsive bidders shall not at any stage, include any of the following:

- (a) Criteria that cannot be reasonably interpreted as a condition meant to elicit the attainment of any of the principles provided for under this Act.
- (b) Criteria that is non-commercial in character and which will not lead to the attainment of the objectives of the concession arrangement.
- (c) Ambiguous criteria the interpretation of which can be subjective.
- (d) A criteria or condition that leads to the grant of the concession to particular persons or group of persons.
- (e) A criteria or condition designed to facilitate the selection of a known bidder in contravention of the competitive process.
- (f) A condition that will promote the corruption of the entire or part of the concession procurement process.

### **Sub Part 7 - Post Evaluation**

#### **Evaluation Report**

**115. (1)** The Concessions Bid Evaluation Panel shall conclude the evaluation within sixty (60) days of the opening of the bids and shall submit an evaluation report to the Inter-Ministerial Concessions Committee.

- (2) The Evaluation Report shall at least comprise the following:
  - (a) A report on the responsiveness of the bids on the basis of the requirements set out in the proposals
  - (b) Results of the technical evaluation
  - (c) Results of the financial evaluation
  - (d) Recommendations which shall include a statement that the bidder with the highest overall score be invited for

negotiations and if negotiations fail with that bidder, negotiations should be held with the next bidder in that order till a successful bidder is selected.

(3) Due diligence of all recommended bidders undertaken as provided in Section 116 of this Act.

(4) The head of the Entity shall not have the power to alter the report of the Concession Bid Evaluation Panel or to request for changes in the recommendations.

### **Due Diligence**

**116.** (1) Prior to the submission of the evaluation report to the Inter-Ministerial Concession Committee a Concession Entity shall undertake due diligence on all responsive bidders.

(2) The extent of the due diligence shall be determined by the Entity but shall at a minimum include a verification of the following:

- (a) The capacity of the private sector entity to enter into the concession agreement.
- (b) The authenticity of the certificate of incorporation and other statutory documents. If the private sector partner is of a foreign origin company, the validity of the document must be verified from the country of origin.
- (c) Authenticity of the persons purporting to represent the bidder for which purpose the public entity shall demand a board resolution of the prospective bidder authorizing the persons to negotiate or enter into an agreement on its behalf.
- (d) The fulfilment by the private sector entity whether wholly foreign owned or in partnership with a local counterpart of the requirements of the laws regulating business operations in Liberia.
- (e) Where the bidder is a consortium, proof that:
  - i. None of the members is disqualified under this Act;
  - ii. Members of the consortium have bound themselves to assume joint and several liabilities

for the private sector party's obligations under the concession agreement or in the alternative that a member(s) of the consortium has consented to bear the risk of the other(s) and that a copy of the document evidencing same has been deposited with the entity.

- (f) Authenticity of the claims of technical and financial capability made by the bidder

(3) The Concession Entity may, if appropriate engage independent experts to carry out the due diligence.

(4) In all cases the due diligence must be concluded before the concession's contract comes into force.

### **Form of Contract**

**117.** The form of contract for each Concession Agreement shall be developed by the Concession Entity in collaboration with the Ministry of Justice and endorsed by the Inter-Ministerial Concessions Committee prior to negotiations.

### **Negotiations**

**118. (1)** Within fourteen (14) days after the approval of the evaluation report by the Inter-Ministerial Concessions Committee, the Inter-Ministerial Concessions Committee shall constitute a Negotiations Team comprising of technocrats and relevant experts co-opted as necessary for the conduct of the negotiation with the highest ranked bidder.

(2) The Negotiations Team shall comprise of a team of not less than three (3) but not more than seven (7) persons appointed by the Inter-Ministerial Concessions Committee.

(3) The Negotiations Team shall consist of technocrats and the head of the Concession Entity shall not be a member of the Negotiations Team.

(4) The Negotiations Team shall be responsible for ensuring that the negotiations are concluded before the expiry of the original or extended date of the Bid Security submitted by the Bidder.

(5) Negotiations shall be entered into with the highest ranked bidder indicated in the evaluation report and approved by the Inter-Ministerial Committee. In the event of the break down of the negotiations, the Negotiation Team shall report to the Inter-Ministerial Concessions

Committee. The Inter-Ministerial Concessions Committee shall give approval if appropriate for the commencement of negotiations with the next highest bidder in that order of ranked bidders until negotiations are concluded and all applicable conditions are fulfilled.

### **Issues to Be Considered At the Negotiations**

**119.** (1) The Negotiations Team shall take the following into account, within the context of existing laws, in its negotiations with the prospective concessionaire:

- (a) Responsibilities of parties under the concession
- (b) Standards of performance including service, deadlines, safety, compliance and operating/maintenance requirements
- (c) Contingency arrangements for identified risks
- (d) Tax obligations
- (e) Mechanisms for monitoring performance, quality of service and other Project objectives
- (f) Dispute resolution mechanisms
- (g) Performance Bonds
- (h) Monitoring/Reporting
- (i) Reporting Requirements
- (j) Social Responsibility Requirements
- (k) Use Of Local Labour
- (l) Capacity Building
- (m) Technology Transfer
- (n) The financial components including payment provisions, the time of payment and currency of payment
- (o) Responsibilities for insurance, security, operation and maintenance where applicable

- (p) Contract revision arising from material change in the conditions of the contract
- (q) Environmental Issues
- (r) Termination provisions
- (s) Project failure and remedies, if any
- (t) Breach of contract/Events of default
- (u) Provision for re-entry, buy-back transfer, reversion, assignment and related issues
- (v) Tariffs, charges, rates, fees, etc. that may be charged to third parties, where applicable and responsibility for fixing same
- (w) Non-circumvention, confidentiality and scope of these provisions
- (x) Ownership of intellectual property, facilities or new technologies developed
- (y) Provisions which may survive termination of the contract e.g. arbitration, confidentiality
- (z) Contract amendment process

(2) The Inter-Ministerial Concessions Committee may expand on these issues for negotiations for any particular concession, but the issues must have been included in the concessions bid documents.

### **Confidentiality Agreement**

**120.** (1) The Negotiations Team shall not commence with the negotiations unless they have received a copy of the Confidentiality Agreement entered into between the bidder invited for the negotiations and the entity which restricts each of the parties from disclosing information in accordance with internationally accepted standards of confidentiality in such cases.

### **Post-Contract Management**

**121.** The Negotiation Team shall conclude post-contract management arrangements during the negotiations and this shall at least include:



- (a) Mechanisms for monitoring performance of the terms and conditions of the agreements
- (b) Reports to be submitted on periodic basis and the methods for authentication of the reports
- (c) Asset maintenance and improvement requirements if any
- (d) Arrangement for handling public complaints

### **Regulations Pertaining to Mining and Petroleum Concessions**

**122.** (1) Without limiting the application of this Part the Commission shall not later than one hundred and eighty (180) days after the coming into force of this Act ensure that regulations are issued so as to bring the procedure for the issue of prospecting, reconnaissance and exploration licenses for petroleum and mining concessions under any existing law in conformity with this Part of this Act.

(2) In the performance of its functions under subsection (1) of this section the Commission shall ensure that the issue of any license for prospecting, reconnaissance and exploration shall be done in a competitive manner and without the grant of a monopoly to any party.

## **PART VII - RULES ON DISPOSAL OF STORES, PLANT AND EQUIPMENT**

### **Authority to Dispose**

**123.** (1) A department with obsolete stores or unserviceable equipment and plant shall send a disposal request to the Minister responsible for Finance.

(2) The Minister responsible for Finance shall if satisfied, authorize the head of the entity to convene a disposal committee comprising representatives of the entity and persons with relevant expertise and the board shall after carrying out inspection recommend the best method of disposal in accordance with Section 124.

(3) The committee's recommendations shall be subject to approval of the head of entity.

## **Disposal Procedures**

**124.** (1) Disposal of obsolete and surplus items consistent with applicable guidelines provided by the Commission, pursuant to the Disposal Committee shall be by:

- (a) Transfer to government departments or other public entities, with or without financial adjustment;
- (b) Sale by public tender to the highest tender, subject to reserve price;
- (c) Sale by public auction, subject to minimum acceptable price;
- (d) Destruction, dumping, or burying or such forms of disposal as appropriate.

(2) Other than the methods of disposal under subsection 1 (a), (b) and (c), any form of disposal including those set out under subsection 1 (d) shall only be done with the written approval of the Environmental Protection Agency.

(3) The Commission may in consultation with the Minister responsible for Finance prescribe further procedures for disposals but the Commission shall not have the power to make any guidelines or regulations in respect of subsection (1) (d) of this section.

## **PART VIII - COMPLAINTS AND REVIEW PROCESS**

### **Right to Review**

**125.** (1) The following shall have the right to lodge a complaint in pursuit of this Act.

- (a) Any bidder who has suffered or is at the risk of suffering a loss or damage as a result of the breach of this Act or in any procurement process;
- (b) Any person who has grounds to believe that he or she or the Entity he or she represents has been prevented from becoming a bidder;
- (c) Any person who has reason to believe that there has been a breach of this Act;

Shall have a right to lodge a complaint to the Procuring or Concession Entity and may seek review or redress from the Entity in the first instance or from

the Commission if he or she is dissatisfied with the Entity's decision or its failure to decide within the time stipulated in subsection (4) of this section.

(2) A complaint or request for review shall not be entertained unless the complainant:

- (a) Submits the complaint in writing
- (b) Has stated his or her particulars and the means by which he or she may be reached
- (c) Has stated the nature of the grievance and, where applicable, part of the process from which the complaint arose.

(3) Notwithstanding subsection (1), the following shall not form the subject of any complaint and the Commission and entities shall not have the authority to review complaints arising from any of the following:

- (a) The Entity's choice of a procurement or concession method unless the complaint is about a contravention of this Act in the choice of the method;
- (b) A decision by the Entity to reject all bids unless the complaint is supported by evidence that the decision to reject the bids was made in contravention of this Act.

(4) The entity shall on receipt of a complaint investigate the complaint and shall communicate its decision to the complainant within fourteen (14) days of receipt of the complaint.

(5) The Entity's response to the complaint shall be in writing and shall state:

- (a) The reasons for the decision; and
- (b) Whether the complaint is upheld in whole or in part
- (c) Indicate the corrective measures that are to be taken where applicable

### **Further Review**

**126.** (1) A person entitled to seek review with the Commission shall lodge a further complaint to the Commission as of right and nothing in this Act or in any other law shall derogate from the right of a qualified person to seek further review with the Commission.

(2) Upon receipt of a complaint, the Commission shall inform the entity of the receipt of a complaint and the particulars of the complaint and may invite the entity to provide information as required.

(3) All complaints to the Commission shall be reviewed by the Complaints, Appeals and Review Panel of the Commission in accordance with this Part and rules of procedure made in pursuit of this Act.

### **Decision Of The Complaints, Appeals And Review Panel**

**127.** Except where a contract has already been entered into in accordance with this Act, the Commission may in accordance with the decision of the Complaints, Appeals and Review Panel:

- (a) Prohibit the Procuring Entity from acting in an unauthorized manner or from following incorrect procedures
- (b) Revise or amend an unlawful decision of any Procurement or Concession Entity
- (c) Annul in whole or in part any unlawful act or decision under a procurement or concession process.
- (d) Replace the Entity's decision with the decision of the Complaints, Appeals and Review Panel.
- (e) Terminate the proceeding.

### **Rules Applicable To Review Proceedings**

**128.** (1) Where the complaint emanates from a bidder or is made in connection with any bid proceedings, the head of the Entity or the Commission shall notify all bidders of the complaint and a copy of the decision of the head of the entity or the Commission shall be furnished to all bidders not later than five (5) days of the issue of the decision.

(2) A summary of the decision may be made available to the general public by or in consultation with the Commission.

(3) The decision of the Complaints, Appeals and Review Panel shall be final and may be appealed only in a Court of competent jurisdiction.

### **Suspension Of Procurement Proceedings**

**129.** (1) Except in the case of emergency, any entity which receives a complaint other than a request for further review under subsection (3) of this

section shall immediately suspend the procurement or concession proceedings for thirty (30) days provided the complaint -

- (a) Is not frivolous;
- (b) Contains a declaration which demonstrate that the bidder will suffer irreparable damage if the suspension is not granted; and
- (c) In the entity's view the complaint is likely to succeed and the grant of the suspension will not cause disproportionate harm to the Procurement or Concession Entity or to other bidders.

(2) The Commission may make rules to regulate complaints and reviews and the rules shall be consistent with the laws regulating administrative procedures for the time being in force.

## **PART IX - GENERAL PROVISIONS**

### **Code of Conduct**

**130.** The Commission shall compile and publish a code of conduct for the purposes of this Act

### **Conduct of Procuring Entities, Public Officials and Their Representatives**

**131.** (1) Any public officer involved in requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of contracts, shall -

- (a) Discharge his or her duties impartially so as to ensure fair competitive access to public procurement by bidders.
- (b) Always act in the public interest and in accordance with the object and procedures set out in this Act.
- (c) At all times avoid conflict of interest and the appearance of conflicts of interest, in carrying out his or her duties and shall immediately disclose any conflict of interest and excuse himself or herself from any involvement in the matter.

- (d) Not commit or abet corrupt or fraudulent practices, coercion or collusion, including the solicitation or acceptance of any inducements.
- (e) Keep confidential the information that comes into his or her possession relating to procurement proceedings and to bids, including bidders' proprietary information.
- (f) Not take up a position of authority in any private concern with which he or she undertook procurement activities for a period of three (3) years after departure from the Procuring Entity.

(2) Public officers of a Procuring Entity, or their close relatives, shall not participate as bidders in the procurement proceedings of the Procuring Entity.

(3) A Procuring Entity shall reject a bid if the bidder offers, gives or agrees to give an inducement and promptly notify the rejection to the bidder concerned, the Commission and to the relevant law enforcement authorities.

(4) The Procuring Entity shall not award a contract to a bidder who is responsible for preparing the specifications or bidding documents for the contract or supervising the execution of a contract, or to any affiliate of such a bidder; but this subsection shall not apply to bidders who jointly or severally are complying with their obligations under a turnkey or design and build contract.

(5) A public officer shall recuse himself or herself from any participation in a procurement proceeding where a bid has been submitted by a bidder who is a close relative of the public officer, or by a bidder by whom the public officer or the close relative is employed in a management capacity, or as an agent or in which he or she is member of the board of directors, or has a financial interest.

(6) Any recusal under subsection (5) shall be effected immediately the public officer becomes aware of the submission of such a bid and the requirement under subsection (5) of this section shall extend to the administration and management of any procurement contract awarded to such a bidder.

(7) All public officers and other persons involved in public procurement shall, in accordance with this Act and other applicable legislation -

- (a) provide full cooperation and disclosure of their interest in any matter being considered by or on behalf of the Commission to the Commission and the Auditor-General, and other authorities exercising monitoring and supervisory jurisdiction over public funds pursuant to the laws of Liberia;
- (b) not later than sixty (60) days from assuming responsibility and thirty (30) days after leaving office, make a declaration of their assets and liabilities in such form as the Commission may determine and the declaration shall be updated annually as well as whenever there is a substantial change in assets and liabilities.

### **Conduct of Bidders and Suppliers**

**132.** (1) A bidder or supplier shall at all time abide by their obligations under this Act, the regulations, contracts, and other instruments applicable to their conduct and activities related to procurement.

(2) A bidder or a supplier shall not engage in or abet corrupt or fraudulent practices, including the offering or giving, directly or indirectly, of any inducement, the misrepresentation of facts in order to influence a procurement process or the execution of a contract, or interference in the ability of competing bidders to participate in procurement proceedings.

(3) Bidders shall not engage in any activity, prior to or after bid submission, designed to deprive the Procuring Entity of the benefits of free and open competition, including, but not restricted to, collusion over bidding for opportunities and price fixing, and coercive, corrupt or fraudulent practices.

(4) Bidders and suppliers who engage in fraudulent, corrupt or coercive practices in connection with public procurement are subject to prosecution pursuant to this Act and other relevant legislation for the time being in force.

(5) It shall be an offence under this Act for a private sector person who is involved in the prefeasibility studies or subsequently involved as an expert in the concession procurement process to have any interest in any form in a bidder or concessionaire or be associated with a concessionaire or any bidder for the same concession or to use any data or information obtained for private gain or to disclose same to unauthorized persons.

### **Records**

133. Written records shall be kept of the bid opening and the records shall include the following

- (a) Minutes of the meeting including a list of all present and who shall be entitled to receive copies of the minutes of the bid opening.
- (b) A form showing the submission or otherwise of the core requirements of Request for Proposals by the bidders including:
  - i. Technical and Financial offers - separate envelopes
  - ii. Bid security as required
  - iii. Duly signed Form of Bid by a person authorized to sign or having a power of attorney thereof.

#### **Guidelines, Regulations, Manuals and Detailed Instructions**

134. (1) The Commission may issue detailed instructions, guidelines, regulations and related documents to give effect to this Act.

(2) Only the Commission is authorized to prepare and issue regulations and guidelines in order to fulfill the objectives of this Act and to carry out the provisions of this Act, and any regulations or guidelines that contradict or is otherwise inconsistent with any of the provisions of this Act shall, to the extent of such contradiction or inconsistency be void.

(3) For the purposes of this Act, and in furtherance of this section, the Commission may make Regulations, Guidelines, Policies including but not limited to:

- (a) Standard bidding documents, Request for Proposals and other formats to be used on a mandatory basis by Procuring Entities and Concession Entities.
- (b) The preparation and submission of bids;
- (c) The provision for the manner of publication of notices for procurement contract awards;
- (d) The Margin of Preference in the evaluation of bids;
- (e) the preparation and submission of applications to pre-qualify for a tender;
- (f) Detailed procedures for selection of consultants;
- (g) The procurement process where one Entity or a specially appointed agent is to procure items on behalf of another entity;



- (h) Amend the threshold for procurement methods and award of contracts as per the Schedule to this Act;
  - (i) Sample formats of the Procurement Plans; and
  - (j) On any other matter connected with public procurement.
- (4) In issuing the standard bidding documents for the purposes of this Act the Commission shall be guided by the need for standard bidding documents for the following:
- (a) Goods –National Competitive Bidding, International Competitive Bidding and for health sector
  - (b) Works – National Competitive Bidding, International Competitive Bidding and small works
  - (c) Services – Request for proposal for services and consultants
  - (d) Concessions

### **Modifications**

135. (1) Except in cases of extreme urgency, where there will be an aggregate increase in the original amount of any contract by more than ten (10) percent of the original contract price, a Procuring Entity shall request the appropriate approving authority for variation, extension, modification or variation of contract as may be required.

(2) Subject to sub-section (3) and (4) of this section, nothing in this Act shall derogate from an Entity's right, considering the circumstances and with the prior approval of the Commission, to vary a contract which has commenced by the omission of part of the contract in order to save the country from further losses.

(3) No variation of omission shall be done without the prior written approval of the Commission acting in consultation with the Minister responsible for Finance.

(4) The Commission and the Minister responsible for Finance shall at all time base their decisions on the need to curtail losses which will otherwise be incurred if part or all of the remaining part of the contract is not omitted.

(5) It shall be an offence under this Act for part of any contract to be varied by omission with the view to awarding it to another person other than a person selected through a competitive bidding process for the omitted parts.

### **Request for Information By The Commission**

136. Every Procuring Entity shall provide the Commission with such information as the Commission may require in writing, regarding procurement or concession engaged in by the Entity.

### **Statutory Audits**

**137. (1)** The Auditor-General shall conduct annual audits of the procurement activities of Entities and shall furnish copies of reports on the audits to the Commission.

(2) The Auditor-General or an independent Entity shall at the request of the Commission also carry out specific audits into the procurement activities of Entities and compliance by successful bidders with the procurement requirements of this Act and regulations made under this Act.

(3) The statutory audit of procurement activities may be relied upon by the Commission to institute measures to improve the procurement or concession process.

### **Offences Relating To Procurement**

**138. (1)** Any person who contravenes any provision of this Act commits an offence and a person convicted under this Act shall, upon summary conviction be liable to a fine or a term of imprisonment not exceeding two (2) years or to both.

(2) In addition to other offences under this Act, the following shall also constitute offences under this Act.

- (a) Entering or attempting to enter into a collusive agreement, whether enforceable or not, with any other bidder;
- (b) Directly or indirectly influencing in any manner or attempting to influence in any manner the procurement or concession process to obtain an unfair advantage in the award of a procurement contract;

### **Review of Threshold Levels**

**139.** The threshold levels specified in the Schedule shall be reviewed by the Commission by means of a Legislative Instrument as and when required.

### **Public Access**

**140.** The Executive Director of the Commission shall ensure that administrative rulings of the Complaints, Appeals and Review Panel and directives of the Commission that are of general application under this Act are promptly made available to the public.

### **Repeals and Amendments**

**141. (1)** By the enactment of this Act, the following laws and regulations are hereby repealed, amended or otherwise affected as set out in this section.

- (a) The following chapters of the Act adopting a new General Business Law are hereby repealed:
    - i. Chapter 2 - by the deletion of the following portion from subsection (2) of Section 2.1 of Chapter 2 of the Act Adopting A New General Business Law viz:
 

*“... nor to any person who operates under a concession previously or hereafter granted by the Liberian Government to the extent that such concession permits monopolization of any field of trade, commerce, business or industry.”*
    - iii. Chapter 8 - Importation of Cement is hereby repealed in its entirety.
  - (b) Chapter 80 of the Executive Law, Management and Disposals of Government Property is hereby repealed in its entirety.
  - (c) The Guidelines of the Liberia National Bidding Committee for Selection of Construction Contractors and Consulting Engineers/Architectural Firms is hereby repealed in its entirety.
  - (d) Articles IV (M), IV (N), (O), VI and X of Liberia Rubber Development Authority are hereby repealed.
  - (e) The Act to Reinforce the Powers of the National Bidding Committee created towards the development and upliftment of Liberian Construction Industry is hereby repealed in its entirety.
  - (f) Section 52.2 (e) of the Ministry of Rural Development Act is hereby repealed.
- (2) The following laws are hereby affected as follows:
- (a) Sub-Section 88.2 (5) of the Act to Amend the Public Authorities Law to create the Liberia Water and Sewer Corporation in respect of the Corporation’s capacity to grant concessions shall be exercised in accordance with the provisions of Part VI of this Act.

- (b) An Act Creating The National Investment Commission Repealing The Act Of Legislature Creating The Liberian Development Corporation, Transferring The Assets Of The Liberian Development Corporation To The National Investment Commission, And Transferring The Functions Of The Concession And The Investment Commission And The Secretariat Of The Said Commission To The National Investment Commission; Approved September 1979 - *Is hereby affected by the deletion of all matters relating to concessions from that Act except as permitted to be performed by the National Investment Commission under the provisions of Part VI of this Act.*
- (c) The Act Adopting A New Minerals And Mining Law Part 1, Title 23, Liberian Code Of Laws Revised; Approved April 2000 is affected as follows:
- i. Notwithstanding any provisions under that Act, its interpretation, operation and application in respect of concessions shall be subject to the provisions of Part VI of this Act.
  - ii. The entitlement or eligibility to mineral rights under sections 4.1 and 4.2 of chapter 4 of that Act to the extent that it leads to the grant of a mining concession shall be subject to the provisions of Part VI of this Act.
  - iii. The powers granted the Minister responsible for Mines, Lands and Energy under sections 21.2 and 21.3 of chapter 21 of that Act shall be subject to the provisions of this Act and shall only be exercised in consultation with the Commission and any regulation issued by the Minister referred to in that Act in respect of concessions shall, to the extent of any inconsistency with this Act be void.
  - iv. Any power granted any person, body or entity in respect of mining, exploration or the extraction of any natural resource shall be exercised in accordance with Part VI of this Act.
- (d) Chapter 51 of the Executive Law: The General Services Agency, Sections 51.2 (a), (b) and (c); 51.4, 51.5 and 51.6 are hereby affected by the deletion of all matters relating to the procurement, disposal and sales, supplies of assets

and materials of Government agencies and institutions, subject to the provisions of this Act.

- (e) Chapter 27 of the Executive Law: Ministry of Public Works, Section 27.2 subsections (a), (b) and (c) are hereby affected subject to the provisions of this Act in respect of all matters relating to the procurement of goods, works and services.
- (f) Section 4 (f), (g), (i) of the Act Creating the Forestry Development Authority is hereby affected subject to the provisions of this Act.

### **Transitional Provisions and Previous Acts**

**142.** (1) Notwithstanding the amendments, revocation and repeal of enactments stated in Section 141, any contracts, order, decisions or anything made or done by a body which, until the coming into force of this Act, was charged with the performance of any of the functions under this Act shall, be valid and continue to be in force as if it was made or done under this Act.

(2) Where in the view of the Commission the continued validity of any contract, order, decisions, or anything done or made by a body under subsection (1) above violates any law, order or decisions before the coming into force of this Act, the Commission may take the appropriate steps to rectify the inconsistency to the extent permissible and consistent with this Act.

(3) Any existing procurement procedures or regulations, including the Interim Public Procurement Policy and Procedures (IPPPP) of July 2004, Executive Order No. 3, followed by procuring entities shall become null and void after the coming into force of this Act.

### **Unfinished Business**

**143.** Notwithstanding the coming into force of this Act, Bid Committees or any Entity involved in an unfinished procurement or concession immediately before the coming into force of this Act shall, subject to the prior approval of the Commission continue through the completion of the unfinished procurement or concession.

### **Coming Into Force**

**144.** (1) Notwithstanding, the enactment of this Act by the National Transitional Legislative Assembly and the approval of the Act by the Chairman

of the National Transitional Government of Liberia, this Act shall become effective:

- a. On the expiration of the Accra Comprehensive Peace Accord (ACPA) and the Contract and Monopolies Commission (CMC) established under the ACPA ceases to exist, and;
- b. Concomitantly with the inauguration of an elected government as of January 2006.

(2) Upon the coming into force of this Act, it shall supersede any other law, regulations, guidelines, directives and such other instruments guiding public procurement and concessions and any such law, regulations, guidelines or instrument of any form found to be inconsistent with any provision of this Act shall, to the extent of the inconsistency be void.

## **SCHEDULE**

### **THRESHOLDS**

- 1. Contract awards shall be published when the estimated value of the contract is above:**
  - a. In the case of contracts for the procurement of goods, US\$25,000
  - b. In the case of contracts for the procurement of services, US\$10,000
  - c. In the case of contracts for the procurement of works, US\$50,000
  
- 2. Shopping Procedures shall be used when the estimated value of the procurement is below:**
  - a. In the case of contracts for the procurement of goods, US\$2,000
  - b. In the case of contracts for the procurement of services, US\$2,000
  - c. In the case of contracts for the procurement of works, US\$10,000
  
- 3. National Competitive Bidding shall be used when the estimated value of the procurement is below:**
  - a. In the case of contracts for the procurement of goods, US\$100,000
  - b. In the case of contracts for the procurement of services, US\$50,000

c. In the case of contracts for the procurement of works, US\$200,000

**4. International Competitive Bidding shall be held when the estimated value of the procurement exceeds:**

a. In the case of contracts for the procurement of goods, US\$100,000

b. In the case of contracts for the procurement of services, US\$50,000

c. In the case of contracts for the procurement of works, US\$200,000

**5. Approval of Contract Awards (values in US\$)**

The solicitation of Expressions of Interest is required when the estimated value of the consultants' services is US\$100,000.

<b>Type of Contact</b>	<b>Contract Value (Threshold)</b>	<b>Authority Approving Proposed Contract Award</b>
Goods	Less than US\$10,000	Head of Procuring Entity
	Over US\$10,000	Procurement Committee
Works / Technical Services	Less than US\$50,000	Head of Procuring Entity
	Over US\$50,000	Procurement Committee
Consulting Services	Less than \$10,000	Head of Procuring Entity
	Over \$10,000	Procurement Committee

**6. Contracts over \$150,000**

The Commission shall be notified of proposed contract awards over \$150,000 and the contract shall not be signed until at least fourteen (14) days after the date of the notice

**7. Contracts over US\$ 250,000**

The Ministry of Finance shall take part in negotiations of contracts over US\$ 250,000 for information purposes only.

**ANY LAW TO THE CONTRARY NOTWITHSTANDING**