

REPUBLIC OF SOUTH SUDAN

**SOUTH SUDAN PUBLIC PROCUREMENT AND
DISPOSAL OF ASSETS AUTHORITY**



PPDAA

Public Procurement &
Disposal of Assets Authority

**PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS
REGULATIONS, 2024**

LAWS OF SOUTH SUDAN

THE PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS REGULATIONS, 2024

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In exercise of the powers conferred by section 83 of the Public Procurement and Disposal of Assets Act, 2018; the Minister, on the recommendation of the Public Procurement and Disposal of Assets Authority and the approval of Parliament, hereby issues the following:

CHAPTER I PRELIMINARY PROVISIONS

1. Title and Commencement

These Regulations may be cited as the Public Procurement and Disposal of Assets Regulations, 2024 and shall come into force upon its signature by the Minister

2. Interpretation

In these Regulations: -

“**Act**” means the Public Procurement and Disposal of Assets Act, 2018;

“**Accounting Officer**” means a person designated as part of his/her official duties in accordance with Public Financial Management and Accountability Act 2011 (as amended);

“**Applicant**” means a person or group submitting an application to pre-qualify or for an expression of interest;

“**Authority**” means the Public Procurement and Disposal of Assets Regulatory Authority of South Sudan;

“**Bidder**” means a physical person or legal entity that has validly submitted a Bid in response to a Bid Notice, or an application to pre-qualify or an expression of interest, if applicable;

“**Circular resolution**” means issuance of the Procurement Committee’s decision without a meeting, by circulation of the relevant papers among members of the Procurement Committee for approval, and the expression of the views of the majority in writing;

“**Closed framework agreement**” means an agreement with specified terms and conditions with an agreed price;

“**Common use items**” means goods and services that are required continuously and repeatedly over a set period of time and are common to more than one procuring entity and are subject to common procurement;

“**Evaluation Committee**” means the committee provided for under the Act;

“**In writing**” means, in accordance with Section 37 of the Act, the recording of information in a form that preserves the content of the information, and is accessible for subsequent use;

“**Open framework agreement**” means an agreement with specified terms and conditions without an agreed price;

“**Performance Securing Declaration**” means a declaration signed by a provider by which the provider agrees to be debarred for a specified period of time determined by the Authority if the provider violates its contractual obligations under a procurement contract;

“Procurement Committee” means the committee provided for under the Act;

“Procuring Entity” means a Government Institution designated to engage in Procurement in accordance with the Act;

“Procurement Unit” means a unit established by a Procuring Entity in accordance with the Act;

“Prompt payment discount” means a provision in a procurement contract that enables the procuring entity to receive a discount in return for payment earlier than required by the contract; and

“Provider” means a natural person or legal entity that is a potential party or any party to the Procurement Process with the Procuring Entity;

CHAPTER II PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS AUTHORITY

3. Policy Functions

The Authority in the performance of its policy functions shall:

- (1) Ensure that public procurement and disposal of Assets policy, systems and procedures are consistent and integrated with other relevant Government policies, systems and procedures, including those for:
 - (a) expenditure management;
 - (b) private sector development and the development of South Sudan providers and other target groups, including Small and Medium Enterprises, women, youth, elderly and disabled, and other sustainable development goals of the country, including environmental and social welfare;
 - (c) public private partnerships;
 - (d) anti-corruption initiatives;
 - (e) decentralization of powers; and
 - (f) the use of information and communications technology.
- (2) Develop procedures and mechanisms to ensure the effective and timely solicitation of views and opinions of interested parties in the development of procurement and disposal policies, systems, procedures and standard documents.

4. Regulatory Functions

- (1) The Authority in the performance of its regulatory functions shall:
 - (a) keep under review, and propose to the Government improvements to the Public Procurement and Disposal of Assets law in accordance with international and regional best practices;
 - (b) provide opinions to procuring entities on the application of laws on public procurement and disposal of Assets, with a view to fostering harmonized interpretation and application of the Act and this Regulations;

- (c) develop standard bidding documents, pre-qualification documents, standard forms of contract and such other standard documents and forms as the Authority may deem necessary or useful for the mandatory use by every procuring entity;
 - (d) ensure that the standard bidding documents are easily available to all procuring entities by posting them on its website or by delivery to the offices of such entities;
 - (e) notify all procuring entities of any amendments to, or change of any standard bidding document as soon as these are done;
 - (f) date all public procurement circulars and sequentially number them; and
 - (g) issue instructions to procuring entities relating to fluctuations of the original contract price for short and long- term contracts.
- (2) All procuring entities shall use the standard bidding document issued by the Authority for a particular kind of procurement, and where no such document has been issued shall seek approval to use a bidding document developed by that procuring entity until the Authority issues the relevant bidding document.
- (3) Any amendment to or change of a bidding document that has not been notified to a procuring entity shall not take effect until the notification has been given.
- (4) In revising public procurement laws, and developing or revising circulars, standard documents or similar documents the Authority shall:
- (a) consult with interested parties in both the public and private sectors; and
 - (b) liaise with the Ministry of Justice regarding the introduction or issuance of all legal documents, including general conditions of contract and contract forms in standard bidding documents.
- (5) Every Procuring Entity shall, before terminating any bidding proceeding, seek the approval of the Authority and where such approval has been given, the procuring entity shall notify all participating bidders of the termination of the bidding proceedings and release any bid securities obtained from the bidders.

5. Monitoring Functions

- (1) The Authority shall ensure that public procurement and disposal of assets proceedings are subject to regular monitoring for compliance with Public Procurement and Disposal of Assets laws, these Regulations and guidelines.
- (2) In conducting its monitoring functions, the Authority may:
- (a) request any person or body to provide it with such information relating to public procurement and disposal of assets as it may require in the performance of its functions;
 - (b) co-operate and work closely with other bodies responsible for oversight; and
 - (c) on the recommendation of the inspectorate unit, refer cases to other public bodies for action.
- (3) The Authority may participate in any mechanisms or programmes, as the case may be, for establishing:
- (a) systems for sharing information with other public oversight bodies, including the Anti-Corruption Commission;
 - (b) common methodologies or standards for investigations and the collection of evidence;

- (c) joint teams to conduct oversight functions;
- (d) joint capacity building training programmes relating to oversight functions;
- (e) scheduled work plans to avoid the duplication of effort or overlapping investigations; or
- (f) any other mechanisms or programmes which facilitates the conduct of oversight functions.

- (4) The Authority shall appoint inspectors for the purpose of monitoring the performance of procuring entities.
- (5) An appointed inspector shall have the power to:
- (a) carry out periodic inspections or audits of procurements and disposal of assets and shall after every inspection or audit make a report to the Executive Director of the Authority and provide a copy to the procuring entity;
 - (b) require any Accounting Officer, officer or employee of a procuring entity concerned to produce any records or other documents in their possession or under their control, relating to the procurement or disposal under inspection or audit, and to furnish to the inspector such information as the inspector may consider necessary to ascertain the true position of the procurement and disposal of assets under inspection;
 - (c) seek any explanation or receive any evidence relating to the procurement or disposal of assets under inspection; or
 - (d) inspect records of the procuring entity, if the inspector is of the opinion that it is desirable to do so, in order to ascertain the nature of any procurement or disposal of asset transaction carried out by the procuring entity or contractual arrangement between the procuring entity and any provider.

6. Capacity Building and Professionalization Functions

- (1) The Authority shall provide or coordinate capacity building and professional development, and shall develop standards, competence levels and certification requirements for staff involved in public procurement, in consultation with appropriate bodies responsible for public sector training and development.
- (2) In developing standards, competence levels and certification requirements, the Authority shall take into account:
- (a) the differing types, volumes and complexity of procurement managed by different procuring entities;
 - (b) the needs of small procuring entities, where it may not be necessary to employ a procurement officer;
 - (c) the skills needed in Government Ministries, States, Counties and Parastatal Bodies, including Local Authorities;
 - (d) the differing skills required by those involved in conducting, managing, authorizing and monitoring procurement and disposal of assets;
 - (e) requirements for different levels of public procurement staff and requirements for career progression for procurement officers; and
 - (f) The need for certification to ensure the competence and professionalism of officials acting in procurement and related supply-chain management functions, upon induction into those functions, for the purposes of maintaining and refreshing skill levels, and for obtaining promotion in the procurement function.

7. Information Management and Dissemination Function

- (1) The Authority shall, with respect to developing and implementing systems for the publication and management of public procurement and disposal of assets information:
 - (a) take into account the most efficient and economic use of media, including electronic media;
 - (b) ensure that systems are accessible to intended users; and
 - (c) consider the ease of maintaining and updating systems.
- (2) The Authority shall work with other government bodies involved with e-government to ensure that systems for publication and management of public procurement and disposal of assets information system is properly integrated and harmonized with other e-government systems.

8. Financial Threshold

- (1) The Authority shall recommend to the Minister the appropriate levels of financial thresholds for use of each procurement method, and for exclusive preference to South Sudan firms.
- (2) The Authority shall review the financial thresholds set out in the Regulations and may recommend to the Minister revision of them by guideline.
- (3) Notwithstanding provisions of sub-regulation (2) of this regulation, the financial thresholds set out in the First Schedule shall apply to all procurements under these Regulations.
- (4) The Authority shall circulate any revised thresholds to all procuring entities; and make the revised thresholds publicly available by publication on the central web portal of the procurement and disposal of assets system and in any media of wide circulation in South Sudan and by any other appropriate means.
- (5) In recommending to the Minister for review and revision of the financial thresholds, the Authority shall:
 - (a) consult with relevant authorities, including Government budget authorities; and
 - (b) take into account all relevant factors, including the need to safeguard public funds, the need for efficiency in the procurement and disposal of assets processes and the capacity of procuring entities and approvals authorities to handle procurement and disposal of assets processes.

9. Reporting

- (1) A procuring entity shall submit quarterly procurement and disposal of assets reports to the Authority, or at such other times that the Authority may require, in the format provided by the Authority through a guideline, to facilitate the establishment and maintenance of data and information base on public procurement and disposal of assets and to assist in the monitoring of public procurement and disposal of assets, and development of public procurement and disposal of assets policies.
- (2) The Authority shall issue public procurement and disposal of assets circulars relating to reports required by it, which circulars may, amongst other things, specify the:
 - (a) types of data and information required;
 - (b) format for reports;

- (c) means of submission, including electronic and online means as may be prescribed; and
- (d) frequency and submission deadlines for reports.

- (3) The Authority shall ensure that reporting requirements imposed on procuring entities promote efficiency and value for money.

CHAPTER III PROCURING ENTITIES

10. Procurement Committees

- (1) The Procurement Committee shall be composed of five members, to be appointed by the Accounting Officer, and shall be chaired by the head of administration and finance of the procuring entity.
- (2) A member of a Procurement Committee shall, on the expiration of the period for which the member was appointed, continue to hold office until another member is appointed to succeed that member, except that such period shall not exceed a period of six months.
- (3) The seat of a member of a Procurement Committee shall become vacant:
 - (a) if the member is absent from three consecutive meetings of the Committee, of which the member has had notice, without the prior written approval of the Chairperson of the Committee;
 - (b) upon the expiry of one month's notice of the member's intention to resign from the Committee, given by the member in writing to the Accounting Officer with a copy to the Chairperson of the Committee;
 - (c) if the member is convicted of an offence under the Act or any other written law and sentenced to imprisonment for a term of six months or more;
 - (d) if the member becomes mentally or physically incapable of performing the duties of a committee; or
 - (e) upon the death of the member.
- (4) A member of a Procurement Committee may resign from the Committee by giving not less than one-month notice in writing to the Accounting Officer, with a copy to the Chairperson of the Committee.
- (5) The Accounting officer shall, at any time, terminate the appointment of a member of a Procurement Committee who has been guilty of:
 - (a) any misconduct, default or breach of trust in the discharge of the member duties; or
 - (b) an offence of such a nature that calls into question the member's professional standing and the reputation of the Procurement Committee on which he or she serves, and warrants that the appointment of such member be terminated.
- (6) The Accounting Officer shall, where the seat of a member of a Procurement Committee becomes vacant, appoint another member in place of the member who vacates the position, and such member shall hold the position for the remainder of the term.

- (7) No legal action or other proceeding shall be instituted against a member of a Procurement Committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise of performance, of any of the powers, functions or duties conferred under the Act or these Regulations.

11. Proceeding of Procurement Committees

- (1) A Procurement Committee shall:
- (a) regulate its own procedure and shall comply with these Regulations when dealing with matters of procurement and disposal of assets at a meeting of the Committee; and
 - (b) meet for the transaction of business, as and when the business of the Committee requires for the timely review and authorization of the procurement and disposal of assets requirements of a procuring entity; and at such places and times as the Chairperson, in consultation with the secretary of the Procurement Committee, may determine.
- (2) The Chairperson of a Procurement Committee may, upon giving notice of not less than three days, call a meeting of the Procurement Committee and shall call a special meeting upon receiving a written request from at least two members of the Committee.
- (3) If the urgency of any matter does not permit the giving of the notice required under sub-regulation (2) of this regulation, a special meeting may be called, by the Chairperson of a Procurement Committee, upon giving a shorter notice.
- (4) The quorum at a meeting of a Procurement Committee shall be three members of the Committee of the members holding office at that time, except that when a member has declared an interest in an agenda item or in any matter before the Procurement Committee, the member in question shall not be counted for the purpose of forming a quorum in relation to the item or matter in question.
- (5) The Chairperson of a Procurement Committee shall preside at meetings of a Procurement Committee at which he or she is present, and in the absence of the Chairperson from the meeting, the members present shall appoint one of their members to preside.
- (6) A Procurement Committee shall consider each submission made, based on the information and supporting documents contained in the submission.
- (7) A Procurement Committee may approve or reject any submission, but shall not vary a recommendation submitted, particularly a contract award recommendation.
- (8) Where a submission is rejected, the Procurement Committee shall state in writing its reasons for rejecting the submission, except that a rejected submission may be re-submitted following consideration of the reasons given and correcting the submission taking into account the reasons for the rejection.
- (9) A Procurement Committee may give a conditional approval to a submission where there is a minor issue to be resolved.

- (10) A decision of a Procurement Committee on any matter shall be by a majority of those in attendance.
- (11) A member of a Procurement Committee may disclose, at a meeting of the Committee, any information that a member possesses as a result of that member's appointment or position in any other public office, to assist the Committee in its deliberations.
- (12) The validity of any proceedings, act or decision of any Procurement Committee shall not be affected by any vacancy in the membership of the Committee or by any defect in the appointment of any member, or by reason that any person not entitled so to do, take part in the proceedings.
- (13) A Procurement Committee shall cause minutes to be kept of the proceedings of every meeting of the Committee.

12. Approval through Circular Resolution

- (1) A decision of the Procurement Committee may be made by the Procurement Committee without convening a meeting through a circular resolution pursuant to the guidelines issued by the Authority.
- (2) Notwithstanding sub-regulation (1), any member of a Procurement Committee is entitled to require the decision be deferred and the subject matter be considered at a meeting of the Procurement Committee.
- (3) Half of the members of the Procurement Committee shall form a quorum of the decision of the Procurement Committee through circular resolution.
- (4) All decisions of the Procurement Committee made through circular resolution shall be of the same force, or effect as a decision made at a duly constituted meeting of a Procurement Committee, and shall be incorporated in the minutes of the next succeeding meeting of a Procurement Committee.

13. Advisers and Observers

- (1) A Procurement Committee may co-opt advisers to assist it in the discharge of its functions. Such advisers may include chairpersons or members of the Evaluation Committee for a particular bid.
- (2) An adviser co-opted by a Procurement Committee shall not vote on any submission and shall only attend the part of the meeting on which their advice is required.
- (3) The Procurement Committee may invite observers, including representatives of the Authority, to attend a meeting of the Procurement Committee.
- (4) The Procurement Committee shall ensure that the attendance of advisers and observers shall be recorded in the minutes of the meeting.

14. Disclosure of Interest by Members of Procurement Committees

- (1) Where a member of a Procurement Committee or a close relative of a member has, or intends to acquire, a direct or indirect personal interest in any agenda item or specific matter requiring the Procurement Committee consideration and decision, that member shall:
 - (a) disclose such interest, as soon as possible after receiving the agenda of the meeting, or on notification of a matter being brought to the attention of the Procurement Committee; and
 - (b) not be present at or participate in the deliberations or decision-making process of the Procurement Committee in relation to the agenda item or the matter in question.
- (2) A disclosure of interest made under this Regulation shall be recorded in the minutes of the meeting at which it is made or to which it relates.

15. Disclosure of Information

- (1) The Procuring Entity shall keep proper records relating to the business of the Procurement Committee and Procurement Unit.
- (2) A Procurement Committee shall cause minutes to be kept of the proceedings of every meeting of the Procurement Committee, which shall record at least:
 - (a) The members present at the meeting;
 - (b) any advisers or observers attending the meeting;
 - (c) any disclosure of interest made at the meeting;
 - (d) all submissions considered and whether the submission was approved or rejected;
 - (e) the reasons for the rejection of any submission and any conditions to approved submissions;
 - (f) the key issues discussed in relation to each submission, including any advice given or disagreement between the members; and
 - (g) All decisions made by the Procurement Committee through circular resolution, including any advice or comments given with respect to the applicability of approval through circular resolution for each approved procurement or disposal of assets using that approach.
- (3) The chairperson of the Procurement Committee shall ensure that minutes and decisions of the Procurement Committee are available and distributed to the members within two working days of the Procurement Committee meeting.
- (4) A person shall not disclose to any third party not authorized to have access to the information as part of their official duties the contents of any document, communication or information whatsoever, which relates to, or which has come to the knowledge of the person in the course of that person's duties under the Act or these Regulations. Disclosure of documents and information outside those parameters is subject to the prior written consent of the Accounting Officer.
- (5) A person who contravenes sub-regulation (4) of this regulation commits an offence and is liable, upon conviction, to a fine payable in South Sudan Pounds not exceeding an amount equivalent to 3,000 USD (three thousand United States Dollars) or to imprisonment for a term not exceeding two years, or both.

- (6) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of sub-regulation (4) of this regulation, unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine payable in South Sudan Pounds not exceeding an amount equivalent to 3,000 USD (three thousand United States Dollars) or to imprisonment for a term not exceeding two years, or both.

16. Staff of the Procurement Unit

- (1) The Authority, in consultation with the Accounting Officer shall appoint or designate such public officers as may be necessary to facilitate the performance of the functions of the Procurement Unit.
- (2) The Procurement Unit shall be headed by a person with appropriate academic and professional qualifications and experience in procurement and disposal of assets functions.
- (3) The public officers appointed under sub-regulation (1) of this regulation, shall constitute a secretariat to facilitate and coordinate the performance of the functions of the Procurement Committee.
- (4) The Authority shall, when determining staffing level of a Procurement Unit, be guided by the volume and complexity of procurement and Disposal of assets being undertaken by the Procuring Entity.

17. Bulk Procurement

- (1) The Minister, on recommendation by the Authority, may designate any entity to carry out bulk procurement or establish framework agreements, on behalf of other procuring entities such as Central Government, States, Administrative Areas, Counties, Statutory Bodies, and Commissions.
- (2) The Minister shall designate by statutory instrument such procuring entity, and the types of goods, services and works, including thresholds if applicable, to be performed under such directive.

18. Delegation of Procurement Function

The Accounting Officer may delegate his or her functions or the functions of Procurement Committee or Procurement Unit as provided for in these Regulations.

19. Delegation of Accounting Officers Own Functions

- (1) An Accounting Officer may delegate in writing his or her functions to a member of staff of the procuring entity except for the establishment of and appointment of members of a Procurement Committee.
- (2) Where the functions of Accounting Officer of a procuring entity are delegated to a member of Procurement Committee or a staff of a Procurement Unit, such member or staff, as the case

may be, shall not be involved in the activities of the respective Procurement Committee or Procurement Unit while exercising the delegated authority.

- (3) An Accounting Officer shall not appoint a person to a Procurement Committee if he delegates to that person his functions on a regular basis.

20. Delegations of the Functions of Procurement Committee or Unit

- (1) An Accounting Officer may delegate any of the procurement or disposal of assets functions of the Procurement Committee or Procurement Unit to a sub-division of the procuring entity subject to any value limitations or other exceptions where:
 - (a) the procuring entity has a large procurement or disposal of assets workload which would be more effectively managed by the sub-division;
 - (b) the procuring entity has a specialized procurement or disposal of assets workload which would be more effectively managed by the sub-division;
 - (c) the sub-division is geographically distant from the head office of the procuring entity and a delegation would reduce practical and logistical problems or reduce costs;
 - (d) the sub-division operates in practical terms as an independent entity and would operate more effectively under delegated authority; and
 - (e) any other reasonable circumstances arise.
- (2) Where an Accounting Officer delegates to a sub-division, he or she shall:
 - (a) appoint a delegated Procurement Committee for the respective sub-division;
 - (b) cause to be established a delegated Procurement Unit for the respective sub-division; and
 - (c) seek approval of the Authority to effect such a delegation.
- (3) When procurement or disposal of assets functions are delegated to a sub-division of the procuring entity, the Procurement Committee and Procurement Unit of the procuring entity shall:
 - (a) ensure the process is in compliance to the provisions of the Act and remain responsible for work and decisions of the bodies to whom the procurement or disposal of assets is delegated;
 - (b) submit consolidated reports covering all the procurement or disposal of assets activities of the procuring entity to the Authority or any other body;
 - (c) liaise with the Authority or any other body on behalf of the body to whom the procurement or disposal of assets functions are delegated; and
 - (d) advise the body to whom the procurement of disposal of assets functions are delegated on all matters relating to public procurement and disposal of assets.
- (4) A delegated Procurement Committee and Procurement Unit shall:
 - (a) submit such reports to the main Procurement Committee of the procuring entity as may be required;
 - (b) give a copy of the minutes of all its meetings to the main Procurement Committee of the procuring entity;
 - (c) seek advice from the main Procurement Committee and Procurement Unit on all matters relating to procurement and disposal of assets; and
 - (d) request the main Procurement Committee and Procurement Unit to act on its behalf on matters requiring liaison with the Authority or any other body.

- (5) An Accounting Officer may revoke the delegation of the authority through written instructions to the holder of the delegated function in the case:
 - (a) the holder of the delegated functions is not complying with the Act, these Regulations or guidelines made under the Act and conditions of the delegation;
 - (b) the circumstances prompting the delegation have changed;
 - (c) a malpractice is alleged, proved or suspected; or
 - (d) of any other justifiable reason.

21. Contracting Out to Procurement Agent

- (1) A procuring entity may procure the services of a procurement agent to undertake any or all of procurement or disposal of assets functions which would otherwise be carried out by that entity in case of heavy procurement and disposal of assets workload, or limited staff with appropriate knowledge and skills required to undertake the procurement in question.
- (2) The procurement agent shall, on behalf of the procuring entity, comply with the procurement procedures prescribed in these Regulations including the use of standard bidding documents and guidelines issued by the Authority.
- (3) An agreement for contracting out shall be prepared and confirmed in writing and signed by the Accounting Officer of a procuring entity and the procurement agent or their duly authorized representatives. A copy of the signed agreement shall be furnished to the Authority.
- (4) The functions of the Accounting Officer and the Procurement Committee shall not be contracted out to a procurement agent.
- (5) The Authority shall issue guidelines for appointment of procurement agents by procuring entities.

CHAPTER IV METHODS OF PROCUREMENT

22. Procurement Methods

- (1) Procuring entities shall use one of the procurement methods in conducting procurement activities in accordance with the Act.
- (2) The conduct of public procurement under a selected method of procurement shall be done in accordance with the public procurement and disposal of assets planning process, contract award process and contract management process as specified under these Regulations.
- (3) A procuring entity shall not use any alternative procurement method unless such method has been approved by the Authority in advance of its use.

23. Open Competitive Bidding

- (1) A procuring entity shall use open competitive bidding for all Public procurement of goods, works and non-consulting services in accordance with provisions of these Regulations. Any other method of procurement may be used only in the circumstances permitted by the Act.
- (2) In international competitive bidding, a procuring entity shall, through a notice advertised nationally and internationally, invite bidders regardless of their nationality, to submit priced bids for procurement of goods, works or services.
- (3) In national competitive bidding, a procuring entity shall, through a notice advertised only in the Republic of South Sudan, invite bidders regardless of their nationality, to submit priced bids for procurement of goods, works or services. The use of this method shall apply where the estimated cost of the goods, works or services does not exceed the threshold prescribed in the First Schedule of these Regulations.
- (4) Notwithstanding sub-regulation (3) of this regulation, a Procurement Committee may restrict the participation to bidders who are nationals of South Sudan in accordance with provisions of these Regulations and where the estimated cost of the goods, works or services does not exceed the threshold prescribed in the First Schedule of these Regulations.

24. Request for Proposals for Consultancy Services

Procuring entity shall use the request for proposals method in accordance with the Act for the procurement of all consulting services in accordance with the procedures provided in these Regulations.

25. Selective Bidding

Procuring entity may use selective bidding for goods, works or non-consulting services in accordance with provisions of the Act and these Regulations.

26. Request for Quotations

Procuring entity may use request for quotations as specified in the Act and under the procedures provided in these Regulations where the estimated value of the goods, works or services does not exceed the threshold specified in the First Schedule of these Regulations.

27. Single-Source Procurements

- (1) A procuring entity may use single-source procurement method as specified in the provisions of the Act and these Regulations.
- (2) Resort to single-source procurement on the grounds referred to in the Act is available only if the circumstances giving rise to the urgency and shall not be foreseen by the procuring entity and not caused by dilatory conduct on the part of the procuring entity.

28. Low Value Procurement

The low-value procurement method may be applied to procurement within the value limits specified in the First Schedule and applying the procedure in accordance with these Regulations.

CHAPTER V
PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS PLANNING

29. Annual Procurement and Disposal of Assets Planning and Application

- (1) A Procurement Unit, in consultation with User Departments, shall prepare an annual procurement and disposal of assets plan for the procuring entity, for each financial year, containing the information required in accordance with the provisions of this regulation.
- (2) An annual procurement and disposal of assets planning shall be integrated with applicable budget processes and based on indicative or approved budgets, as appropriate.
- (3) Procuring entities shall revise or update their procurement and disposal of assets plans, as appropriate, after the approval of the budget for that financial year or during the course of each financial year.
- (4) A procuring entity shall publish, in at least one newspaper of wide readership, post on the Authority's central web portal of the procurement and disposal of assets system, procuring entity's website and on the procuring entity's notice board, all information relating to the annual procurement and disposal of assets plan, including the following:
 - (a) title and quantity of the bid;
 - (b) procurement or the disposal of assets method to be applied, in accordance with the law;
 - (c) source of the funding;
 - (d) expected publication and execution dates; and
 - (e) whether the award that is the subject of the procurement and disposal of assets will or may be divided into lots.
- (5) The Authority shall issue a standard format for procurement and disposal of assets plans for use by all procuring entities.

30. Contents of Annual Public Procurement and Disposal of Assets Plan

An annual procurement and disposal of assets plan for each procuring entity shall include the following:

- (a) a detailed breakdown of the goods, works and services required, or assets to be disposed, their priorities and an indication as to whether it will be necessary to carry out a prior study for bids, particularly for works;
- (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
- (c) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common use items;
- (d) an estimate of the value of each package of goods, works and services required and details of the budget available and sources of funding;
- (e) an indication of the anticipated procurement or disposal of assets method for each procurement requirement, including any need for pre-qualification, and the anticipated time

for the complete procurement cycle, taking into account the applicable approval requirements;

- (f) indicating whether the procurement process for goods, works or services will be managed by the Procurement Unit, any special agency designated to procure common use items or any other body;
- (g) an indication of the resources available for managing the procurement and disposal of assets workload;
- (h) an indication of local or regional preferences or reservations for certain types of bid, and preferences and reservations for small or medium-sized businesses, women-led or owned businesses, and businesses led or owned by youth, elderly, or disabled, if applicable;
- (i) specifying whether there is a requirement for a letter of no-objection from an external intergovernmental or bilateral aid agency for an award of contract;
- (j) specifying planning schedules under which different procurement and disposal of assets methods shall be undertaken;
- (k) specifying schedules for the execution of contracts; and
- (l) details of any committed or planned procurement expenditure under existing multi-year contracts.

31. Aggregation of Public Procurement and Disposal of Assets Requirements

- (1) A procuring entity shall aggregate procurement and disposal of assets requirements, where appropriate, in order to achieve economies of scale.
- (2) In deciding where aggregation is appropriate, a Procurement Unit shall consider all relevant factors including: -
 - (a) which items are of a similar nature and likely to attract the same bidders;
 - (b) which items will be ready for bidding at the same time and when delivery, implementation or completion is required;
 - (c) the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the items required;
 - (d) the need to apply any applicable measures to promote the participation of national providers or other target groups;
 - (e) which items will be subject to the same bidding requirements and conditions of contract; and
 - (f) the potential to realize savings in time, transaction costs or facilitate contracts management by the procuring entity.

32. Division of Public Procurement and Disposal of Assets into Lots

- (1) Notwithstanding the need for aggregation of procurement and disposal of assets requirements, procuring entities may divide a procurement or disposal of assets requirements, which could be awarded as a single contract, into two or more lots, all of which are to be awarded in the same procurement or disposal of assets proceeding, where it is anticipated that splitting the award into lots may result in the best overall value for the procuring entity.
- (2) The division of a requirement into a package of separate lots is permitted, provided that the awards are made in a single procurement or disposal of assets proceeding, where it is likely to increase the number of responsive bids by enabling the participation of:
 - (a) bidders who are able to bid for some, but not all, types of item;

- (b) small providers, or other target groups, who would not be qualified to bid for the complete package as a single contract; or,
- (c) enable increased efficiency and timeliness in fulfilment of the procurement requirement.

(3) A requirement shall not be divided into lots:

- (a) for the sole purpose of avoiding competitive methods;
- (b) where the award of several separate contracts would create problems of compatibility or inter-changeability between items purchased as separate lots;
- (c) where the award of several separate contracts would invalidate or otherwise restrict any provider's warranty or liability; or
- (d) where the award of several separate contracts would increase the costs of servicing maintenance or similar requirements.

(4) Where a requirement is divided into lots, which may result in separate contracts, the estimation of the value of the procurement, including for determining the procurement or disposal of assets method to be used, shall be based on the estimated total value of all the lots.

(5) Where a requirement which could be procured or disposed as a single contract is divided into lots, the procuring entity shall:

- (a) permit bidders to bid for a single lot, any combination of lots or all lots; and
- (b) demonstrate, prior to contract award, that the recommended contract award or combination of contract awards offers the best overall value for the procuring entity.

(6) Division of a procurement award into lots is only permissible if such a possibility was disclosed in the bid notice and bidding documents. In such a case, the procuring entity shall indicate, in the bid notice, whether bids may be submitted for one, for several or for all of the lots. Where a procuring entity decides to have the possibility of dividing a procurement award into lots, it shall ensure that the bidding documents specify the nature of each lot and modalities for awarding the bid.

(7) In the cases where the bidders are allowed to submit bids for many or all parts of the bid, the procuring entity may restrict the number of parts that may be awarded to the same bidder, and, if there is such a limit, this must be stated in the bidding documents. Nevertheless, if the bidding documents foresee such a possibility, the procuring entity may award all the parts or the number of the restricted parts to one bidder if that bidder submits the best bids.

33. Estimating Value of Procurement

(1) When preparing an estimation of cost for any procurement transaction, the following factors shall be taken into consideration:

- (a) The published price lists of providers;
- (b) Data on and comparison with the historical development of the prices and previous similar purchase transactions made by the procuring entity or by any other entity;
- (c) Unit price analysis;
- (d) Cost elements as provided under these Regulations to the extent relevant; and
- (e) Such other factors as may be relevant to estimating the price of the procurement, depending upon the nature of the procurement, including:
 - i. Whether the scope of work, goods or services is sufficiently defined to enable an accurate and reliable price estimate;

- ii. Whether the items being procured are standard, commercially available items, or have to be produced specifically, to meet the requirements of the procuring entity;
- iii. The degree of competitiveness that may be expected in the procurement proceeding;
- iv. After sale service and warranty obligations;
- v. Reasonable overhead and profit;
- vi. Whether the procurement contract shall include a price revision or adjustment clause; and
- vii. Time period for performance of the contract.

(2) The cost elements shall include the following:

- (a) Materials cost;
- (b) Labor cost;
- (c) Other direct cost, including equipment, transportation, information technology and others;
- (d) Fees, taxes, insurance and any other expenses related to the procurement transaction; and
- (e) For the purposes of applying monetary thresholds:
 - i. all the payments that shall be due under the contract from the procuring entity shall be taken into account;
 - ii. for a rental or lease contract, the price estimate should be based on the total amount of payments due under the term of the rental or lease contract, until its expiry;
 - iii. in the case of contracts for procurement of goods or services that occur at regular intervals, the price estimation shall be based on the total actual value of such contracts during the preceding twelve months or fiscal year, adding an adjustment to reflect changes in price expected to take place during the contract award period;
 - iv. Price estimates shall include, to the extent foreseen in the contract, options to extend the contract for additional quantities and renewals;
 - v. in estimating the value of a contract concluded for an indefinite period of time, or that is subject to renewal after the expiry of a fixed term, reference may be made to the actual value of contracts of a similar nature that were concluded in the preceding budget or calendar year or other reference term, subject to adjustment to reflect any expected changes in the required quantities; and
 - vi. when a procurement is divided into lots, the price estimate for the procurement shall be based on the combined value of all of the lots.

(3) For estimating the price for goods, including specialized goods such as pharmaceuticals, textbooks, non-consultancy services, and very small simple works, the main methodology shall rely on data collection for the continuation, operation and maintenance of structured data base of prices largely based on the recorded prices of public procurement bid prices, refined with trend analysis tools, and price adjustment tools. In addition to this, for goods, the procuring entity shall carry out market research to ascertain prices of the goods to be procured in the domestic and international market.

(4) The Procurement Unit may, in large-sized or complicated procurement transactions, or in the case of civil work contracting, where reliance cannot be placed primarily or solely on data collection of unit prices, make an estimation of the costs with the assistance of technical experts.

- (5) Estimating the value of a framework agreement shall take account of the estimated total amount, including any form of option, any or all lots that may be awarded, any renewals of the contract, and the maximum estimated value, net of taxes, of all the contracts envisaged for the total term of a framework agreement.
- (6) After the preparation of cost estimate under this Regulation, it shall be examined by a technician or group of technicians, one level higher in rank than the technician who has prepared it. If there are mistakes, they shall be corrected.
- (7) If there is no higher-level technician than the technician who prepared cost estimate in the procuring entity, the Accounting Officer shall make other arrangements, including hire of an individual consultant, to examine such a cost estimate.
- (8) The Procurement Unit shall document the price estimation process and findings.
- (9) To assist procuring entities in the preparation of their estimates, the Authority shall prepare guidelines on the collection and storage of historical prices obtained from submitted bids.

34. Requisition and Authorization

- (1) All procurement requirements shall be documented by the user department, using procurement requisition form in the format issued by the Authority, which shall include:
 - (a) a statement of requirements, in accordance with these Regulations, as appropriate;
 - (b) the estimated value of the goods, works or services; and
 - (c) details of the funds budgeted for the requirement, including any funds from future budgets for multi-year contracts.
- (2) In preparing the statement of requirements, the user department shall ensure that it seeks any technical advice that may be needed, where required. Such technical advice may, if necessary, be sought from other procuring entities or, if not available in government, through the engagement of consultancy services in accordance with the Act and these Regulations.
- (3) In estimating the value of the goods, works or services, the user department shall ensure that the estimate is determined in accordance with the provisions of these Regulations.
- (4) The requisition shall be approved by the Accounting Officer or by an officer or officers designated by the Accounting Officer to perform this function prior to the initiation of procurement or disposal of assets proceedings.
- (5) The approval of requisitions shall include confirmation of the:
 - (a) need for the items listed and authority to proceed with the procurement; and
 - (b) availability of funds for the procurement.
- (6) Approved requisitions shall be submitted to the Procurement Unit of the procuring entity to initiate procurement proceedings.

35. Confirmation of Funds

- (1) The Accounting Officer shall ensure that adequate funds are budgeted prior to initiating procurement proceedings, taking into account all costs involved in the procurement.
- (2) The costs involved may, in addition to the total contract price, include the following:
 - (a) contingencies, including any anticipated contract variations, exchange rate fluctuations or allowance for price adjustment;
 - (b) other costs relating to the successful delivery of a procurement requirement and for which the procuring entity will be liable, such as freight, insurance, customs clearance, inland delivery, import taxes or duties, inspection, installation or any costs relating to service or maintenance agreements;
 - (c) costs relating to facilities, services or resources to be provided by the procuring entity, such as office space or communication facilities for consultants or counterpart staff; or
 - (d) the cost of any linked contract, which is necessary for the successful implementation of the procurement, such as a contract for engineering supervision of a construction contract.
- (3) A procuring entity shall also ensure that adequate funds are available for managing the procurement proceedings, including any funds required for publication of notices.
- (4) Where a procuring entity wishes to initiate procurement proceedings for a multi-year contract, which commit the procuring entity to make payments in subsequent financial years, the procuring entity shall ensure that funds for the current financial year are budgeted and for future financial years are included in budgets for subsequent financial years.

36. Statement of Requirements for Goods and Non-Consultancy Services

- (1) Every requisition for the procurement of goods or non-consultancy services shall be accompanied by a complete, precise and unambiguous description of the goods or services required, in the form of a statement of requirements.
- (2) A statement of requirements shall include, where appropriate:
 - (a) a list of the goods or services and the quantities required, including any incidental services or works, such as delivery, installation, commissioning, maintenance, repair, user training or the provisions of after-sales services;
 - (b) a delivery and completion schedule;
 - (c) specifications; and
 - (d) drawings.
- (3) Specifications of the goods or non-consultancy services shall include, where appropriate:
 - (a) the purpose and objectives;
 - (b) a full description of the requirements;
 - (c) a generic specification to an appropriate level of detail;
 - (d) a functional description including any environmental or safety features;
 - (e) performance parameters, including outputs, timescales and any indicators or criteria by which satisfactory performance can be judged;
 - (f) process and materials descriptions;

- (g) dimensions, symbols, terminology language, packaging, marking and labeling requirements;
- (h) inspection and testing requirements; and
- (i) any applicable standards.

37. Use of Brand Names

- (1) Subject to the provisions of the Act, a statement of requirements for goods shall not include any reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item, unless there is no other sufficiently precise or intelligible way of describing the requirement, in which case the words "or equivalent" shall be included and the description shall serve only as a benchmark during the evaluation process.
- (2) Notwithstanding the provisions of sub-regulation (1) of this regulation, where a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item is required for reasons of technical compatibility, servicing, maintenance or preservation of warranty, such description may be used, subject to written justification.

38. Statement of Requirement for Works

- (1) Without prejudice to the possibility of utilizing design-and-build or lump-sum contracts, every requisition for the procurement of works shall be accompanied by a complete, precise and unambiguous description of the works required, in the form of a bill of quantities.
- (2) A bill of quantities shall include, where appropriate:
 - (a) a description of the scope of the works, which may include design, construction or installation of equipment;
 - (b) the purpose and objectives of the works;
 - (c) the duration or completion schedule for the works;
 - (d) details of the supervision requirements, working relationships and other administrative arrangements;
 - (e) drawings or design requirements;
 - (f) specifications and standards; and
 - (g) inspection and testing requirements.
- (3) In the case of lump-sum contracts, a schedule of activities shall be utilized.

39. Terms of Reference for Consultancy Service

- (1) Every requisition for the procurement of consultancy services shall be accompanied by a complete, precise and unambiguous description of the services required in the form of terms of reference.
- (2) Terms of reference shall include, where appropriate –
 - (a) a background narrative to the required consultancy services;
 - (b) the objectives of the consultancy services and targets to be achieved;
 - (c) a list of specific tasks or duties;
 - (d) deliverables or outputs for the assignment;
 - (e) the role, qualifications or experience required for any key staff;

- (f) management and reporting lines for the Consultant, including administrative arrangements and reporting requirements;
- (g) any facilities, services or resources to be provided by the procuring entity;
- (h) inspection or quality testing requirements or indicators of successful performance; and
- (i) the duration or completion schedule.

(3) The terms of reference shall be prepared by an experienced and qualified staff or team of staff of the user department, and where such capacity to prepare terms of reference is lacking in a procuring entity, it shall seek from other procuring entities or consultants using procedures prescribed in the Act and these Regulations.

40. Planning and Preparation of Individual Procurement and Disposal of Assets Proceedings

(1) A Procurement Unit shall, following receipt of an approved requisition, prepare a procurement plan for each individual procurement requirement.

(2) An individual procurement plan shall include:

- (a) a description of the requirement, including the schedule required for delivery, implementation or completion of the goods, works or services and any division into lots;
- (b) the estimated value of the requirement and, where applicable, individual lots;
- (c) the proposed procurement method, and a justification for the use of any method other than open bidding;
- (d) an indication of whether pre- or post-qualification will be required, or whether the procurement requirement will make use of any pre-qualification for a group of contracts;
- (e) an estimate of the time required for each stage in the procurement cycle, taking into account publication requirements and the applicable approval requirements;
- (f) the proposed type of contract in accordance with these Regulations;
- (g) the rules applicable to the procurement, where any procurement is subject to alternative rules in accordance with the Act;
- (h) an indication of the resources required and available for management of the procurement process and contracts management; and
- (i) any other relevant information.

(3) Notwithstanding the provisions of sub-regulation (1) of this regulation, where the estimated value of the procurement requirement is permitted for request for sealed quotations, no written procurement plan shall be required.

(4) Plans for disposal proceedings shall be developed containing information of the type referred to under this regulation to the extent relevant to the disposal of assets process.

41. Choice of Public Procurement and Disposal of Assets Method

(1) A procuring entity shall select the most appropriate method of procurement or disposal of assets for each requirement, as part of the procurement and disposal of assets planning process, in accordance with the conditions for use of the various procurement methods as defined in accordance with the provisions of these Regulations.

(2) The choice of procurement method shall take into account:

- (a) the estimated value of the procurement in accordance with the thresholds for that kind of procurement as specified in the First Schedule;
 - (b) the potential sources for the procurement, in accordance with these Regulations;
 - (c) the nature of the goods, works or services required; and
 - (d) the circumstances surrounding the procurement, such as the existence of an emergency need.
- (3) The reasons for the selection of any procurement or disposal of assets method other than open bidding shall be clearly stated in the procurement of assets record.
- (4) A procuring entity shall obtain the prior authorization of the Procurement Committee for the use of:
- (a) selective bidding; or
 - (b) single-source, except where the method is used on grounds of the estimated value, in accordance with these Regulations.
- (5) The procedures in the Third Schedule shall be applied when procurement is implemented on the basis of public-private partnerships.

42. Potential Sources of Bidders

- (1) In considering the potential sources of bidders for fulfilment of any procurement requirement, a Procurement Unit shall consider all relevant factors, including:
- (a) the competitiveness of the national, regional or international market for the goods, works or services to ensure value for money is achieved with public funds;
 - (b) the likely interest of national, regional or international bidders, given the size and nature of the requirement;
 - (c) whether items should be purchased from the manufacturer or from a distributor or agent;
 - (d) any restrictions relating to existing copyright, intellectual property rights, patent or proprietary rights;
 - (e) whether there are functionally equivalent goods, works or services which would meet the needs of the procuring entity;
 - (f) any applicable Government Regulations that restrict sources;
 - (g) the need for compatibility or inter-changeability with existing goods, works or services;
 - (h) requirements for servicing and maintenance of items purchased and any restrictions related to conditions of warranty;
 - (i) any impact on conditions relating to warranty or a provider's liability, if alternative providers are used for additional or continued work;
 - (j) any potential benefits such as the use of experience acquired or savings in mobilization costs; and
 - (k) any applicable international agreements or obligation.
- (2) Any recommendation to use a limited number of providers or a single source as the criterion for determining the choice of procurement of assets method shall include:
- (a) a comprehensive analysis of the market for the required goods, works or services;
 - (b) full details of the relevant factors under this Regulation;
 - (c) a clear statement that no other sources of bidders could be used to open the requirement up to a more competitive procurement of assets method; and

- (d) a justification for any parts of the statement of requirements that restrict the number of potential sources.

43. Planning for Common use of Public Procurement

- (1) The use of framework agreements established by a procuring entity designated to establish such agreements for the procurement of common use items in accordance with these Regulations shall be mandatory by the procuring entities.
- (2) For planning purposes, each procuring entity shall, by the end of the fiscal year, as part of the annual budget preparation and procurement planning exercise, submits to the entity designated pursuant to these Regulations, its provisional estimates of the common use procurement that it will require in the coming year. The provided information shall include technical descriptions, specifications, statement of requirements and estimated quantities.
- (3) With a view to maximizing participation and competition in common use procurement, as and when feasible and in accordance with circulars issued by the Authority, priority shall be given to the online establishment of closed or open framework agreements as part of the e-procurement system to be introduced pursuant to these Regulations.
- (4) The establishment of closed or open framework agreements is subject to the advertisement requirements in accordance with these Regulations, including publication on the Authority's central web portal of the procurement and disposal of assets system.
- (5) In accordance with circulars issued by the Authority, procuring entities shall procure common-use items from the framework agreements established pursuant to this Regulation.
- (6) Where common-use items to be procured by the procuring entity under a mandatory framework agreement are not available, the entity referred to in this regulation, shall, within one day of receipt of a request from the procuring entity, issue a waiver concerning non-use of the mandatory framework agreement. The waiver shall entitle the procuring entity to apply another method of procurement in accordance with the conditions for use of procurement methods set forth in the Act.

44. Emergency Procurement

- (1) An emergency situation shall include circumstances which are urgent, unforeseeable and not caused by the dilatory conduct of the procuring entity where:
 - (a) the country is threatened by or confronted with a disaster, catastrophe or war;
 - (b) life or the quality of life or environment may be seriously compromised;
 - (c) the conditions or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
 - (d) an investment project is seriously delayed for want of minor items.
- (2) General maintenance of equipment shall not be regarded as an emergency unless specially justified under these Regulations.

- (3) Any recommendation to use an emergency situation as the criterion for determining the choice of procurement of assets method shall include a comprehensive justification for its use, stating the reasons giving rise to the emergency situation.
- (4) Where an emergency situation affects the choice of procurement of assets method, the procuring entity shall not automatically exclude competitive methods of procurement and shall obtain competition to the maximum extent practical in the circumstances.
- (5) Where the procuring entity uses selective bidding, direct solicitation of interest in a request for proposals, or single source procurement on grounds of an emergency situation, the procuring entity shall limit the procurement to the quantity needed to deal with the emergency.

45. Selection of Appropriate Type of Contract

- (1) A procuring entity shall use the most appropriate type of contract from among the types specified in these Regulations.
- (2) A Procurement Unit, in consultation with the user department, shall select the type of contract as part of the procurement planning process, taking into account the:
 - (a) nature, value and complexity of the procurement requirement;
 - (b) need to offer an equitable contract to bidders to ensure effective competition;
 - (c) need to maximize value for money and minimize risk for the procuring entity;
 - (d) expected stability or volatility of market prices during the duration of the contract;
 - (e) likelihood of any delays or unforeseen circumstances requiring contract variations;
 - (f) procuring entity's ability to define its precise requirements, including the quantities or inputs and delivery or completion dates required;
 - (g) need for effective contracts management and cost control; and
 - (h) resources available for contracts management.

CHAPTER VI
BIDDING PROCEDURES UNDER OPEN AND SELECTIVE BIDDING

46. Use of Open or Selective Bidding

A procuring entity shall ensure that it complies with all relevant requirements of these Regulations, prior to initiating open or selective bidding procedures.

47. Pre-qualification

- (1) A procuring entity may use pre-qualification under open bidding to obtain a shortlist of bidders who have been assessed to be capable of effectively performing the proposed contract, using prescribed qualification criteria in accordance with these Regulations.
- (2) Pre-qualification may be used where:
 - (a) the goods, works or services are highly complex, specialized or require detailed design or methodology;
 - (b) the costs of preparing a detailed bid would discourage competition;
 - (c) the evaluation is particularly detailed and the evaluation of a large number of bids would require excessive time and resources from a procuring entity; or
 - (d) the bidding is for a group of contracts, in accordance with these Regulations.

48. Pre-qualification Notice

- (1) Where the procuring entity conducts pre-qualification in accordance with these Regulations, it shall publish a pre-qualification notice inviting all potential applicants to submit applications to pre-qualify. Publication shall be in line with the Act, and shall include publication on the Authority's central web portal of the procurement and the disposal of assets system; and the Authority may issue circulars specifying cases in which publication may be made in other media outlets.
- (2) Pre-qualification notices shall contain at least:
 - (a) the name, address and contact details of the procuring entity;
 - (b) an outline of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
 - (c) a statement of the key requirements and criteria to pre-qualify, including any restriction of eligibility to citizen or local bidders under open national bidding;
 - (d) details of any margin of preference or reservation scheme which will apply to the procurement;
 - (e) instructions on obtaining the pre-qualification documents, including any fees payable, which, if charged, shall reflect only the cost of reproduction and distribution of the documents; and
 - (f) instructions on the location and deadline for submission of applications to pre-qualify.

49. Pre-qualification Documents

- (1) A Procurement Unit shall promptly issue pre-qualification documents to all applicants who request them and shall maintain a record of all applicants to whom documents are issued.

- (2) A procuring entity shall prepare a pre-qualification document using standard pre-qualification document issued by the Authority, and shall contain all the information required by applicants to prepare and submit applications to pre-qualify and shall include at least:
 - (a) the name, address and contact details of the procuring entity;
 - (b) details of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
 - (c) the qualification criteria;
 - (d) instructions on the preparation of applications to pre-qualify, including any standard forms to be submitted and the documentary evidence and information required from applicants;
 - (e) instructions on the sealing, labeling and submission of applications to pre-qualify, including the location and deadline for submission; and
 - (f) information on how applications will be evaluated.
- (3) The procuring entity shall allow a sufficient period of time, to enable applicants to prepare and submit their applications to pre-qualify as prescribed in the First Schedule of these Regulations
- (4) In determining the pre-qualification period, a Procurement Unit shall take into account the factors in these Regulations.
- (5) The Procurement Unit shall promptly respond to all requests for clarification, in accordance with the procedure of these Regulations.

50. Evaluation of Applications

- (1) All applications to pre-qualify received on time shall be evaluated by the Evaluation Committee appointed in accordance with the Act and these Regulations.
- (2) Evaluation shall be on a pass or fail basis against the criteria in the pre-qualification document.
- (3) The Evaluation Committee shall prepare a record of its evaluation of applications, which shall clearly state which applicants were determined to be qualified and the reasons why any applicants were determined not to be qualified.
- (4) The results of the pre-qualification, including the record of the evaluation of applications, shall be submitted to the Procurement Committee for authorization.
- (5) A procuring entity shall invite all pre-qualified applicants to submit applications.
- (6) In a situation where all bidders fail to pre-qualify on the basis of the prescribed requirements, the Procurement Committee may revise some of the requirements and evaluate all bidders on the basis of the revised requirements with a view to ensuring that they satisfy the conditions during the bidding of the goods, works or services.
- (7) In revising the requirements under this regulation, the Procurement Committee may vary, waive or alter the prescribed requirements, but shall not revise requirements establishing

the bidder's experience in carrying out assignments of similar nature and capability to finance the assignment.

51. Pre-qualification for a Group of Contracts

- (1) Pre-qualification may be used to pre-qualify bidders for a group of similar contracts, where this would avoid the need for repeated pre-qualification exercises or facilitate the preparation of shortlists.
- (2) Where pre-qualification is conducted for a group of contracts, the procedure for pre-qualification shall be in accordance with this Regulation, except that:
 - (a) the invitation to pre-qualify notice and the pre-qualification document shall be published in accordance with these Regulations and state the time period covered by the pre-qualification and details of the subject matter of the group of contracts, estimated number, value and timing of contracts;
 - (b) procuring entities shall not be obliged to invite all pre-qualified applicants to submit bids, where the estimated value of a contract is less than the threshold below which request for quotation is permitted in accordance with these Regulations, but shall ensure a rotation of pre-qualified applicants on successive shortlists. In doing so, procuring entities shall observe the following:
 - (i) The majority of the providers included in the shortlist shall be other than those included in the previous procurement exercise;
 - (ii) No provider who provided a quote after being requested to do so may be approached to quote for a second time before all providers for a specific commodity had the opportunity to quote; and
 - (iii) Inclusion in the record of the procurement proceeding a description of the steps taken to ensure rotation of providers.
 - (c) a limit on the number or total value of contract awards to an applicant may be made, on the basis of their qualifications;
 - (d) the list of pre-qualified applicants shall be updated periodically; and
 - (e) pre-qualification information shall be verified prior to contract award.

52. Inviting Bids

Bids shall be invited:

- (a) through the publication of a bid notice in accordance with these Regulations in the case of open bidding, where no pre-qualification has been conducted;
- (b) from the list of pre-qualified applicants in the case of open bidding, where a pre-qualification has been conducted in accordance with these Regulations; and
- (c) from a shortlist of bidders in the case of selective bidding.

53. Bid Notices

- (1) A bid notice published by a procuring entity in accordance with these Regulations, shall invite all potential bidders to submit bids.
- (2) A bid notice shall contain at least the information referred to in the Act and in the applicable standard bidding documents.
- (3) A bid notice shall be published and distributed in accordance with these Regulations.

54. Contents of Bidding Documents

- (1) Procuring entities shall use the appropriate standard bidding document issued by the Authority for drafting individual bidding documents. The prepared individual bidding document shall be approved by the Procurement Committee in accordance with the Act.
- (2) The bidding documents shall provide bidders with all the information that they require in order to submit bids that are responsive to the needs of the procuring entity, in particular, the bidding documents shall include:
 - (a) a clear statement of requirements for the goods, works or services required;
 - (b) instructions on the preparation of bids, including any standard forms to be submitted and the documentary evidence and information required from bidders;
 - (c) a statement of whether alternative bids are permitted and any instructions relating to alternatives bids;
 - (d) instructions on the sealing, labeling and submission of bids, including the location and deadline for submission and procedures for the withdrawal, modification or substitution of bids;
 - (e) the eligibility criteria and any documentation required as evidence of eligibility in accordance with these Regulations;
 - (f) any qualification criteria in accordance with these Regulations and the procedure for post-qualification or verification of pre-qualification information;
 - (g) information on the methodology for the evaluation of bids, any evaluation criteria to be applied and the manner in which the criteria shall be applied in accordance with these Regulations;
 - (h) any margin of preference or reservation to be applied;
 - (i) Any requirements as to the submission of securities for participation in the procurement proceeding and implementation of the contract;
 - (j) information on the procedure for contract award, including the requirements for publication of notice of best evaluated bidder;
 - (k) the duration of the standstill period unless, exceptionally and in accordance with the Act, no standstill period will be applied;
 - (l) the type of contract to be awarded;
 - (m) the terms and conditions of the proposed contract in accordance with these Regulations; and
 - (n) information on the bidder's right to appeal under the independent review process and on the Government's policy on fraud and corruption, including the debarment of bidders.
- (3) Where appropriate, procuring entity may include additional evaluation criteria in the bidding document, which shall be taken into account in determining the evaluated price of each bid.
- (4) The bidding document shall state the methodology for calculating and applying any adjustment to the bid price for the purposes of evaluation and comparison of bids and for factoring into bid evaluation cost implications of minor deviations from requirements in the bidding documents.

55. Minimum Bidding Periods

- (1) A bidding period shall start on the date of the first publication of the bid notice or issue of the bidding document to all pre-qualified or short-listed bidders and shall finish on the date of the bid submission deadline.
- (2) The minimum bidding period shall be within the time specified in the First Schedule.
- (3) Notwithstanding the provisions of this regulation where selective bidding is used on grounds of emergency, the minimum bidding period for selective bidding where shortlisted bidders are nationals only or where the shortlisted bidders include foreign bidders shall not apply.
- (4) In determining the appropriate bidding period for each requirement, a Procurement Unit shall take into account, in addition to the minimum bidding period:
 - (a) the time required for preparation of bids, taking into account the level of detail required and the complexity of bids;
 - (b) any need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such documents;
 - (c) the location of shortlisted or potential bidders and the time required to obtain the bidding document and for the delivery and submission of bids to the procuring entity;
 - (d) the extent of anticipated sub-contracting; and
 - (e) any restrictions relating to the time the goods, works or services are required.
- (5) Depending on the fixed bidding period, the Procurement Unit shall include in the bidding document, the deadline for submission of bids which shall be a fixed day which is not a non-working day.

56. Issue and Sale of Bidding Documents

- (1) Bidding documents shall be issued, as appropriate to all bidders responding to a bid notice; or all bidders on the shortlist or list of pre-qualified bidders
- (2) Where the bidding document is issued to short-listed or pre-qualified bidders, the document shall be issued to all bidders at the same time.
- (3) A Procurement Unit shall maintain a record of all bidders to whom the documents are issued.
- (4) A procuring entity may charge a non-refundable fee for the bidding documents, but the price shall be calculated to cover the costs related to printing, copying and distribution of the document only and shall not include any element of profit or recouping the costs of preparation of the bidding documents. The Authority shall issue circulars for fixing fees to be charged for the bidding documents.
- (5) Where bidding documents are sold a Procurement Unit shall issue signed receipts and bidders may be required to submit a copy of the receipt with their bid.
- (6) Where bidding documents are sold a Procurement Unit shall allow potential bidders to inspect the documents before purchasing.

57. Bid Security

- (1) A procuring entity shall require bid securities for all procurement requirements with an estimated value as specified in First Schedule in order to deter irresponsible bids and encourage bidders to fulfill the conditions of their bids.
- (2) The bidding documents shall state the requirement for a bid security.
- (3) The value of any required bid security shall be expressed as a fixed amount and not as a percentage but the amount shall not be less than one and a half percent of the estimated value of the contract.
- (4) In determining the amount of bid security required, a Procurement Unit shall take into account the cost to bidders of obtaining a bid security, the estimated value of the contract and the risk of bidders failing to fulfill the conditions of their bids but the amount shall be high enough to deter irresponsible bids and not so high as to discourage competition.
- (5) The bidding documents shall state that a bid security shall be:
 - (a) in accordance with the format and wording provided in the bidding document;
 - (b) in a form acceptable to the procuring entity, which may be:
 - (i) an insurance or bank guarantee; or
 - (ii) an equivalent instrument, such as a stand-by letter of credit;
 - (c) from an institution acceptable to the procuring entity in the case of instruments issued by financial institutions; and
 - (d) valid for the period prescribed in the bidding document, which shall be thirty days beyond the expiry of the bid validity period.
- (6) The conditions for forfeiture of a bid security shall be specified in the bidding document, and shall include those specified in the Act. The circumstances referred to in the Act include failure to accept an arithmetical correction made to the bid price.
- (7) A Procurement Unit shall release bid securities promptly to unsuccessful bidders upon expiry of the term of the security or formation of contract with the successful bidder and submission of any required performance security, whichever is earlier.
- (8) The bid security of the successful bidder shall not be released, until any required performance security has been received.
- (9) Procuring entities may accept a Bid Securing Declaration in place of a bid security, provided that this is specified in the bidding document.
- (10) In cases where a bid securing declaration requirement is provided in the bidding documents, no bidders participating in the procurement proceedings will be required to furnish a bid security.
- (11) The use of bid securing declaration shall be applicable for contracts not exceeding the values provided in First Schedule of these Regulations.

58. Clarification and Amendment of Bidding Documents

- (1) A bidding document shall state that a bidder may seek clarification of the bidding document and shall state the final date after which such clarification may not be sought but such date shall allow adequate time for bidders, including foreign bidders, to receive and study the bidding document.
- (2) Where a request for clarification is received, a Procurement Unit shall promptly provide a clarification in writing and such clarification shall be copied to all bidders and shall include a description of the inquiry, but without identifying the source.
- (3) At any time prior to the deadline for submission of bids, a procuring entity may, either at its own initiative or in response to a request for clarification from a bidder, amend the bidding document by issuing an addendum. Such an addendum shall be approved by the Procuring Committee.
- (4) Any addendum shall be issued in writing and the same information shall be provided to all bidders at the same time, and shall be numbered sequentially.
- (5) All clarifications and addenda to the bidding document shall be binding on all bidders.

59. Extension of Bidding Period

A procuring entity may, through the issue of an addendum approved by the Procurement Committee, extend the deadline for the submission for bids in order to give bidders reasonable time in which to take a clarification of, or addendum to, the bidding documents into account in preparing their bids.

60. Withdrawal Substitution or Modification of Bids

- (1) The bidding documents shall state that bidders may withdraw, substitute or modify their bids at any time prior to the deadline for submission of bids, without forfeiting any bid security or being subject to enforcement of the bid securing declaration, if applicable.
- (2) The bidding documents shall state the procedures to be followed for withdrawal, substitution or modification.

61. Alternative Bids

- (1) A procuring entity shall not permit alternative bids, except where specifically indicated in the bidding document.
- (2) A procuring entity may permit alternative bids:
 - (a) where it is anticipated that bidders may be able to offer goods, works or services which do not conform precisely to the statement of requirements, but which meet the objectives of the procurement in an alternative manner;
 - (b) in areas of rapidly changing technology; or
 - (c) where a need could be satisfied in a number of different ways and the procuring entity wishes to encourage cost efficient and technically innovative approaches by bidders.

- (3) Where alternative bids are permitted, under this Regulation, the bidding documents shall state that the alternative bids do not need to conform precisely to the statement of requirements, but shall:
 - (a) meet the objectives or performance requirements prescribed in the statement of requirements;
 - (b) be substantially within any delivery or completion schedule, budget and other performance parameters stated in the bidding documents; and
 - (c) clearly state the benefits of the alternative bid over any solution which conforms precisely to the statement of requirements, in terms of technical performance, price, operating costs or any other benefit.
- (4) Alternative bids shall be evaluated in the same way as other bids, except that the technical evaluation shall take into account only the objectives or performance requirements prescribed in the statement of requirements.

62. Pre-bid Conferences and Site Visits

- (1) A procuring entity may organize:
 - (a) a pre-bid conference in order to brief bidders or to offer the opportunity for them to seek clarifications; or
 - (b) a site visit, to enable bidders to gain access to the site for delivery of any proposed works or services.
- (2) The bidding document and, where possible, the invitation to bid notice, shall state the details of pre-bid conferences and site visits, including the date, time and location.
- (3) Notwithstanding the provisions of sub-regulation (2) of this regulation, the request for the pre-bid meeting or site visit may be issued as an addendum.
- (4) The date of any pre-bid meeting or site visit shall be sufficiently early in the bidding period to enable bidders to take the information into account in preparing their bids, but shall not be so early as to make attendance difficult for any bidders.
- (5) A Procurement Unit shall prepare minutes of any pre-bid conference and shall promptly send them to all bidders to whom the bidding documents have been issued.
- (6) The minutes of a pre-bid conference shall include:
 - (a) all information provided as part of any briefing;
 - (b) details of any clarification requested, but without identifying the source of the inquiry; and
 - (c) the details of responses provided to clarifications.
- (7) A Procurement Unit shall, following any pre-bid conference or site visit, where required, issue clarifications or amend the bidding document, in accordance with these Regulations.

63. Receipt of Bids

- (1) A Procurement Unit shall make arrangements for the receipt and safe-keeping of bids up until the deadline for submission of bids, which shall normally be by use of a bid box in which bidders are responsible for depositing their bids directly and which shall remain in a secure location and locked until the time for bid opening.

- (2) Where any bid is too large for a bid box, or samples are required to be submitted separately, a Procurement Unit shall receive the bid or samples, issue a signed receipt, showing the precise date and time of receipt and keep the bid or samples in a secure location until the time for bid opening.
- (3) A Procurement Unit shall maintain a record of all bids and samples received, indicating the name of each bidder, the date and time of receipt and the name of the person responsible for receipt.
- (4) Bids shall only be received electronically if authorized by the Authority in conjunction with authorization or mandating the use of a central e-procurement system in accordance with the Second Schedule.
- (5) A procuring entity shall not be held liable for the loss or delay in delivery of any bid delivered by mail or courier.
- (6) A Procurement Unit shall ensure that all bidders have access to the bid box during working hours prior to the deadline.
- (7) A procuring entity shall not disclose the number or identity of bids received, prior to bid opening.

64. Selection of Bid Submission Methods

- (1) A procuring entity shall select the most appropriate bid submission method for each requirement, as part of the procurement planning process.
- (2) A bid submission method may be either:
 - (a) one stage-single envelope method, in which a bid, containing both technical and financial information, is submitted in one sealed envelope, which is opened on the specified date and time in a single bid opening;
 - (b) one stage-two envelope method, in which a bid is submitted in an outer sealed envelope, containing two separately sealed and labeled technical and financial bids, which are opened on different dates in separate bid openings; or
 - (c) two stage methods, in which separate technical and financial bids are submitted on different dates.
- (3) A selection of a bid submission method shall take into account the evaluation methodology to be used and the circumstances of the procurement requirement, in accordance with the following guidance:
 - (a) the one stage-single envelope method shall be used where all stages of the evaluation are to be conducted together and a combined technical and financial evaluation report produced;
 - (b) the one stage-two envelope method may be used where the technical evaluation is to be conducted without reference to financial information; and
 - (c) the two-stage method may be used:

- (i) where alternative technical bids are possible and the procuring entity needs to evaluate the initial technical bids in order to determine a single technical standard with which all bidders are invited to conform by submitting revised technical bids and supplementary financial bids; or
- (ii) for large and complex contracts, where technically unequal bids are likely and more than one equally acceptable technical solution is available to the procuring entity, which needs to ensure that all technical bids conform to the same technical standard before financial bids are prepared.

- (4) The bidding documents shall state that bids shall be submitted in plain outer envelopes securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- (5) Bidders shall be at liberty to choose their preferred method of envelope sealing, but a procuring entity may reject at the opening any envelope that is unsealed.
- (6) The bidding documents shall contain instructions on the details of labeling and references to be detailed on each envelope.

65. Bid Closing

- (1) A Procurement Unit shall ensure that bidding is closed at the precise date and time of the deadline for submission of bids stated in the bidding document and that no further bid is placed in the bid box or received in any other way.
- (2) A Procurement Unit shall assign suitable and experienced staff to manage the bid closing.
- (3) Any bid that is received after the date and time of the deadline for submission of bids shall not be accepted, but shall be declared and labeled as late, stating the date and time of actual receipt, and returned unopened to the respective bidder.
- (4) Any late bid which is not labeled with the bidder's name shall be left unopened for seven days after which the unopened envelope shall be destroyed.
- (5) Notwithstanding sub-regulation (4) of this regulation, where a bid is submitted using a two-envelope system, the Procurement Unit may open the outer envelope only, for the purpose of identifying the name and address of the bidder on the inner envelopes; except that the inner envelopes shall not be opened but shall be returned unopened to the bidder or left unopened and destroyed.
- (6) A Procurement Unit shall ensure that, immediately after the bid closing, the bids received are taken to the location for bid opening.
- (7) A Procurement Unit shall keep a record of envelopes received late.

66. Public Opening of Bids

- (1) A Procurement Unit shall open, in public, all bids received on time at the date, time and location indicated in the bidding document.

- (2) The time for bid opening shall be the same as, or immediately after, the time of the deadline for submission of bids.
- (3) The opening of bids shall be managed by the Procurement Unit.
- (4) A Procurement Unit shall permit bidders, or their representatives, to attend the opening of bids and details of the bid opening shall be included in the bidding document.
- (5) A Procurement Unit shall first open any envelopes marked "withdrawal" and the corresponding bids shall be located and returned unopened to the bidder.
- (6) A Procurement Unit shall open all other envelopes, including substitutions, modifications and alternative bids and the details indicated in the bidding document read out, which shall include:
 - (a) the name of the bidder;
 - (b) the presence or absence of a bid security or bid securing declaration, if one was required;
 - (c) the total price of the bid, including the currency and amount and any discounts offered, except where the opening is of technical bids only.
- (7) All bids opened shall be stamped and signed by the chairperson of the bid opening on key pages, which shall include at least priced and signed pages by the bidder,
- (8) A Procurement Unit shall not, with the exception of late bids, accept, reject or evaluate any bid in any manner at the bid opening but shall note any discrepancies or missing documents in the record of bid opening.
- (9) A Procurement Unit shall make a record of the bid opening, which shall be kept as part of the procurement record.
- (10) The record of the bid opening shall include at least the details read out in accordance with sub-regulation (6) of this regulation and the names of all staff and bidders' representatives attending the opening.
- (11) A Procurement Unit shall request all bidders' representatives attending the bid opening to sign the record, but the absence of any signature shall not invalidate the record.
- (12) A Procurement Unit shall immediately take all opened bids to a secure location, where they shall be kept until the evaluation begins.

67. Evaluation Committee and Function

- (1) The appointment of Evaluation Committee for each procurement or disposal of assets shall be in accordance with the Act.
- (2) An Evaluation Committee shall be responsible for the evaluation of bids in accordance with the Act, Regulations and bidding documents, and the preparation of an evaluation report for submission to the Procurement Committee.

- (3) An Evaluation Committee shall, within ten days or any other period fixed by the Accounting Officer, through the Procurement Unit, submit an evaluation report and recommendations to the Procurement Committee or report to the Procurement Committee the anticipated completion date of the evaluation report.

68. Assessing Responsiveness of Bids

- (1) Evaluation Team's determination of responsiveness of a bid shall be based on the contents of the bid itself, subject to any clarifications received as specified under these Regulations.
- (2) A substantially responsive bid shall be one that conforms to all the instructions, requirements, terms and conditions of the bidding documents, without material deviation, reservation or omission.
- (3) A material deviation, reservation or omission shall be one that:
 - (a) affects, in any substantial way, the scope, quality or performance of the goods, works or services specified in the bidding documents;
 - (b) would limit, in any substantial way, the procuring entity's rights or the bidder's obligations under any resulting contract or would be inconsistent with the bidding documents; or
 - (c) if corrected, would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.
- (4) A procuring entity shall reject any bid which contains a material deviation, reservation or omission, and is therefore not subsequently responsive, and such bid shall not subsequently be made responsive by the bidder or the procuring entity.

69. Details of Evaluation Methodology and Criteria

- (1) The evaluation criteria shall be related to the price, performance characteristics, or terms and conditions of a bid, such as delivery or completion schedule, payment schedule, the cost of spare parts or after sales service, operating or maintenance costs or the productivity of equipment.
- (2) Any evaluation criteria other than the bid price shall be designed to measure costs to the procuring entity or the advantage or disadvantage of a factor to the procuring entity. Some non-price criteria, related to minimum technical requirements, may be evaluated on a pass or fail basis.
- (3) Cost-related criteria shall be quantified in monetary terms and applied as an increase or decrease to the bid price, for purposes of evaluation only.

70. Preliminary Examination

- (1) An Evaluation Committee shall conduct a preliminary examination of bids to determine whether they are complete and responsive to the basic instructions and requirements of the bidding document.
- (2) A preliminary examination shall determine whether:
 - (a) the bid has been submitted in the correct format;

- (b) any required bid security has been submitted, in the correct form and amount and valid for at least the period required;
 - (c) the bid has been submitted without material reservations or deviations from the terms and conditions of the bidding document;
 - (d) the bid has been correctly signed and authorized;
 - (e) the correct number of copies of the bid has been submitted;
 - (f) the bid is valid for at least the period required;
 - (g) all key documents and information required have been submitted;
 - (h) any required samples have been submitted; and
 - (i) the bid meets any other key requirement of the bidding document.
- (3) The classification of a deviation, reservation or omission as material or non-material shall be determined by the objectives and requirements of the individual procurement requirement, as stated in the bidding document; and shall take into account the impact on key factors, such as cost, risk, time and quality.
- (4) Material deviations, reservations or omissions may typically include:
- (a) unacceptable time schedules where it is stated in the bidding document that time is of the essence;
 - (b) unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; and
 - (c) unacceptable key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.
- (5) The classification of deviations, reservations and omissions as material or nonmaterial shall be consistently applied to all bids.
- (6) Any deviation, which is considered to be a material deviation, shall result in rejection of the bid and such bid shall not be subject to technical evaluation, except that deviations which are considered to be non-material shall not result in rejection of the bid.
- (7) A preliminary examination shall also determine whether bidders are eligible, where this has not been determined prior to inviting bids.

71. Correction of Non-conformity Errors and Omissions

- (1) Where a bid is substantially responsive, an Evaluation Committee shall waive, clarify or correct any non-conformity, error or omission, which does not constitute a material deviation.
- (2) A non-conformity, error or omission shall be quantified in monetary terms to the extent possible and taken into account in the financial evaluation and comparison of bids, in accordance with these Regulations.
- (3) An Evaluation Committee may correct purely arithmetical errors in bids in accordance with the following procedure:
 - (a) where there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and the quantity and frequency, the unit rate shall prevail and the total price shall be corrected;

- (b) where there is an error in a total corresponding to the addition or subtraction of subtotals, the totals shall prevail and the total shall be corrected;
- (c) where there is a discrepancy between the rates in figures and in words, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error in which case the amount in figures shall prevail subject to paragraphs (a) and (b).

(4) An Evaluation Committee shall, through the Procurement Unit, notify bidders of any arithmetical corrections and request them to agree, in writing, to the correction and any bidder who does not accept the correction of an arithmetical error shall be rejected and their bid security may be forfeited.

72. Evaluation of Minor Deviations

- (1) The cost of minor omissions or missing items in the scope of supply, services, and the like shall be added to the bid price to allow for bid comparison on an equal basis. The procuring entity shall base the price adjustment on a reasonable estimate of the cost or based on the fair price of the omitted item. In the event of uncertainty, the average price quoted by the other responsive Bidders may be used. The cost implications of the minor deviations, if any, shall be taken into account in accordance with the provisions of this Regulation.
- (2) All bid-price adjustments, for evaluation purposes only, shall be made by the Evaluation Committee without any consultations with the bidder regarding the justification for the amount of the adjustment.
- (3) Adjustments for any minor variations in payment terms, if acceptable, may be evaluated at the prevailing interest rates.
- (4) The bidding documents may provide that:
 - (a) when a bid contains so many deviations requiring adjustments to the bid price that the total value of all adjustments exceeds fifteen percent of the bid price, or
 - (b) when only one or a few deviations have a relatively high monetary value, as would be the case with deviations regarding retention money or delay penalties or liabilities the bid shall be rejected as non-responsive.

73. Clarification of Bids

- (1) An Evaluation Committee may seek clarification, through Procurement Unit, from a bidder of its bid.
- (2) A request for clarification on a bid and a clarification given shall be in writing.
- (3) A request for clarification on a bid shall not seek, and the bidder shall not be permitted, to:
 - (a) amend its bid price, except to accept the correction of arithmetic errors;
 - (b) change the substance of the bid; or
 - (c) substantially alter anything which is a deciding factor in the evaluation.
- (4) Any clarification received on a bid which is not in response to a request from the Evaluation Committee shall not be taken into account.

- (5) The failure of a bidder to reply to a request for clarification from the Evaluation Committee may result in the rejection of its bid.

74. Technical Evaluation

- (1) An Evaluation Committee shall conduct a technical evaluation by comparing each bid to the technical requirements of the statement of requirements in the bidding document, to determine whether the bids are substantially responsive.
- (2) The factors taken into account in a technical evaluation shall be those indicated in the bidding document and may include:
- (a) conformity to specifications, standards, drawings or terms of reference, without material deviation or reservation;
 - (b) satisfactory understanding of an assignment, as demonstrated by any methodology or design; or
 - (c) suitable staffing or arrangements for supervision or management of an assignment.
- (3) The evaluation shall not take into account any requirement which were not included in the bidding document.
- (4) Any material deviation shall result in rejection of the bid and such bids shall not be subject to financial evaluation and comparison.
- (5) Non material deviations shall be taken into account in the evaluation process in accordance with these Regulations

75. Financial Evaluation and Comparison

- (1) The evaluated price for each bid shall be determined by:
- (a) taking the bid price, as read out at the bid opening;
 - (b) correcting any arithmetic errors, in accordance with the methodology stated in the bidding document;
 - (c) applying any non-conditional discounts offered in the bid;
 - (d) making adjustments for any non-material non-conformity, error or omission;
 - (e) applying any additional evaluation criteria, through an increase or decrease to the bid price, in accordance with these Regulations
 - (f) converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding document; and
 - (g) applying any margin of preference indicated in the bidding document.
- (2) Where the bidding document included more than one lot and permitted bidders to offer discounts, which were conditional on the award of one or more lots, the Evaluation Committee shall conduct a further financial evaluation, to determine the lowest evaluated combination of bids.

76. Application of Discounts

- (1) A Procuring Entity may permit bidders to offer discounts to their bids only if included in the bid and read out at the bid opening.
- (2) Any discount offered by a bidder after the deadline for submission of bids shall not be taken into account.
- (3) Any non-conditional discount shall be taken into account in the financial evaluation and comparison of bids, in accordance with the provisions of these Regulations
- (4) Bidders may be permitted to offer discounts, which are conditional on the award of one or more lots.
- (5) Conditional discounts shall be taken into account in a further financial evaluation, in accordance with these Regulations
- (6) Any prompt payment discount included in a bid shall become a term of the contract, if that bid is accepted, and shall be utilized by the procuring entity, if payment is made in accordance with the terms of the discount, except that prompt payment discounts shall not be considered in the evaluation and comparison of bids, unless such discount is taken into account through the application of any additional evaluation criteria.

77. Post-Qualification

- (1) Where indicated in the bidding documents, the procuring entity may conduct a post-qualification of the bidder, who submitted the best evaluated bid, to determine whether the bidder is qualified to perform the contract effectively.
- (2) The criteria for qualification shall be as set out in the bidding document and shall be drafted in accordance with these Regulations.
- (3) Where a bidder is determined not to be qualified, the bid shall be rejected and a post-qualification conducted on the bidder who submitted the next lowest evaluated responsive bid.
- (4) Where a pre-qualification has been conducted, the procuring entity shall verify the information submitted by the bidder who submitted the lowest evaluated responsive bid and if the bidder no longer meets the qualification criteria, the bidder shall be rejected and the qualifications of the next bidder verified.

78. Combining Rate and Cost Scores

When the evaluation and ranking of bids is based on a combination of rated technical scores, and cost, bids shall be given a financial score inversely proportional to their prices. The bidding documents shall specify the weight to be accorded to the financial score. The relative weight to be assigned to rated financial criteria should generally not exceed thirty percent, but it may be set as high as fifty percent if justified to achieve value for money.

79. Most Advantageous Bid

- (1) When rated criteria are not used, the most advantageous bid is the bid of the bidder that meets the qualification criteria and whose bid has been determined to be substantially responsive to the request for bids or request for proposals document, and with the lowest evaluated cost.
- (2) When rated criteria are used, the most advantageous bid is the bid of the bidder that meets the qualification criteria and whose bid has been determined to be substantially responsive to the request for bids or request for proposals document and with the highest ranked bid.

80. Evaluation Report and Recommendation

- (1) The Evaluation Committee shall prepare an evaluation report for submission to the Procurement Committee.
- (2) An evaluation report shall include:
 - (a) a summary of the bids received and opened;
 - (b) the results of the preliminary examination;
 - (c) the results of the technical evaluation;
 - (d) reasons why any bids were declared non responsive;
 - (e) details of any non-material deviations, which were accepted and the way in which they were quantified and taken into account in the financial evaluation;
 - (f) the evaluated price of each bid, showing any corrections or adjustments to the bid price and any conversion to a common currency;
 - (g) the ranking of the bids, according to their total evaluated price;
 - (h) a statement of the best evaluated bid, for each lot where applicable;
 - (i) a summary of the application of any conditional discounts and the best evaluated combination of bids, where applicable;
 - (j) the results of any post-qualification; and
 - (k) a recommendation to award the contract or contracts to the best evaluated bid or combination of bids, or other appropriate recommendation, such as any requirement for negotiations or the cancellation of the procurement process.
- (3) The evaluation report and recommendations shall be approved by the Procurement Committee, prior to proceeding with contract award, in accordance with these Regulations, or any other action, such as negotiations or cancellation of the procurement process.

CHAPTER VII
PROCEDURE FOR REQUEST FOR PROPOSALS FOR CONSULTANCY SERVICES

81. Selection of Consultants

- (1) The selection of consultants to participate in procurement proceeding shall be in accordance with the Act and these Regulations.
- (2) The Selection process shall be:
 - (a) through the publication of a notice requesting expressions of interest and development of a shortlist in accordance with these Regulations in the case of open selection; or
 - (b) through the development of a shortlist without publication of a notice seeking expressions of interest in accordance with these Regulations in the case of request for proposals.
 - (c) The shortlist shall include a sufficient number of consultants to ensure effective competition, which should be at least four and not more than six consultants.
 - (d) In developing a shortlist, without publication of a notice soliciting expressions of interest, a Procurement Unit may use:
 - (i) provider databases or lists maintained in accordance with these Regulations;
 - (ii) its own knowledge of the market; or
 - (iii) any other appropriate sources of information.
- (3) The procuring entity shall use a standard request for expression of interest issued by the Authority.

82. Choice of Selection Method

- (1) A procuring entity shall select the most appropriate selection method for consultancy services and shall state the evaluation methodology in the request for proposals document.
- (2) The selection methodology may be any of the following:
 - (a) Quality and Cost Based Selection, which takes into account both the quality and the cost of proposals and selects the proposal which offers the optimum balance of quality and cost;
 - (b) Quality Based Selection, which focuses on quality and selects the highest quality proposal;
 - (c) Fixed Budget Selection, which selects the highest quality proposal, which is within the procuring entity's pre-disclosed budget;
 - (d) Least Cost Selection, which selects the lowest priced proposal, which meets the procuring entity's technical requirements;
 - (e) Selection based on consultant's qualifications; or
 - (f) Use of individual consultants.
- (3) Notwithstanding sub-Regulations (4), (5) and (6) of this regulation, Quality and Cost Based Selection shall be the preferred evaluation methodology.

- (4) Quality and cost based selection shall be used when:
 - (a) the type of service required is common and not too complex;
 - (b) the scope of work of the assignment can be precisely defined and the terms of reference are clear and well specified; and
 - (c) the procuring entity can estimate with reasonable precision the staff time, the assignment duration, and the other inputs and costs required of the consultants.

- (5) Quality Based Selection may be used for:
 - (a) highly specialized assignments, where it is difficult to define precise terms of reference and inputs and bidders are expected to demonstrate innovation in their bids;
 - (b) assignments which will have a high downstream impact and the procuring entity wishes to contract the best consultant; or
 - (c) assignments that can be carried out in substantially different ways and where the value of the services depends on their quality.

- (6) Fixed Budget Selection may be used for assignments, which are simple, can be precisely defined and where the budget is fixed.

- (7) Least Cost Selection may be used for selecting consultants for assignments of a standard or routine nature such as audits, engineering design of non-complex works where well-established practices and standards exist.

- (8) Consultancy services may be procured in accordance with a consultant's qualifications if the estimated value of the required services are small and not exceeding the level set in the First Schedule of the Regulations, and the nature of services does not require preparation and consideration of competitive proposals. This method may also be used in emergency situations in which the need for issuing a request for proposals, and preparing and evaluating competitive proposals, is not justified.

- (9) Consultancy services may be procured from individual consultant in the following cases:
 - (a) If the assignment does not require a team of consultants;
 - (b) If the assignment does not require additional professional support;
 - (c) The experience and qualifications of the individual are the paramount requirement; and,
 - (d) If there is a need for an individual consultant for a specific assignment for a limited period of time.

83. Notice Inviting Expressions of Interest

- (1) A procuring entity may invite potential consultants to submit expressions of interest through a notice published in accordance with these Regulations.

- (2) A notice requesting expressions of interest shall contain at least the information in accordance with the provisions of these Regulations and shall be approved by the Procurement Committee before its publication.

- (3) The notice shall be published and distributed in accordance with these Regulations, including on the Authority's central web portal of the procurement system.
- (4) A minimum period prescribed in the First Schedule to these Regulations shall apply for submission of expressions of interest.

84. Evaluation of Expressions of Interest and Development of Short-lists

- (1) All expressions of interest shall be evaluated by an Evaluation Committee against the criteria stated in the notice requesting expressions of interest, in order to develop a shortlist of bidders who are expected to be able to meet the procuring entity's requirements.
- (2) A record of the evaluation of expressions of interest shall be maintained by the procuring entity.
- (3) A shortlist shall include sufficient consultants to ensure effective competition, which shall be between four and six Consultants, wherever possible, with a view to maximizing participation in the proceedings.
- (4) Where the number of suitable bidders is greater than the number of consultants to be included on the shortlist, the applicants who best meet the procuring entity's requirements shall be included on the shortlist.
- (5) Consultants shall not be included unless they are expected to fully satisfy the procuring entity's requirements, including those related to eligibility, qualifications, capacity, resources and experience.
- (6) The consultants included on a shortlist shall not all have the same beneficial ownership, and any consultants sharing beneficial ownership shall be excluded.
- (7) The results of the evaluation of the expressions of interest and the proposed shortlist shall be approved by the Procurement Committee, prior to issue of the request for proposals document.

85. Shortlists Under Direct Solicitation

- (1) A shortlist shall comply with the provisions of these Regulations.
- (2) Where, the procuring entity uses direct solicitation on the grounds of a limited number of consultants, it shall also publish a notice, in accordance with these Regulations, which shall state:
 - (a) the nature of the procurement requirement;
 - (b) that the procuring entity is using direct solicitation on the grounds of a limited number of sources;
 - (c) the proposed shortlist of consultants; and
 - (d) that any potential consultants requiring information on the procurement requirement or wishing to participate in the procurement may contact the Procurement Unit of the procuring entity.

- (3) The proposed shortlist shall be authorized by the Procurement Committee, prior to issue of the request for proposals document package.

86. Contents of Request for Proposals

- (1) A procuring entity shall use the appropriate standard request for proposal documents issued by the Authority for drafting individual request for proposal documents.
- (2) The request for proposals shall include all information necessary to enable bidders to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the procuring entity.
- (3) The request for proposals shall include, in particular:
 - (a) a clear statement of requirements for the services required, including the terms of reference for the assignment in accordance with the provisions of these Regulations;
 - (b) instructions on the preparation of technical and financial proposals, including any standard forms to be submitted and the documentary evidence and information required from bidders;
 - (c) instructions on the sealing, labeling and submission of proposals, including the location and deadline for submission and procedures for the withdrawal, modification or substitution of proposals;
 - (d) information relating to eligibility to bid, including restrictions relating to conflict of interest and any restriction of eligibility to citizens or local bidders under open national selection;
 - (e) information on the selection method, the evaluation criteria and points to be applied and any minimum technical score required;
 - (f) any margin of preference or reservation to be applied;
 - (g) information on the procedure for contract award, including the requirement for publication of a notice of best evaluated bidder;
 - (h) the type of contract to be awarded;
 - (i) the terms and conditions of the proposed contract; and
 - (j) information on the bidder's rights to appeal for review and on the Government's policy on fraud and corruption, including the debarment of bidders.

87. Submission of Proposals

- (1) The request for proposal documents shall require bidders to submit separately sealed technical and financial proposals, both sealed in an outer envelope.
- (2) Notwithstanding the provisions of sub-regulation (1) of this regulation, where the evaluation methodology is Quality Based Selection, the request for proposal documents may require bidders to submit a technical proposal only, with a financial proposal to be submitted at a later date by the bidder with the highest technical score only.

88. Evaluation Criteria

- (1) The request for proposal documents shall state the evaluation criteria and methodology to be applied during the technical evaluation.
- (2) The evaluation criteria and scoring methodology shall be designed to assess:

- (a) adequacy of proposed methodology and work plan;
- (b) relevant experience and qualifications of key staff;
- (c) relevant experience of the consultant; and
- (d) if applicable, transfer of knowledge and involvement of national consultants in the assignment.

- (3) Each criterion shall be allocated a maximum number of points and the total for all criteria shall equal one hundred, and the number of points allocated to each criterion shall be directly related to its importance to the procurement, except that the points allocated to experience may be limited, where experience has already been taken into account in the development of the shortlist.
- (4) The request for proposal documents may also include sub-criteria to provide further guidance on the allocation of points under each main criterion. Each criterion shall then be assigned a score on the basis of the total points assigned to its sub-criteria. The number of sub-criteria should be kept to the minimum essential.
- (5) The Authority shall prepare and issue guidelines on the evaluation criteria and scoring methodology for consultancy services.

89. Issue of Request for Proposal Documents

- (1) The request for proposal documents shall be approved by the Procurement Committee, prior to its issue.
- (2) The request for proposal documents shall be issued to all shortlisted consultants at the same time and a record of the issue of the documents shall be maintained by the Procurement Unit.

90. Clarification and Amendment of Request for Proposal Documents

- (1) The request for proposal documents shall state that a consultant may seek clarification of the request for proposal documents and shall include the final date after which such clarification may not be sought.
- (2) Where a request for clarification is received, the Procurement Unit shall promptly provide a clarification in writing, which shall be copied to consultants and shall include a description of the inquiry but without identifying the source.
- (3) At any time prior to the deadline for submission of proposals, the procuring entity may, either at its own initiative or in response to a request for clarification from a consultant, amend the request for proposal documents by issuing an addendum, approved by the Procurement Committee prior to its issuance.
- (4) An addendum shall be issued in writing and numbered sequentially with the same information being provided to all consultants at the same time.
- (5) All clarifications and addenda to the request for proposal documents shall be binding on all consultants.

91. Extension of Bidding Period

A procuring entity may extend the deadline for the submission of proposals, through the issuance of an addendum, in order to give consultants reasonable time in which to take a clarification or addendum into account in preparing their proposals.

92. Receipt of Proposals

- (1) A Procurement Unit shall make arrangements for the receipt and safe-keeping of proposals up until the deadline for submission of proposals, which shall normally be by use of a bid box, or in the case of e-procurement, the electronic functional equivalent of a bid box, in which consultants shall be responsible for depositing their proposals directly and which shall remain locked until the time for proposal opening.
- (2) Other aspects of receipt of proposal shall be in accordance with the provisions of these Regulations.

93. Deadline for Submission of Proposal

A Procurement Unit shall ensure that bidding for consultancy services is closed in the same manner as provided in these Regulations.

94. Opening of Technical Proposal

- (1) A Procurement Unit shall open, in public, all proposals received on time, at the date, time and location indicated in the request for proposal documents.
- (2) The time for proposal opening shall be the same as, or immediately after, the time of the deadline for submission of proposals.
- (3) The opening of proposals shall be managed by the Procurement Unit which shall permit all consultants, or their representatives, to attend the opening and details of the proposal opening shall be included in the request for proposal documents.
- (4) A Procurement Unit shall first open any envelope marked "withdrawal" and the corresponding proposals shall be located and returned unopened to the consultant.
- (5) A Procurement Unit shall open the outer envelopes of all other envelopes, including substitutions and modifications, and open the technical proposal within.
- (6) The details indicated in the request for proposal documents shall be read out, which shall include at least:
 - (a) the name of the consultant; and
 - (b) whether or not a separately sealed financial proposal has been submitted, if required.
- (7) All technical proposals opened shall be stamped and signed on key pages, at least by the chairperson of the opening session, and initialed by the other members of the Procurement Unit or staff of the procuring entity appointed for the opening.

- (8) Proposals shall be numbered consecutively, the last one being endorsed ‘and last’, and initialed by the members of the Procurement Unit in the presence of bidders or their representatives.
- (9) A Procurement Unit shall not accept, reject or evaluate a proposal in any way at the proposal opening, except for rejection, unopened, of proposals received after the expiry of the deadline for submission of proposals.
- (10) At a proposal opening any discrepancies or missing documents shall be noted in the record of the proposal opening.
- (11) A Procurement Unit shall make a record of the proposal opening, which shall be kept as part of the procurement record and which shall include, at least, the details read out in accordance with sub-regulation (6) of this regulation and the names of all staff and consultants' representatives attending the opening.
- (12) A Procurement Unit shall request all consultants' representatives, attending the proposal opening, to sign the record, but the absence of any signature shall not invalidate the record.
- (13) The technical proposals shall be taken immediately to a secure location, where they shall be kept until the evaluation begins but any financial proposals shall be kept unopened in a secure location, until the time for opening of financial proposals.
- (14) The envelopes containing financial proposals shall be initialed by those attending the opening session of the technical proposal and shall remain sealed and shall be deposited with the Procurement Unit until they are opened publicly.

95. Responsibility of Evaluation Committee

- (1) An Evaluation Committee shall be responsible for the evaluation of proposals in accordance with the Act, these Regulations and the request for proposal documents and shall prepare the technical and financial evaluation reports for submission to the Procurement Committee
- (2) An Evaluation Committee shall, within twenty-one days, submit, through the Procurement Unit, the technical evaluation report to the Procurement Committee and indicate the anticipated completion date of the financial evaluation and the combined evaluation report.

96. Preliminary Examination of Technical Proposals

- (1) An Evaluation Committee shall conduct a preliminary examination to determine whether the technical proposals are complete and responsive to the basic instructions and requirements of the request for proposal documents.
- (2) The preliminary examination shall determine whether:
 - (a) the proposal has been submitted in the correct format;
 - (b) the proposal has been submitted without material reservations or deviations from the terms and conditions of the request for proposal documents;
 - (c) the proposal has been correctly signed by the authorized person;
 - (d) the correct number of copies of the proposal have been submitted;

- (e) a separately sealed financial proposal has been submitted, if required;
- (f) the proposal is valid for at least the period required;
- (g) curriculum vitae have been correctly signed, if required;
- (h) all key documents and information have been submitted;
- (i) the proposal meets any other key requirements of the request for proposal documents;
and
- (j) Any material deviations shall result in rejection of the proposal and such proposals shall not be subject to technical evaluation.

- (3) The preliminary examination shall also determine whether consultants are eligible, where this has not been determined prior to inviting proposals.

97. Scoring of Technical Proposal

- (1) An Evaluation Committee shall, prior to commencing the technical evaluation, discuss the evaluation criteria in order to ensure that all members have a common understanding of the criteria and their relative importance.
- (2) Each member of the Evaluation Committee shall independently conduct a technical evaluation of each proposal, awarding scores against each criterion which scores shall be recorded and the score sheets signed by the evaluators.
- (3) The chairman of the Evaluation Committee shall ensure that scores from each member of the Evaluation Committee are compiled and an average score for each proposal shall be calculated from the individual scores awarded by members of the Evaluation Committee.
- (4) An Evaluation Committee shall consider any significant deviations from the average score or inconsistencies in scoring and evaluators may be required to justify the scores awarded.
- (5) Where an evaluator has misunderstood a proposal or the criteria or has evaluated proposals in an inconsistent manner, the evaluator may be permitted to adjust those scores, but no evaluator shall be obliged to make adjustments to scores or permitted to adjust scores without justification.
- (6) Where any score has been adjusted under sub-regulation (5) of this regulation, the original score sheet shall be kept as part of the record of the evaluation, the adjusted scores recorded on a new score sheet and the reasons for making adjustments shall be recorded.
- (7) The average score for each proposal shall be based on its total technical score for evaluation purposes.

98. Quality Cost Based Selection, Fixed Budget Selection and Least Cost Selection

- (1) An Evaluation Committee shall compare the total technical score of each proposal to the minimum technical qualifying mark stated in the request for proposals document and any proposal with a score less than the minimum technical qualifying mark shall be rejected and eliminated from further evaluation.

- (2) An Evaluation Committee shall recommend all proposals with a score equal to or higher than the minimum technical qualifying mark for financial evaluation.
- (3) An Evaluation Committee shall prepare a Technical Evaluation Report, which shall include:
 - (a) minutes of the opening of technical proposals;
 - (b) the results of the preliminary examination, with reasons why any proposals were rejected;
 - (c) the technical scores awarded by each evaluator for each proposal;
 - (d) a summary of the relative strengths and weaknesses of each proposal;
 - (e) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to scores;
 - (f) the total technical score for each proposal;
 - (g) a list of the proposals which reached the minimum technical qualifying mark and a recommendation to open the financial proposals of these consultants; and
 - (h) a recommendation to reject all proposals which did not reach the minimum technical qualifying mark.
- (4) A Technical Evaluation Report shall be submitted to the Procurement Committee for approval, before proceeding with the opening and evaluation of financial proposals or the rejection of any proposals.

99. Technical Evaluation for Quality Based Selection

- (1) An Evaluation Committee shall compare the total technical scores of all proposals and the proposal with the highest total technical score shall be recommended for financial evaluation.
- (2) An Evaluation Committee shall prepare a Technical Evaluation Report, which shall include details contained in these regulations and a recommendation to open the financial proposal of the consultant with the highest total technical score and to reject all other proposals.
- (3) An Evaluation Report shall be submitted to the Procurement Committee for approval, before proceeding with the opening and evaluation of the financial proposal or the rejection of other proposals.

100. Notification of Results of Technical Evaluation

- (1) The Procurement Unit shall, following the approval of the Technical Evaluation Report by the Procurement Committee, notify the bidder or bidders whose proposals shall be proceeding to the financial evaluation of the date and time set for the opening of financial proposals.
- (2) The opening date, to be notified under sub-regulation (1) of this regulation, shall not be sooner than fourteen working days after the notification date, where foreign consultants are included or seven working days, where all consultants are national.
- (3) Notwithstanding the provisions of sub-regulation (1) of this regulation, in the case of Quality Based Selection where only technical proposals have been submitted, the Procurement Unit shall notify the consultant who achieved the highest technical score, requesting the submission of a financial proposal.

- (4) Notwithstanding provisions of sub-regulation (2) of this regulation, where all consultants are qualified to have their financial proposals opened in the case of quality and cost based selection or in the case of quality and least cost selection, the Procurement Unit, on approval of Procurement Committee, may fix shorter period for opening of financial proposal subject to obtaining confirmation of the attendance of all successful bidders at the set date for opening.

101. Opening of Financial Proposal

- (1) A Procurement Unit shall open the financial proposals of consultants whose technical proposals have achieved the required minimum technical score or, in the case of the quality-based selection method, the financial proposal of the first-ranked consultant, at the time, date and location notified to consultants; and consultants' representatives shall be permitted by the Procurement Unit, to attend and witness the opening.
- (2) A Procurement Unit shall ensure that key pages of the financial proposals are stamped and the following information read out and recorded:
 - (a) the name of the consultant;
 - (b) the consultant's total technical score; and
 - (c) the total bid price.
- (3) The opened financial proposals shall be taken immediately to a secure location, where they shall be kept until the financial evaluation begins.
- (4) The Procurement Unit shall maintain a record of the financial proposal opening, which shall form part of the procurement record.
- (5) The Procurement Unit shall request all consultants' representatives attending the financial opening to sign the record, but the absence of any signature shall not invalidate the record.

102. Financial Evaluation for Quality and Cost Based Selection

- (1) An Evaluation Committee shall determine the evaluated price of each proposal by:
 - (a) correcting any arithmetic errors;
 - (b) determining whether financial proposals are complete and have costed all corresponding inputs in the technical proposal, costing any missing items and adding them to the proposal price; and
 - (c) converting all proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the request for proposal documents.
- (2) The lowest priced proposal shall be given a financial score as stated in the request for proposal documents and other proposals shall be given a financial score which is inversely proportional to the lowest evaluated price, using the methodology stated in the request for proposals document.
- (3) The technical and financial scores of each proposal shall be weighted, using the weights stated in the request for proposals document.

- (4) The weighted technical and financial scores shall be added together, to give a total score for each proposal.
- (5) The proposal with the highest total score shall be the best evaluated bid and shall be recommended for award of contract, subject to any negotiations required.
- (6) An Evaluation Committee shall prepare a Combined Evaluation Report, which shall include the following:
 - (a) minutes of the opening of financial proposals, including the technical scores and proposal prices read out;
 - (b) the evaluated price of each proposal, following any corrections, adjustments and the conversion to a single currency;
 - (c) the financial score of each proposal and the methodology used for allocating financial scores;
 - (d) the weighting of the technical and financial scores;
 - (e) the total score for each proposal;
 - (f) a recommendation to award the contract to the consultant obtaining the highest total score, subject to any negotiations required; and
 - (g) the currency and price of the proposed contract, subject to any changes following negotiations.

103. Financial Evaluation for Quality Based Selection

- (1) An Evaluation Committee shall correct any arithmetic errors and determine whether the financial proposal is complete, has costed all corresponding inputs in the technical proposal and offers value for money, subject to any negotiations that may be required.
- (2) An Evaluation Committee shall prepare a Combined Evaluation Report, which shall include:
 - (a) minutes of the opening of the financial proposal, including the technical score and proposal price read out;
 - (b) any corrections to arithmetic errors and a statement of whether the proposal appears to be complete;
 - (c) a recommendation to award the contract to the consultant, subject to any negotiations required; and
 - (d) the currency and price of the proposed contract, subject to any changes following negotiations.

104. Financial Evaluation for Fixed Budget Selection

- (1) An Evaluation Committee shall determine the evaluated price of each financial proposal by conducting the steps provided under these Regulations.
- (2) The evaluated price of the financial proposals shall be compared to the budget indicated in the request for proposals document and any proposal which exceeds the budget shall be rejected and all proposals which are within the budget shall be ranked according to their technical score.

- (3) The financial proposal with the highest technical score, which is within the budget, shall be the best evaluated bid and shall be recommended for award of contract, subject to any negotiations required.
- (4) An Evaluation Committee shall prepare a Combined Evaluation Report, which shall include the information referred to in these Regulations.

105. Financial Evaluation for Least Cost Selection

- (1) An Evaluation Committee shall determine the evaluated price of each proposal by conducting the steps referred to in these Regulations.
- (2) All proposals shall be ranked according to their evaluated price.
- (3) The financial proposal with the lowest evaluated price shall be the best evaluated bid and shall be recommended for award of contract, subject to any negotiations required.
- (4) An Evaluation Committee shall prepare a Combined Evaluation Report, which shall include the information referred to in these Regulations.

106. Negotiations

- (1) A Consultant recommended for award of the contract may be invited by the Procuring Entity for negotiations.
- (2) Negotiations may relate to:
 - (a) minor alterations to the terms of reference, methodology and staffing;
 - (b) minor amendments to the Special Conditions of Contract;
 - (c) mobilization arrangements, the work-plan and completion schedule; or
 - (d) inputs required from the procuring entity.
- (3) Negotiations shall not be conducted to:
 - (a) substantially change the technical quality or details of the proposal, including the tasks or responsibilities of the bidder;
 - (b) materially alter the terms and conditions of contract;
 - (c) reduce fee rates or reimbursable costs, except where changes are required to reflect any agreed changes to the technical proposal; or
 - (d) substantially alter anything which was a deciding factor in the evaluation of proposals.
- (4) Notwithstanding the provisions of sub-regulation (3) of this regulation, where the evaluation was conducted using Quality Based Selection, negotiations may relate to the total proposal price and its constituent costs, to obtain value for money.

107. Procedure for Negotiations

- (1) Negotiations shall not be conducted until after the Combined Evaluation Report has been approved by the relevant Procurement Committee.

- (2) Negotiations shall only be held with the consultant recommended for contract award, except where negotiations fail, and the Procurement Unit obtains approval of the Procurement Committee, to open negotiations with the next ranked consultant.
- (3) The negotiations shall be conducted by not less than two staff of the procuring entity, who shall be appointed by the Accounting Officer to constitute a Negotiation Committee.
- (4) The Negotiation Committee shall prepare a negotiation plan to be approved by the Procurement Committee, which shall specify the issues to be negotiated and objectives to be achieved and set maximum and minimum negotiation parameters. The Negotiation Committee shall not commit the procuring entity to any proposed arrangement or agreements, but shall seek the approval of the Procurement Committee, prior to confirming any agreement reached.
- (5) The Negotiation Committee shall prepare minutes of the negotiations, which shall form part of the record of the procurement and shall obtain the consultant's written agreement that they are a true and accurate record of the negotiations held.

108. Procurement Based on Consultant's Qualification

- (1) In the procurement of consultancy services on the basis of a consultant's qualifications, the following shall be applied:
 - (a) The procuring entity shall request expressions of interest by attaching the terms of reference to the request. At least three qualified bidders shall be requested to provide information about their experience and qualifications relevant to the assignment; and
 - (b) From among the bidders that have expressed interest, the procuring entity shall select the best-rated consultant, in accordance with the criteria disclosed in the notice seeking expressions of interest, related to qualifications and experience to provide the required technical services.
- (2) The procuring entity shall request the selected consultant to submit a joint technical and financial proposal and then shall be invited for negotiation concerning the procurement contract.

109. Procurement of Individual Consultant

- (1) If the services basically depend on the qualifications and experiences available to the individual consultant for assignments to be performed by individual consultants, the procuring entity may seek expressions of interest, by publication of a notice or by direct solicitation, with a view to comparing the qualifications of at least three qualified consultants, and award the contract to the interested consultant with the best qualifications, subject to successful negotiation of the contract.
- (2) The types of services for which a procuring entity may require services of individual consultants include:
 - (a) preparation of terms of reference;
 - (b) opening and evaluation of bids for works contracts and supplier and consultant's proposals;
 - (c) preparation of the brief where architectural or engineering services to be procured;
 - (d) revision and updating of feasibility studies;

- (e) preliminary project or engineering design;
- (f) technical assistance for the planning of development, economic or sectoral planning, organization and management;
- (g) application of the recommendations formulated in a study;
- (h) training;
- (i) assistance of the procuring entity with project implementation, and in particular for the monitoring and supervision of project implementation, as well as for investigations and technical advice;
- (j) preparation of project completion reports; and
- (k) other necessary assistance required by the procuring entity.

CHAPTER VIII BIDDING PROCEDURE FOR REQUEST FOR QUOTATIONS

110. Use of Request for Quotation Procedures

Procuring entities shall ensure that they have complied with all relevant requirements of these Regulations, prior to initiating request for quotations procedures.

111. Contents of Request for Quotations Document

- (1) A Procurement Unit shall prepare a written Request for Quotations document, using the appropriate standard document issued by the Authority.
- (2) The Request for Quotations shall include all information necessary to enable bidders to participate in the procurement proceedings and to submit quotations that are responsive to the needs of the procuring entity.
- (3) A Request for Quotations shall, in particular, include:
 - (a) instructions on the conduct of the procurement process, including the preparation and submission of quotations and information on the evaluation of quotations and award of contract;
 - (b) instructions on any documents required with the quotation;
 - (c) a statement of requirements for the goods, works or services required, as the case may be;
 - (d) information on the methodology and criteria for the evaluation of quotations;
 - (e) a statement on the form and type of contract to be awarded, which shall normally be a purchase order for a lump sum contract;
 - (f) the terms and conditions of contract which will apply; and
 - (g) information on the bidder's right to appeal and on the Government's policy on fraud and corruption, including the debarment of bidders.

112. Development of Shortlist and Invitation for Quotation

- (1) A Procurement Unit shall request for written quotations from a shortlist of bidders.
- (2) A shortlist shall include sufficient bidders to ensure effective competition, but in any case, not less than three quotations shall be obtained.

- (3) Notwithstanding the provisions of sub-regulation (2) of this regulation, a shortlist may consist of only two bidders, where only two suitable sources exist.
- (4) A Procurement Unit may use:
 - (a) provider databases or lists maintained in accordance with these Regulations;
 - (b) lists of pre-qualified applicants;
 - (c) its own knowledge of the market; or
 - (d) any other appropriate sources of information.
- (5) A Procurement Unit shall, in developing a shortlist, comply with the following rules:
 - (a) a fair and equal opportunity shall be afforded to all potential bidders and there shall be a rotation of different bidders on successive shortlists;
 - (b) the shortlist shall not include any bidders who are not expected to fully satisfy any eligibility criteria; and
 - (c) the shortlist shall not include bidders with the same beneficial ownership.
- (6) A Procurement Unit shall record the names of the bidders included on the shortlist and the reasons for their inclusion which shall be kept as part of the procurement record.

113. Submission and Receipt of Quotations

- (1) A procuring entity shall require bidders to submit written quotations.
- (2) A Request for Quotations document, under sub-regulation (1) of this regulation, shall specify the method or methods of submission permitted, which may include submission by:
 - (a) postal or courier service;
 - (b) facsimile;
 - (c) electronic mail, if permitted by public procurement circulars;
 - (d) using the e-procurement system established in accordance with the provisions of the Act;
 - or
 - (e) any other form which leaves a record of the quotation.
- (3) A Request for Quotations document shall specify the location, date and time for submission of quotations and any quotation received after the deadline for submission shall be rejected.
- (4) All quotations shall be kept securely until after the deadline for submission of quotations.
- (5) Where quotations are received in an unsealed form, prior to the submission deadline, the contents of the quotation shall be kept confidential and shall not be revealed to any person, other than the officer responsible for receiving the quotation.

114. Evaluation of Quotations

- (1) Evaluation Committee appointed in accordance with the provisions of the Act, shall evaluate the quotations received.
- (2) In addition to the other provisions of these Regulations, the following shall specifically apply to an evaluation of quotations:
 - (a) alternative quotations shall not be permitted; and
 - (b) the determination of the evaluated price of quotations shall not include the application of any additional evaluation criteria.

- (3) The quotation with the lowest evaluated price, which is substantially responsive to the requirements of the procuring entity, shall be recommended for award of contract.

115. Procedure for Low Value Procurement

Where a procuring entity conducts low-value procurement, in accordance with the threshold specified in the First Schedule of these Regulations, the procedure shall be as follows:

- (a) the Procurement Unit shall first confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;
- (b) the Procurement Unit shall identify suitable bidders for invitation of quotations;
- (c) the Procurement Unit shall request a quotation from at least three identified bidders, based on the statement of requirements included in the requisition;
- (d) the procuring entity shall, under the low-value procurement method, be responsible for ensuring that the value for money is obtained to the extent practicable;
- (e) the purchase shall be made from the bidder that submitted the lowest priced quotation and that meets the requirements of the procuring entity;
- (f) An Accounting Officer may delegate authority to a user department to undertake low-value procurement of not exceeding the value specified in the First Schedule to these Regulations or not less than the limit set in the guidelines issued by the Authority;
- (g) A procuring entity may use petty cash, imprest or purchase cards to effect payments under low-value procurement;
- (h) All low-value procurements shall be reported to the Procurement Committee on a monthly basis by the holder of delegated authority, using the appropriate procedural form issued by the Authority; and
- (i) All low-value procurements shall be reported to the Authority on quarterly basis using the appropriate procedural form.

CHAPTER IX BIDDING PROCESS FOR SINGLE SOURCE PROCUREMENT

116. Use of Single Source Method

Procuring entities shall ensure that they have complied with all relevant requirements of the Act and these Regulations, prior to initiating single source procurement.

117. Procedure for Procurement from a Single Source

Where a procuring entity conducts single source procurement, the Procurement Unit shall:

- (a) prepare a written invitation, containing a statement of requirements for the goods, works or services, as the case may be, and a statement of the proposed contract form and terms and conditions of contract;
 - (b) issue the written invitation to the sole bidder and obtain a written bid;
 - (c) evaluate the bid in accordance with provisions of these Regulations;
 - (d) negotiate with the bidder, if required, in accordance with provisions of these Regulations;
- and

- (e) prepare a report for submission to the Procurement Committee, which shall contain:
 - (i) a summary of the evaluation of the bid;
 - (ii) a record of any negotiations held; and
 - (iii) a recommendation to award the contract or take other appropriate action.

118. Evaluation of a Single Source Bid

- (1) The evaluation of the single source bid shall be conducted by the Evaluation Committee to determine whether the bid:
 - (a) meets the procuring entity technical needs, as defined by the statement of requirements;
 - (b) accepts the contractual terms and conditions proposed by the procuring entity or offers other terms and conditions which are acceptable to the procuring entity; and
 - (c) offers value for money, based on prices previously obtained for similar goods, works or services or a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement.
- (2) The Procurement Committee shall, based on the evaluation, determine whether negotiations are required with the bidder.
- (3) An evaluation report and recommendations shall be submitted to the Procurement Committee, prior to any negotiations or contract award.

119. Appointment of Negotiation Committee for Single Source

- (1) The Accounting Officer shall appoint a Negotiation Committee in accordance with the provisions of these Regulations.
- (2) The Negotiation Committee shall prepare a plan for negotiations which shall specify the issues to be negotiated and objectives to be achieved and shall set minimum negotiation parameters.
- (3) The negotiations shall be conducted by the Negotiation Committee who shall not commit the procuring entity to any proposed arrangement or agreements, but shall seek the approval of the Procurement Committee, prior to confirming any agreement reached.
- (4) The Negotiation Committee shall prepare minutes of the negotiations, which shall form part of the record of the procurement and shall obtain the bidder's written agreement that they are a true and accurate record of the negotiations held.

120. Procedures for Emergency Procurement

Where a procuring entity conducts single-source procurement on the grounds of an emergency need, the Procurement Unit shall:

- (a) first confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement, or an existing contract of the procuring entity or of another governmental entity to which access may be arranged pending the implementation of the procurement processes needed to respond to the emergency;
- (b) notify the Procurement Committee in accordance with the provisions of these Regulations;

- (c) identify a suitable bidder;
- (d) where time permits, prepare a written request for a bid, containing a statement of requirements for the goods, works or services required, as the case may be, and a statement of the proposed contract form and terms and conditions of contract;
- (e) issue a written request to the sole bidder and obtain a written bid;
- (f) evaluate the bid in accordance with the provisions of these Regulations;
- (g) negotiate with the bidder, if required, in accordance with the procedure provided under provisions of these Regulations; and
- (h) prepare a brief report, for submission to the Procurement Committee, which shall contain:
 - (i) details of the requirement and the emergency circumstances;
 - (ii) a summary of the action taken to invite, evaluate and negotiate the bid; and
 - (iii) a recommendation to award the contract or take other appropriate action.

121. Approval Arrangement for Emergency Procurement

- (1) A Procurement Unit shall notify the Procurement Committee as soon as it identifies a procurement requirement which shall be subject to single-source procurement on the grounds of an emergency need.
- (2) In order to ensure that emergency procurement proceeds promptly, any approvals, other than approval to award a contract, may be given by the chairperson of the Procurement Committee, or any other member designated by the chairperson, unless alternative arrangements are agreed by the Procurement Committee.
- (3) A Procurement Committee shall meet promptly to consider any contract award recommendation and, where the Procurement Committee is unable to meet within a reasonable time, the contract award may be approved by the written approval of a majority of the members, without the Committee having met, unless alternative arrangements are agreed by the Procurement Committee.

122. Notification of the Authority

Procuring entities shall submit, within seven days, information about any procurement carried out using a single source method and using a standard procedural form prepared by the Authority.

CHAPTER X CONTRACT AWARD

123. Contract Award Decisions

- (1) All contract award decisions shall be taken by the Procurement Committee in accordance with the Act and these Regulations.
- (2) The Procurement Committee award decision shall be determined by the actual value of the recommended contract and not the estimated value prepared during the procurement planning or disposal process.
- (3) All contract award decisions shall be taken in response to a recommendation for contract award, contained in an evaluation report, unless otherwise permitted by these Regulations.
- (4) A contract award decision by the Procurement Committee shall not constitute a contract, but only a decision as to the winning or recommended bidder.

124. Notice of Best Evaluated Bidder

- (1) Where procurement is conducted using open or selective bidding, or request for proposals, following the contract award decision by the Procurement Committee, the procuring entity shall publish a notice of best evaluated bidder.
- (2) Notwithstanding the provisions of sub-regulation (1) of this regulation, where the procuring entity uses selective bidding or request for proposals with direct solicitation, on grounds of emergency circumstances, the requirement for publication of a notice of best evaluated bidder may be waived.
- (3) The Procurement Committee shall submit, within three days, its award decision to the Accounting Officer who shall proceed to publish a notice of best evaluated bidder if he or she is satisfied that all provisions of the Act, Regulations and bidding documents have been complied with.
- (4) A notice of best evaluated bidder shall specify:
 - (a) the name and address of the bidder recommended for the award;
 - (b) the proposed contract price and completion or delivery period;
 - (c) the reasons as to why the bidders bid was not successful;
 - (d) that bidders have the right to submit an application for review of the decision in accordance with the Act; and
 - (e) the procurement reference number and description.
- (5) A notice of best evaluated bidder shall clearly state that it does not constitute an award of a contract and shall be:
 - (a) sent directly to all bidders;
 - (b) published on the Authority's central web portal of the procurement system; and

(c) displayed on the notice board or a prominent place in the procuring entity offices.

- (6) Unless a standstill period is not applicable, a procuring entity shall not award the contract until ten working days have elapsed after publication of the notice of best evaluated bidder in a format issued by the Authority.

125. Commitment of Funds

- (1) A procuring entity shall, following the contract award decision by the Procurement Committee, commit the required funds, before proceeding to award the contract.
- (2) Where required, a procuring entity shall also commit the funds for other costs linked to the contract.

126. Contract Award Under Open or Selective Bidding

- (1) A procuring entity shall, following the commitment of funds in accordance with these Regulations and the publication of the notice of best evaluated bidder and provided no application for review has been received, award the contract by issuing a letter of bid acceptance to the recommended bidder.
- (2) The letter of bid acceptance shall state:
- (a) the name and address of the procuring entity;
 - (b) the name and address of the bidder;
 - (c) the date and reference number of the bid being accepted;
 - (d) any modifications to the bid, resulting from clarifications, corrections or negotiations;
 - (e) any items excluded from the contract or variations in quantity or any other detail;
 - (f) the total contract price; and
 - (g) that the letter of bid acceptance constitutes a contract between the procuring entity and the bidder, until such time a formal contract is signed.
- (3) A Procurement Unit shall obtain a signed acknowledgment from the bidder, confirming that it has received the letter of bid acceptance.
- (4) If the recommended bidder fails to conclude a contract, or provide a performance security or any other action required by the bidding document, the procuring entity shall annul the contract award; and shall award the contract to the next ranked bidder, subject to the bidder being qualified and approval of the Procurement Committee is obtained.

127. Contract Preparation and Signature Under Open or Selective Bidding

- (1) A Procuring Entity shall, following the issue of the letter of bid acceptance, in accordance with these Regulations prepare a written contract, using the contract included in the bidding document.
- (2) A Procurement Unit shall obtain approval of the contract document from the Accounting Officer and the Ministry of Justice, before sending it to the bidder for signature.
- (3) A Procurement Unit shall ensure that the bidder signs and returns a copy of the contract within five days from receipt of the contract draft.

128. Contract Award under Request for Quotations

- (1) Where procurement is conducted using request for sealed quotation, following the contract award decision by the Procurement Committee and the commitment of funds, the Procurement Unit shall prepare a written purchase order and send it to the successful bidder.
- (2) The purchase order shall not contain any terms, conditions or requirements which differ from the bidder's quotation, unless these have been agreed in writing with the bidder.
- (3) The purchase order shall constitute a contract between the procuring entity and the bidder.
- (4) A procuring entity shall require the bidder to provide written confirmation that it has received the purchase order and is proceeding with performance of the contract, but any failure by the bidder to provide such confirmation shall not invalidate the contract.

129. Contract Award under Single Source Procurement

- (1) Where a procuring entity conducts single source procurement on any other grounds, other than emergency procurement, following the contract award decision by the Procurement Committee and the commitment of funds, the Procurement Unit shall prepare a written contract or purchase order and send it to the recommended bidder.
- (2) A procuring entity may, where appropriate, send a letter of bid acceptance to the bidder, prior to sending the contract document, in accordance with these Regulations
- (3) A Procurement Unit shall obtain a signed acknowledgement from the bidder, confirming that it has received the letter of bid acceptance, contract or purchase order and that it is proceeding with performance of the contract, but any failure by the bidder to provide such confirmation shall not invalidate the contract.

130. Performance Securities

- (1) A procuring entity shall request a performance security for all contracts for goods, works and non-consulting services that require performance security to secure the provider's obligation to fulfill the contract.
- (2) The bidding documents and contract shall state the requirement for a performance security which may cover warranty obligations, if stated in the contract.
- (3) The value of any required performance security may be expressed either as a fixed amount or as a percentage of the contract value.
- (4) The amount shall, in the case of unconditional, simple demand bank guarantee or stand-by letter of credit not exceed ten percent of the contract value.
- (5) A Procurement Unit shall, in determining the amount of performance security required, take into account the cost to the provider of obtaining a performance security, the value of the contract, the risk of a provider failing to fulfill the contractual obligations and the extent of

protection offered to the procuring entity through alternative means, such as payment retentions.

- (6) Where appropriate, the value of the performance security may be progressively reduced, in accordance with the provider's progress in delivering or completing the goods, works or services to which the security relates.
- (7) The bidding documents and contract shall state that the performance security shall be:
 - (a) in accordance with the format and wording provided in the contract;
 - (b) in a form acceptable to the procuring entity, which may be:
 - (i). a Manager's or certified cheque or payable order;
 - (ii). an insurance or a bank guarantee; or
 - (iii). an equivalent instrument, such as a stand-by letter of credit;
 - (c) from an institution acceptable to the procuring entity, where the security is issued by the financial institution; and
 - (d) valid for the period prescribed in the contract, which shall normally be one month beyond the anticipated completion date of the contract.
- (8) The conditions for forfeiture of the performance security shall be specified in the contract.
- (9) A Procurement Unit shall release the performance security promptly to the provider upon completion of all the provider's contractual obligations.
- (10) The successful bidder shall be required to provide any Performance Security within fourteen days of the date of the bid acceptance, unless otherwise provided in the standard bidding documents issued by the Authority.
- (11) In procurement proceedings in which a performance security is not required, the procuring entity may, in accordance with guidance that may be issued by the Authority, require the successful bidder to sign a performance securing declaration in accordance with these Regulations.

131. Rejection of Bids and Debriefing of Unsuccessful Bidders

- (1) A Procurement Unit shall, upon the entry into force of a contract and, the provision by the successful bidder of any required performance security, promptly reject the bids of all unsuccessful bidders.
- (2) A Procurement Unit shall, when rejecting unsuccessful bids, return any bid securities and any unopened financial proposals.
- (3) A Procurement Unit shall, where so requested in writing, provide all unsuccessful bidders with a debrief as to the reasons for the failure of their bids or applications to pre-qualify.

- (4) The Procurement Unit and User Department of the Procuring Entity shall debrief the unsuccessful bidders within five working days from a request for such information, except that where such debrief is provided verbally, it shall be confirmed in writing to the bidder.
- (5) A debrief shall state at which stage of the evaluation the bid was rejected, provide brief details of any material deviation, reservation or omission leading to rejection of the bid, or state that a bid was substantially responsive but failed to offer the lowest evaluated price or highest score, as required.
- (6) A debrief shall not provide details on any other bids, other than information that is publicly available from bid openings or published notices.

132. Public Notice of Contract Awards

- (1) A procuring entity shall publish a notice of contract award for all contracts which exceed the threshold specified in the First Schedule.
- (2) A notice of contract award shall indicate the name and address of the provider, a brief description of the goods, works or services purchased and the contract price, and shall be published in accordance with these Regulations.
- (3) A summary notice, providing details of contract awards for all contracts below the threshold in sub-regulation (1) of this regulation, shall be displayed on the notice board or a prominent place in the procuring entity offices and, to the extent feasible, published on the Authority's central web portal of the procurement and disposal of assets system on a monthly basis.

133. Types of Contract and Pricing Approaches

- (1) A procuring entity may use any of the contract types and pricing approaches included in this part, in accordance with the provisions of these Regulations, or any other contract types authorized by the Authority.
- (2) A Procuring entity shall use the contract forms included in the standard bidding documents issued by the Authority.

134. Lump Sum Contracts

- (1) A procuring entity may use a lump sum contract for goods, works or services, where the content, duration and outputs of the contract are well defined.
- (2) A lump sum contract shall consist of an agreed total price for the performance of the contract.
- (3) A procuring entity shall, subject to the conditions of the contract, pay the provider the agreed lump sum price, irrespective of the actual quantity, time or work required for performance of the contract.
- (4) Payments under a lump sum contract shall be dependent on clearly specified outputs, deliverables or events, which may include, but not be limited to:

- (a) deliveries of goods, as evidenced by the appropriate delivery documentation specified in the contract;
- (b) installation or commissioning of goods;
- (c) milestones in construction;
- (d) provisional or final acceptance of goods or works;
- (e) reports or recommendations;
- (f) the completion of drawings, bills of quantities, activity schedules or bidding documents;
- (g) software programmes; or
- (h) workshops or training programmes.

135. Time Based or Measured Works Contracts

- (1). A procuring entity may use a:
 - (a) time based contract for service, where the scope and duration of the contract are difficult to define; or
 - (b) measured works contract for works, which are not well defined, likely to change in quantity or specification or where difficult or unforeseen site conditions are likely.
- (2) Payments under a time based or measured works contract shall be for the actual quantity delivered or performed, using fixed unit prices for different items specified in the contract.
- (3) For services contracts, payment shall be based on:
 - (a) agreed fee rates for a specified period of time, for either nominated personnel or a certain type or grade of personnel; and
 - (b) reimbursable items, such as transportation and subsistence, using either actual expenses or agreed unit prices.
- (4) For works contracts, payment shall be based on agreed rates for various items of work, as priced by the provider in the bill of quantities.
- (5) Time based and measured works contracts shall include a maximum amount of total payments, which may include a contingency amount for unforeseen work, except that the procuring entity shall not exceed the maximum amount without gaining authorization for a contract amendment.
- (6) A Procurement Unit shall monitor time based and measured works contracts closely, to ensure that progress is in accordance with the contract and that payments claimed by the provider are appropriate and in accordance with the contract.

136. Percentage Based Contracts

- (1) A procuring entity may use a percentage-based contract where it is appropriate to relate the fee paid directly to estimated or actual costs or amounts, such as the value of a contract or sale.
- (2) A percentage-based contract shall clearly define the total cost from which the percentage is to be calculated and the percentage to be paid.
- (3) A percentage-based contract may include:

- (a) a fixed target cost or amount;
- (b) minimum or maximum fees;
- (c) a sliding scale of fees; or
- (d) incentive fees, related to any savings made through economic design, discounts obtained, cost reductions or anything similar.

137. Cost Reimbursable and Target Price Contracts

(1) A procuring entity may use a cost reimbursable or target price contract for:

(a) emergency works, where there is insufficient time to fully calculate the costs involved;
or

(b) high risk works, where it is more economical for the procuring entity to bear the risk of price variations than to pay the provider to accept the risk, or where a provider will not accept the risk.

(2). Payment under a cost reimbursable and target contract shall be for:

(a) the actual cost of the works, as evidenced by receipts and other appropriate documentation; and

(b) a fee or profit, as specified in the contract.

(3). Where a target price can be agreed, an incentive payment may also be made for any cost savings.

138. Contents of Contract

(1) A procuring entity shall use the contract form included in the appropriate standard bidding document issued by the Authority for drafting individual contract documents.

(2) Where procurement shall be conducted using open or selective bidding, the draft contract shall be included in the bidding document issued, except that in all other cases, where the draft contract is not included, any bidding document shall clearly state the type of contract and key contract terms which shall apply.

(3) The contract document shall include all contract terms and conditions and in particular, the following:

- (a) the general conditions of contract, or a statement of the general conditions which apply;
- (b) the special conditions of contract;
- (c) a statement that the special conditions of contract prevail over the general conditions and the order of priority of other contract documents;
- (d) a clear description of the goods, works or services covered by the contract, including the technical requirements, quantity and delivery or completion schedule, based on the statement of requirements included in the bidding document and the provider's bid, subject to any modifications agreed;
- (e) the total contract price and, if applicable, the conditions applicable to varying, adjusting, modifying or re-calculating the actual price payable;
- (f) the payment conditions, including the payment period, schedule, currency and documentation required;
- (g) any requirement for securities;

- (h) the procedures agreed for dispute settlement;
- (i) other key contract terms as required by the standard documents, including warranties, insurance, subcontracting, inspection and acceptance, contract completion, delays in performance or other non-performance, force majeure and variation, indemnification of the procuring entity regarding intellectual property rights-related liability, modification and termination of the contract; and
- (j) information on the Government's policy on fraud and corruption, including the debarment of bidders.

(4). The pricing of a contract shall be in accordance with one of the contract types permitted in these regulations.

139. Price Adjustment

(1) For contracts with a duration of more than eighteen months, the procuring entity may include a price adjustment provision, where it determines that it is more economical for the procuring entity to accept the risk of increased costs than to pay an additional cost for the provider to accept the risk.

(2) Where a price adjustment provision is included, the contract shall clearly state:

- (a) the formula for calculating adjustments, which shall separate the total price into components, such as labour, equipment, materials and fuel;
- (b) price indices for each component specified in the formula;
- (c) any correction factor to take into account differences in the payment currency and the currencies of the source of the input and price index;
- (d) the base date for application of the formula;
- (e) the frequency with which the method shall be applied; and
- (f) any minimum variation required to qualify for price adjustment and any other restrictions or conditions.

(3) Where a price adjustment methodology cannot be based on the provisions detailed in sub-regulation (2) of this regulation, alternative provisions may be included which base adjustment on the submission by the provider of documentary evidence which shall include actual invoices provided by the provider evidencing increases in costs and where this is permitted the contract shall state:

- (a) the actual costs that are subject to price adjustment, such as labour, equipment, materials and fuel;
- (b) the method for calculating adjustments;
- (c) any correction factor to take into account differences in the payment currency and the currencies of the source of the input and price index;
- (d) the base date for application of the methodology;
- (e) the frequency with which the method shall be applied; and
- (f) any minimum variation required to qualify for price adjustment and any other restrictions or conditions.

(4) The contract may, in addition, provide that, when the price adjustment provisions result in an increase exceeding a specified percentage or amount of the contract, the procuring entity may either:

- (a) terminate the contract; or
- (b) re-negotiate the contract in order to stay within the budget or otherwise minimize costs for the procuring entity.

(5) A contract including a price adjustment shall also include a contingency which shall be used, subject to the approval of Procuring Entity, for paying any computed price adjustment.

140. Payment Terms

- (1) The period for payment shall be stated in a contract.
- (2) The contract shall provide for interest to be paid to the provider where the procuring entity fails to make payment within the period specified in the contract.
- (3) The contract shall clearly state the interest rate to be applied, how interest payments shall be calculated and any other conditions relating to payment of interest.
- (4) The contract shall clearly state the currency or currencies of payment and, where required, the exchange rates or the source of exchange rates applicable.
- (5) The contract shall clearly specify the payment schedule, which may include advance payments, progress payments and retained payments.

141. Advance Payments

- (1) A contract may provide for advance payments to the provider where this is necessary to ensure effective implementation of the contract or to obtain competitive prices.
- (2) Advance payments may be made for costs such as mobilization, start up, the purchase of materials or costs related to goods which are specially or custom manufactured for the procuring entity.
- (3) The total amount of an advance payment shall not exceed twenty-five percent of the total contract price.
- (4) Any advance payment shall only be made against the provision by the provider of an advance payment guarantee, covering the full amount of the advance payment and in accordance with the provisions of these Regulations.
- (5) The contract shall state that materials, equipment and personnel for which an advance payment is received, shall be used only for performance of that contract and works contract may require that materials, equipment and personnel for which an advance payment is received, shall be committed to the site or sites of the works.
- (6) Where specified in the contract, advance payments may be recovered from subsequent payments to the provider which shall be subject to a fixed percentage deduction in a manner that the advance payment is recovered in full when eighty percent of the contract price has been certified for payment.

142. Progress Payments

- (1) A contract may provide for progress payments to the provider, which shall be either:

- (a) payment of a specified percentage or amount of the contract value following particular events, milestones or submission of deliverables specified in the contract; or
 - (b) payment for the actual quantities of goods, works or services delivered or completed.
- (2) Progress payments shall not exceed the cost or value of the goods, works or services delivered or completed.
- (3) Progress payments shall only be made against interim certificates or other documentation proving delivery or completion of the goods, works or services subject to the progress payment or submission of the deliverables specified.

143. Retained Payment

- (1) A contract may provide for a specified percentage or amount of payments to the provider to be retained.
- (2). The contract shall clearly specify:
- (a) the percentage or amount to be retained;
 - (b) the period or event at which the retention is to be released, which may include, but not be limited to installation of goods, completion of the contract or expiry of a warranty period; and
 - (c) the documents required to prove completion of the event or period in paragraph (b).
- (3) Where specified in the contract, the provider may substitute a retention money security for a retention payment.

144. Payment Documents

- (1) A contract document shall require the provider to submit an original invoice for each payment requested or other applicable, equivalent payment document.
- (2) The contract document shall clearly state the documents against which payments shall be made.
- (3) The documents required shall relate to the delivery, progress or performance of the contract for which the payment is due or provide evidence of fulfillment of contract terms and conditions.
- (4) The documents required may include, but not be limited to:
- (a) Goods Received Notes, Bills of Lading, Air Waybills or other documentation proving delivery or receipt of goods, in accordance with the terms of the contract;
 - (b) Packing Lists, or other documentation proving the content of any consignments delivered;
 - (c) Inspection Certificates or Reports, or other documentation proving that goods, works or services have passed inspection;
 - (d) Installation, Commissioning, Acceptance or Handover Certificates, or other documentation proving that goods, works or services have been accepted;
 - (e) Insurance Certificates or other documentation proving that the provider has taken out the required insurance for the goods, works or services;
 - (f) Certificates of Origin or evidence of nationality, where goods supplied or personnel employed under a contract are subject to restrictions on origin or nationality;
 - (g) Interim Certificates, certifying the progress made in performance of a contract, as evidence of entitlement to progress payments; or

- (h) Receipts or other documentation, proving that specified costs have been incurred, such as air tickets or time sheets for personnel.

145. Payment Securities

- (1) A procuring entity may require a payment security from the provider, where the contract permits payments to a provider prior to the delivery or completion of the goods, works or services to which the payment relates.
- (2) The value of any payment security shall be equal to the payment to which it relates and, where appropriate, the value of a security may be progressively reduced, in accordance with the provider progress in delivering or completing the goods, works or services to which the payment relates.
- (3) The contract shall state that the payment security shall be:
 - (a) in accordance with the format and wording provided in the contract;
 - (b) in a form acceptable to the procuring entity;
 - (c) from an institution acceptable to the procuring entity; and
 - (d) valid for the period prescribed in the contract, which shall normally be at least one month beyond the anticipated due date of the payment.
- (4) The conditions for forfeiture of the payment security shall be specified in the contract.
- (5) A Procurement Unit shall release the payment security promptly to the provider upon completion of all the provider contractual obligations which are subject to the security or upon expiry of the security.

CHAPTER XI PROCEDURE FOR FRAMEWORK AGREEMENTS

146. Framework Agreement

- (1) A procuring entity may use a framework agreement for goods, works or services:
 - (a) where the items are needed on call, but where the quantity and timing of the requirements cannot be defined in advance, including for planning preparedness for emergency procurement should the need arise; or
 - (b) to reduce procurement costs or lead times for items which are needed repeatedly or continuously over a period of time, by having them available on a call off basis.
- (2) Payments under a framework agreement shall be for the actual quantity delivered or performed during the time period covered by the framework agreement, using the fixed unit prices specified in the framework agreement, or determined in accordance with the framework agreement.
- (3) Framework agreements may include an estimated quantity or value, but shall not commit to purchasing this estimated quantity or value.

- (4). Framework agreements shall specify the arrangements for obtaining specific requirements during the period of the contract, using “call-off” or delivery orders.
- (5) In accordance with the provisions of the Act, procuring entities may enter into open or closed framework agreements for recurrent procurement of goods, services and small works that occur on indefinite or recurrent basis over a period of time; or if the procuring entity expects that, due to the nature of the goods, works or services to be procured, the need for them will arise on an urgent basis during the term of the framework agreement, including for planning preparedness for emergency procurement should the need arise.

147. Establishment of Framework Agreement

- (1) Framework agreements shall be established following procedures prescribed for open bidding, or, such other methods available under the Act, as may be appropriate in accordance with the conditions for the use of those methods, and taking into account the particular characteristics of framework agreements and the nature of the procurement.
- (2) Framework agreements may be established by:
 - (a) individual procuring entities;
 - (b) a procuring entity acting on behalf of itself and one or more other procuring entities; and
 - (c) a central authority acting on behalf of a group of procuring entities.
- (3) A framework agreement may be established with a single, or with more than one provider.
- (4) In solicitations for participation of bidders in procurement proceedings leading to the establishment of a framework agreement, the procuring entity shall disclose, in addition to the information generally required to be disclosed in the bidding documents:
 - (a) that the procurement is leading up to the establishment of a framework agreement and the information required to enable bidders to understand the nature of the framework agreement and related procedures;
 - (b) a description of the goods, works or services intended to be covered by the framework agreement;
 - (c) an estimate of the total volume or scope of the goods, works or services for which call-off contracts may be placed and, as far as possible, the volume or scope and frequency of the call-off contracts to be awarded under the framework agreement;
 - (d) the entity or entities that will be eligible to conclude-call-off contracts under the framework agreement, either by specifying them or providing a sufficiently clear description of the type and range of entities when more than one entity will be eligible;
 - (e) a statement that there is no guarantee of being awarded a call-off contract;
 - (f) whether the framework agreement is open or closed, and its duration, which shall not exceed three years, unless otherwise approved by the Authority;
 - (g) determine whether the framework agreement will be concluded with one party or a certain number of parties, or whether there will be a minimum and a maximum number of the parties;
 - (h) in the case of an open framework agreement, an explicit statement that providers may apply to become parties to the framework agreement at any time during the period of its

- (i) operation by presenting indicative submissions, subject to any maximum limit on the number of providers;
- (j) the form, terms and conditions of the framework agreement, as may be specified in accordance with the applicable standard bidding documents;
- (k) the method or methods that will be employed to award call-off contracts under the framework agreement and the contracting format to be used, such as purchase orders or statements of work;
- (l) the terms and conditions of contract that will apply to call-off under the framework agreement, to the fullest extent those can be specified at the time of solicitation of participation in the framework agreement;
- (m) the pricing mechanisms to be applied include:
 - (i). the manner in which prices that are offered at the time of engagement in the framework agreement for indicative purposes only will be evaluated for the purposes of such engagement and for the purposes of award of call-off contracts should the bidder be engaged in the framework agreement, including, if applicable, that those prices are maximum prices;
 - (ii). where bid evaluation criteria to be included in the framework agreement are for indicative purposes subject to further refinement at the stage of soliciting call-off contracts, information to that effect;
 - (iii). in the case of a multi-provider framework agreement with a competition at the contract award stage, whether that competition will entail an electronic reverse auction.
- (n) whether the prices included in the framework agreement will be subject to adjustment during the duration of the framework agreement and, if so, the frequency and manner of such adjustment, and whether upward and downward, or only downward, adjustments would be possible;
- (o) any obligations of the provider to continue improvement on the provision of goods or services, and or reducing charges; and
- (p) such other information as may be required in accordance with the applicable standard bidding documents.

148. Choice of Type of Framework Agreement

- (1) When a closed framework agreement is established, only the providers engaged at the time of the establishment of the framework agreement are admitted into the framework agreement for its duration.
- (2) When an open framework agreement is established, the agreement is open for additional providers to join the agreement during its duration. An open framework agreement shall be concluded with all qualified providers that presented indicative submissions that are evaluated as being responsive to the requirements disclosed in the bidding documents. The procuring entity shall promptly notify the providers whether they have become parties to the framework agreement and of the reasons for the rejection of their indicative submissions if they have not.
- (3) Submission of a bid security shall not be required at the stage of engagement of providers in a framework agreement.
- (4) The procuring entity shall, during the entire period of operation of the open framework agreement, republish continuously on the Authority's central web portal of the procurement

system the invitation to become a party to the open framework agreement and shall in addition ensure unrestricted, direct and full access to the bidding documents and the terms and conditions of the framework agreement and to any other necessary information relevant to its operation, including the manner of applying for and being admitted to the framework agreement.

- (5) The procuring entity shall examine all indicative submissions received during the period of operation of an open framework agreement within the maximum number of days as specified in the bidding documents to determine whether they are responsive to the requirements in the bidding documents, and it shall promptly inform the bidders that they were approved to join the agreement, or, in case of rejection, of the reasons of rejection.
- (6) In the case of multi-user framework agreements, the establishment of framework agreements shall be based on consultations with procuring entities, so as to ascertain their requirements, and market research in order to ascertain the availability of supplies and solutions, the degree of competition in the market, pricing levels, delivery parameters.
- (7) A user guide for each framework agreement shall be prepared for participants by the entity establishing the framework agreement.
- (8) Providers awarded a framework agreement have no guarantee of any call-off contracts.

149. Award of Contracts under Framework Agreements

- (1) Any procurement contract under a framework agreement shall be awarded in accordance with the terms and conditions of the framework agreement and the procedures specified therein, and only to a provider that is a party to the framework agreement.
- (2) A framework agreement shall, as specified in the framework agreement, generally be based on prices that are either pre-agreed, or determined at the call-off stage through competition or a process allowing their revision without further competition.
- (3) If only a single provider is engaged in the framework agreement, the call-off contracts shall be awarded in accordance with the terms agreed when the framework agreement was established.
- (4) In the case of a framework agreement in which more than one provider is engaged, the procedure for award of contracts under the framework agreement, shall be based on:
 - (a) direct selection applying objective criteria for call-off that have been defined in the framework agreement, except when the provider is unable to supply the procuring entity's needs or has a conflict of interest. In this case, the contract is allocated to the next ranked, available provider; or
 - (b) a competition among providers engaged in the framework agreement applying objective criteria described in the framework agreement, if the terms stated in the framework agreement are not sufficiently defined to identify the best source to fulfil the procuring entity's needs in accordance with those criteria;
 - (c) Where call-off contracts are awarded on the basis of a competition, the award may be based on lowest price or the identification of the most advantageous bid, in accordance with the criteria disclosed in the framework agreement and specified in the solicitation of bids in the competition.

- (5) In the case of a framework agreement in which more than one provider is engaged, contract awards may be subject to an upper limit placed on awards to each provider.
- (6) When contracts are awarded on the basis of a competition among providers engaged in the framework agreement, the competition may involve an electronic reverse auction procedure.

150. Use of Framework Agreements for Procurement of Commodities

- (1) A framework agreement may be established for procurement of commodities and to constitute a list of bidders drawn up to whom periodic invitations to bid are issued.
- (2) Bidders may be invited to quote prices linked to the market price at the time of, or prior to, the shipments.
- (3) Bid validities shall be as short as possible and a single currency in which the commodity is usually priced in the market may be used for bidding and payment.
- (4) Standard contract conditions and forms consistent with market practices shall be issued by the Authority and used by procuring entities.

151. Modifications in Framework Agreement

- (1) During the operation of the framework agreement, no amendment may be made to the description of the subject matter of the procurement. Changes to other terms and conditions of the procurement, including to the criteria for any second stage competition and the manner of their application, and procedures for the award of the anticipated procurement contracts, may be made only to the extent and in the manner expressly permitted in the framework agreement.
- (2) Without prejudice to the scope or nature of the framework agreement, incremental changes in technical specifications for the purposes of avoiding obsolescence, or other changes envisaged in the bidding documents for the establishment of the framework agreement and envisaged in the framework agreement, and that do not change substantially the supplier market for the framework agreement are permissible.
- (3) Any changes in the specifications under the framework agreement shall be carried out in a transparent manner including publication on the Authority's central web portal of the procurement system, and, in a multi-provider framework agreement, in a competitive manner where all providers engaged in the framework agreement, and any that may wish to join, in the case of an open framework agreement, may bid on the basis of the modified technical specifications. Changes to the technical specifications shall not be made upon the issuance of purchase orders except in the case of a single-provider framework agreement.

CHAPTER XII CONTRACT MANAGEMENT

152. Selection of Contract Manager

- (1) The User Department, shall designate a member of staff as the contract manager for every contract awarded, except that where a contract is particularly large or complex, a team of staff may be appointed to manage the contract.
- (2) A contract manager, or members of the contract management team, may be from the Procurement Unit, the User Department, State, Administrative Areas, County or any other relevant part of the Government of South Sudan where the contract is being performed and a contract manager or a member of the contract management team, and may be external to the procuring entity where the required skills or experience are not available within the procuring entity.
- (3) A contract manager, or contract management team, shall be of an appropriate level of seniority and experience for the contract to be managed and have skills appropriate to the contract to be managed and the deliverables required under the contract.
- (4) The User Department shall, in selecting the contract manager, or contracts management team, take into account the need for:
 - (a) user department or end user representation, especially where the delivery of services involves the user or user training is required;
 - (b) technical skills relevant to the goods, works or services, especially where technical supervision or inspection is required;
 - (c) receipt of goods into stores or installation of goods at a particular location; or
 - (d) contracting, legal or financial management skills.

153. Contract Management Responsibilities

- (1). A contract manager or team shall be responsible for:
 - (a) monitoring the performance of the provider to ensure that all delivery or performance obligations are met or appropriate action taken by the procuring entity in the event of obligations not being met;
 - (b) ensuring that the provider submits all required documentation;
 - (c) ensuring that the procuring entity meets all its payment and other obligations on time and in accordance with the contract;
 - (d) ensuring that there is adequate cost, quality and time control, where required, including any inspection and receipt procedures that may be applicable;
 - (e) preparing any required contract variations or change orders and obtaining all required approvals before their issue;
 - (f) referring any required contract amendments to the Procurement Unit for preparation;
 - (g) managing any handover or acceptance procedures;
 - (h) referring any recommendations for contract termination to the Procurement Unit;
 - (i) ensuring that the contract is complete, prior to closing the contract file;

- (j) ensuring that all contract management records are kept and archived as required;
- (k) ensuring that the provider and the procuring entity act in accordance with the Act, these Regulations and the contract;
- (l) managing the processes of avoidance and resolution of disputes; and
- (m) keeping the Procurement Unit informed of the status and progress of the contract.

(2) In managing the contract, the contract manager shall use existing systems, procedures and resources within the procuring entity and, in particular, the contract manager shall use existing disbursement systems for making payments to providers.

154. Inspection of Goods, Works and Services

(1) A contract shall state that the procuring entity has the right to inspect goods, works and services at any reasonable time or place, including:

- (a) during manufacture or construction;
- (b) prior to shipment;
- (c) on delivery or completion; or
- (d) prior to final acceptance.

(2) A contract shall require the provider to ensure that the procuring entity's right of inspection is extended to subcontractors.

(3) A procuring entity may:

- (a) observe tests conducted by the provider or any subcontractor, under their own quality control procedures;
- (b) conduct its own inspection; or
- (c) employ an independent third party to undertake technical inspection.

(4) The contract shall clearly state all requirements relating to inspections, including:

- (a) the type of inspection or test to be performed and the standards to be met;
- (b) the location for inspection;
- (c) the person to carry out the inspection or tests;
- (d) when inspection is to be conducted;
- (e) who is responsible for payment of the various costs of inspection;
- (f) any notification or documentation required from providers relating to inspection or testing;
- (g) that samples provided for testing shall be provided free of charge by the provider; and
- (h) that where goods, works or services fail an inspection, the provider is liable for the correction of any defects at his or her own expense and the costs of any re-inspection required.

155. Acceptance of Goods, Works and Services

(1) An Accounting Officer shall appoint a Verification and Acceptance Committee in accordance with provisions of the Act.

(2) The Verification and Acceptance committee shall, prior to accepting goods, works or services or signing any interim or completion certificate, goods received notes or similar documents, ensure that:

- (a) the correct quantity or inputs of goods, works or services have been received;
- (b) the goods, works or services meet the technical standards defined in the contract;
- (c) the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- (d) all required deliverables have been submitted; and
- (e) all required manuals or documentation have been received.

156. Contract Amendments

- (1) Where any change to the terms and conditions of a contract is required, other than contract variations permitted in accordance with provisions of these Regulation, the Procurement Unit and contract manager shall prepare a written amendment to the contract.
- (2) Any amendment to the contract shall only be valid when approved by the Procurement Committee and signed by authorized representatives of both the procuring entity and the provider.
- (3) The Procurement Unit shall obtain the prior authorization of the internal financial control unit of the procuring entity prior to the issuance of any contract amendment.

157. Contract Variations

- (1) A contract may where appropriate, in order to facilitate adaptations to unanticipated events or changes in requirements, permit:
 - (a) the contract manager or other designated official to order variations to the statement of requirements for goods, works or services, the price or the completion date; or
 - (b) defined compensation events to justify variations in the price or completion date.
- (2) Where a variation results in a change in price, any additional funds shall be committed prior to issuance of the variation, unless such funds are already provided by any committed amount for contingencies or similar.
- (3) A contract shall include a maximum limit on the variations which may be issued without an amendment to the contract in accordance with the provisions of these Regulations.
- (4) A contract shall clearly state any approval requirements relating to contract variation.

158. Contract Termination

- (1) A contract document shall specify the grounds on which the contract may be terminated and specify the procedures applicable to termination.
- (2) A Procurement Unit shall obtain the approval of the Procurement Committee prior to terminating the contract; and the request for approval shall clearly state:
 - (a) the reasons for termination;
 - (b) actions which have been taken to avoid the need for termination;
 - (c) the contractual grounds for termination; and
 - (d) the costs, if any, for which the procuring entity will be liable following termination.
- (3) Following the approval of Procurement Committee to terminate a contract, the procuring entity shall consult the Ministry of Justice for their legal opinion before effecting the termination of the contract.

CHAPTER XIII DISPOSAL OF PUBLIC ASSETS

159. Board of Survey

- (1) An Accounting Officer shall establish a Board of Survey as and when required for the purpose of disposal of assets of unserviceable, obsolete, obsolescent, or surplus stores, equipment or assets.
- (2) The Board of Survey shall be responsible for verification and processing of all disposal of Public assets recommendations in liaison with the Head of Procurement Unit as prescribed.
- (3) The Board of Survey shall comprise of:
 - (a) a chairperson, who shall be a head of department;
 - (b) the head of administration and finance function;
 - (c) at least three heads of user departments, of whom one shall be the head of the user department disposing off the stores, equipment or assets;
 - (d) the head of the Procurement Unit as secretary or his or her designate.
- (4). The Board of Survey shall perform the following functions:
 - (a) conduct board of survey activities of assets for disposal;
 - (b) verify the condition and the location of the assets identified for disposal;
 - (c) determine the current market value of the assets for disposal;
 - (d) set up a reserve price based on paragraph (c), where technical advice is not required;
 - (e) verify the justification and procedure for disposal;
 - (f) seek technical expertise where necessary to ascertain the value and the condition of the assets; and
 - (g) prepare a disposal report and submit it to the Accounting Officer, with specific recommendations on the assets to be disposed or those not to be disposed and the reasons thereof.

160. Disposal Planning

- (1) For the purposes of disposal planning, an Accounting Officer shall, in each financial year, cause the public assets of a procuring entity to be reviewed to identify the public assets to be disposed of in the following financial year.
- (2) A procuring entity shall, through the Board of Survey, identify the public assets to be disposed of.
- (3) For the purposes of maximizing competition and achieving value for money, a procuring entity shall group the public assets to be disposed of in contracts or lots.
- (4) In order to reduce the administration and transaction costs, a procuring entity shall dispose of as many assets as possible at a given time, where the public auction disposal method is to be used.

161. Initiation of Disposal Requirements and Approval for Disposal

- (1) A user department or the department of a procuring entity that is responsible for the management of assets, shall initiate a process for disposal of an asset by making a request for disposal of the asset to the Accounting Officer.
- (2) A user department may initiate a process for disposal of assets following the Board of Survey recommendation for the disposal of an asset.
- (3) A user department or the department of a procuring entity that is responsible for the management of assets which initiates a disposal process shall in the request for disposal, clearly indicate the asset to be disposed of.
- (4) The Accounting Officer shall approve a request for disposal prior to the commencement of the disposal process.
- (6) The request and approval of the disposal of an asset shall be made by using appropriate forms issued by the Authority.

162. Selection and Approval of Disposal Method

- (1) A procuring entity shall dispose of its assets using any of the disposal of assets methods specified in the Act.
- (2) The Procurement Committee shall be responsible for the approval of the method of disposal following the submission for approval by the Procurement Unit using appropriate forms issued by the Authority.

163. Disposal of a Public Asset through Public Bidding

- (1) Public bidding shall be used as a method of disposal where:
 - (a) the asset is located in a remote area;
 - (b) the asset has a geographically dispersed potential market;
 - (c) the sale has end-user or export restrictions;
 - (d) conditions need to be attached to the sale of the asset; or
 - (e) post-bid negotiations may be required.
- (2) A procuring entity shall solicit bids to dispose public asset by public bidding by publishing an invitation notice to the public.
- (3). The invitation notice to the public shall be published in at least one newspaper of wider national circulation and may be communicated to the public using any other appropriate media outlet, which offers an efficient means of communicating with potential bidders and which increases competition.
- (4) The invitation notice shall be displayed on the procurement and disposal notice board of the procuring entity and on the website of the Authority.
- (5) The invitation notice shall indicate how an interested bidder shall obtain the bidding documents from a procuring entity.
- (6) For international public bids, the notice shall be published in a media of wide international circulation or on widely read internet sites, in the English language.

- (7) Where a procuring entity establishes that it is necessary to ensure wider competition, the entity may further send the notice directly to potential bidders.
- (8) A procuring entity shall keep record of any bidders to whom the notice is sent directly, which shall form part of the disposal record.
- (9) An Accounting Officer of a procuring entity shall ensure the disposal document prepared contains sufficient information to allow fair competition among those who may wish to submit bids.
- (10) In all assets disposal proceedings, a procuring entity:
 - (a) shall allow a potential bidder to inspect the disposal document prior to obtaining the document;
 - (b) may charge a fee for obtaining the disposal document, the amount of which shall adhere to principles contained in these Regulations;
 - (c) may require bid deposits as specified in the bid document be paid by the bidder which shall be deemed as a bid security. The value of any required bid deposit shall be expressed as a fixed amount and not as a percentage.
- (11) For successful bidders, the deposit described in this regulation shall form part of sale price and those who decline the award shall forfeit deposit paid, and for unsuccessful bidders, the deposit shall be refunded in accordance with the provisions of the bid document.
- (12) The bidding documents for disposal by public bidding shall indicate:
 - (a) a description of the public asset(s) to be disposed of;
 - (b) the documentation required for bidding;
 - (c) the eligibility requirements for the bidders;
 - (d) the procedure for signing and authorizing bids;
 - (e) that the public asset is sold on “as is, where is” basis or the alternative basis for sale;
 - (f) the location of the public asset and the arrangements for a potential bidder to inspect the public asset;
 - (g) assets or equipment with implication on public health and safety, and environmental protection;
 - (h) instructions on any pre-bid conference, site visits, access to stores, assets and equipment for potential bidders to assess the conditions, specifications and value;
 - (i) the requirement for a bid security or bid deposit, where necessary;
 - (j) that the substance of a bid including changes in price shall not be sought, offered or permitted after bid closing;
 - (k) the deadline for submission of bids fixed in conformance with the minimum bidding period stipulated in the First Schedule of these Regulations and the location and method for submission of bids;
 - (l) the arrangements for opening the bids;
 - (m) the method to be used to evaluate the bids which shall be “price only methodology” and to award the contract for disposal;
 - (n) the conditions of the sale;
 - (o) the payment procedure and handing over arrangements; and
 - (p) that the risk and cost of dismantling and removing the public asset is to be the responsibility of the successful bidder.

- (13) The bidding documents shall be drafted using the standard bidding documents for disposal of public assets issued by the Authority.
- (14) Where the successful bidder fails to pay the contract price in accordance with the terms of the contract, the procuring entity shall terminate the contract and make an offer for sell to the next highest bidder.
- (15). Where an Accounting Officer has advertised for disposal through an open bidding method and has not attracted successful bidders, that Accounting Officer shall dispose the items within six months through a public auction.

164. Disposal of Public Assets by Public Auction

- (1) A public auction shall be used where:
 - (a) there is a large number of potential bidders for the public asset;
 - (b) the value of the asset is low;
 - (c) more than one public assets are to be disposed of and the assets are at one location; or
 - (d) an onsite auction is arranged to avoid transport costs.
- (2) Where the public auction method is used, the sale shall be at a reserve price.
- (3) A procuring entity shall solicit for bids to dispose of a public asset by public auction, by publishing an invitation notice to the public.
- (4) The invitation notice to the public shall be published in at least one newspaper of wider national circulation and may be communicated to the public using any other appropriate media outlets, which offers an efficient means of communicating with potential bidders and which increases competition.
- (5) The invitation notice shall be displayed on the procurement and disposal notice board of the procuring entity and on the website of the Authority.
- (6) A procuring entity shall appoint an auctioneer to conduct a public auction on behalf of the procuring entity and hand over the public asset for disposal to the auctioneer.
- (7) The auctioneer shall issue a receipt to the procuring entity for the public asset received from the procuring entity.
- (8) A procuring entity shall allow a period of at least ten working days for the potential bidders to inspect the public asset to be auctioned, which shall be between the date of publication of the invitation notice to the public and the date of the public auction.
- (9) The procedure for bidding at a public auction shall be specified by the auctioneer, however bidding at a public auction shall be made orally and the auctioneer shall not hold negotiations with any bidder.
- (10) The auctioneer shall at the public auction announce the successful bidder who shall immediately after the announcement pay at least fifty percent of the contract price.
- (11) The successful bidders in the public auction shall be given a period of at least fourteen days from the date of the public auction to pay for the items and take possession of them and remove them from the procuring entity's premises.

- (12) Where the successful bidder fails to meet the requirements in sub-regulation (11) of this regulation the bidder shall forfeit the bid deposit and the items may be offered to the second highest bidder.
- (13) Notwithstanding anything contained in this regulation, a public asset shall not be handed over to a bidder until the full contract price is paid and received by the procuring entity.

165. Appointment of Auctioneer

- (1) The auctioneer to be appointed by a procuring entity to conduct a public auction on behalf of the procuring entity shall be an auctioneer licensed under relevant laws of the country.
- (2) The auctioneer shall be procured in accordance with the relevant procurement rules and methods in the Act and these Regulations.
- (3) In procuring an auctioneer, a procuring entity shall take into account:
- (a) the commission rate of the auctioneer;
 - (b) the location of the auctioneer and cost of transporting the asset to be disposed of;
 - (c) the facilities of the auctioneer;
 - (d) the ability of the auctioneer to achieve optimum returns;
 - (e) the performance record and integrity of the auctioneer; and
 - (f) the viability of the business of the auctioneer.
- (4) The auctioneer appointed under this regulation shall provide a performance security in the format issued by the Authority.

166. Disposal of Public Assets by Direct Negotiations

- (1) Direct negotiations shall be used where national security, public interest, health and safety issues, legal and human rights issues or environmental considerations are served, when a sale is made to a particular bidder.
- (2) Where a public asset is to be disposed of through direct negotiations, a procuring entity shall obtain a valuation for the public asset before the negotiations are conducted.
- (3) A procuring entity shall solicit for bids to dispose of a public asset by direct negotiations by issuing bidding documents drafted using the format issued by the Authority.
- (4) The minimum bidding period for disposal by direct negotiations shall be three working days.
- (5) The bids shall be evaluated using the “price only” methodology.
- (6) Where the successful bidder fails to pay the contract price in accordance with the terms of the contract, the procuring entity shall terminate the contract and dispose of the asset using another appropriate method of disposal.

167. Disposal of Public Assets by Sale to Public Officers

- (1) Sale to a public officer shall be used for the disposal of a public asset where:
- (a) the public assets for disposal are a small number or are of a low value and sale to the public would not achieve value for money for the procuring entity; or

- (b) the use of the public asset by the public officer, would directly enhance the performance of the public officer in the execution of his or her duties within a procuring entity, if the asset is put to the personal use of the public officer.
- (2) A public asset shall be sold to a public officer for the personal use of the public officer and not for business or commercial use.
- (3) For the purposes of sub-regulation (2) of this regulation a public asset is sold for business or commercial use where a public officer:
 - (a) makes an excessive number of purchases of a similar public asset made within a limited period; or
 - (b) purchases more than one similar public assets at a particular disposal process.
- (4) A procuring entity shall solicit for bids to dispose of a public asset by sale to public officers by publication of an invitation notice which shall be displayed within at least five procuring entities, which are freely and easily accessible by public officers and on the website of the Authority.
- (5) The invitation notice shall indicate that the public officers interested in bidding for the public assets shall obtain the bidding documents from the procuring entity. The bidding documents shall not be sold.
- (6) The bidding documents for disposal by sale to public officers shall be drafted using the format issued by the Authority and shall contain information contained in these Regulations.
- (7) The public assets to be sold to public officers shall not be grouped in lots, but shall be sold as separate items, except where:
 - (a) a group of items is of a very low value;
 - (b) a group of items forms a natural set; or
 - (c) the items would not have a value or would have a lower value if sold as separate item.
- (8) Except where items are in lots, a public officer shall not be permitted to purchase two or more similar items at a particular disposal of assets process.
- (9) The bidding period for sale to public officers shall be seven working days, and the bids shall be evaluated using the “price only” methodology, and a procuring entity shall not hold negotiations with any bidder.
- (10) The Evaluation Committee shall, prior to recommending award of contract, using the register of sales to public officers of the Authority, verify that the best evaluated bidder is not purchasing the public asset for business or commercial use.
- (11) Where the Evaluation Committee determines that best evaluated bidder is purchasing the public asset for business or commercial use, the Evaluation Committee shall report this to the Procurement Committee.
- (12) Where the successful bidder fails to pay the contract price in accordance with the terms of the contract, the procuring entity shall terminate the contract and make an offer to the next highest bidder.

- (13) The Authority shall maintain a register of the sales to public officers, which shall include for each contract:
- (a) the name of the public officer to whom the contract is awarded;
 - (b) the date of the disposal contract;
 - (c) the type of public asset sold; and
 - (d) any other relevant information.

168. Disposal of Public Asset by Destruction

- (1) Destruction of a public asset shall be used where:
- (a) national security, public interest, health and safety issues, legal and human rights issues or environmental considerations will be served if the public asset is destroyed; or
 - (b) the public asset has no residual value and it cannot be transferred to another procuring entity, converted or classified into another form with any value or disposed of by donation.
- (2) A procuring entity shall undertake the destruction of the public asset or engage a competent authority or a provider to undertake the destruction.
- (3) Where a procuring entity engages a provider to undertake the destruction, the provider shall be procured in accordance with the relevant methods in the Act and these Regulations.
- (4) The Accounting Officer shall approve the destruction of an asset, prior to the destruction using an appropriate procedural form issued by the Authority.
- (5) Where a procuring entity engages a competent authority or a provider to undertake the destruction, the competent authority or provider shall issue a certificate of destruction to the procuring entity which shall be part of the record of disposal proceedings.

169. Disposal of Public Asset by Transfer to Another Procuring Entity

- (1) Transfer to another procuring entity shall be used where the procuring entity to which a transfer of the public asset is made shall make further use of the public asset
- (2) Procuring entities shall prior to the transfer, agree on the following:
- (a) the subsidiary or linked public assets to be included in or excluded from the transfer;
 - (b) the date for the transfer;
 - (c) the responsibility for transporting the public asset;
 - (d) the procedure of handing over the public asset and the documentation to be transferred with the public asset; and
 - (e) the responsibility for any legal obligations linked to the public asset to be transferred.
- (3) The arrangements for the transfer shall be recorded using procedural form issued by the Authority

170. Disposal of Public Asset by Conversion or Classification of a Public Asset into Form for Disposal by Sale

- (1) Conversion or classification of a public asset into another form for disposal by sale shall be used as a method of disposal:

- (a) where national security, public interest, health and safety issues, legal and human rights issues or environmental considerations will be served if the public asset is converted or
 - (b) classified into another form; or
 - (c) where the public asset has no residual value in its current form, but where some sale value can be obtained through conversion or classification of the public asset into another form.
- (2) A procuring entity may engage a competent authority or a provider to undertake the conversion or classification.
- (3) Where a procuring entity engages a provider to undertake the conversion or classification, the provider shall be procured in accordance with the relevant procurement rules and methods in the Act and these Regulations.
- (4) The competent authority or the provider who undertakes the conversion or classification shall submit evidence of the conversion or classification undertaken, using appropriate procedural form issued by the Authority which shall be part of the record of disposal of assets proceedings.

171. Disposal of Public Asset by Trade-In

- (1) Trade-in shall be used where a public asset of a procuring entity will be upgraded in a convenient, economic and efficient way, by trading-in a surplus public asset of the procuring entity, to offset the purchase price of a new asset.
- (2) Trade-in shall not be used where competition and value for money will not be achieved in the procurement process.
- (3) The user department shall justify the use of the trade-in disposal procedure and submit its recommendations to the Procurement Committee for approval through the head of Procurement Unit.
- (4) Any justification for the use of trade-in method applied by a procuring entity shall arise from a combination of the need to procure and the need to dispose the stores, assets and equipment.
- (5) A trade-in may be initiated and negotiated with a selected bidder through a direct procurement subject to justification and approval by an Accounting Officer.
- (6) Where direct procurement is used by a procuring entity, the value of the item to be traded-in shall be negotiated by the parties.
- (7) A procuring entity may also open a trade-in procedure to all bidders participating in the procurement in which case the bidders shall quote the value of the items to be traded-in.
- (8) Upon receipt of bids, the appointed Evaluation Committee shall conduct an assessment on the cost and benefits of the trade-in method to establish the following:
- (a) costs of trade-in if different from procurement requirement transaction costs;
 - (b) transaction costs without trade-in, such as sales or destruction;
 - (c) comparison of the estimated sale value of the stores, assets or equipment with the estimated discount as part of the disposal requirement; or

- (d) any other considerations that may inform the decision of the Procurement Committee to ensure value for money.
- (9) The Evaluation Committee shall prepare an evaluation report for submission to the Procurement Committee through the head of the Procurement Unit which shall include:
- (a) a summary of the cost benefit analysis;
 - (b) the results of the evaluation;
 - (c) a recommendation on the trade-in or other disposal method to be used;
 - (d) the current condition of the asset;
 - (e) reserve price to be applied as part of the disposal of assets process; and
 - (f) any other relevant information.
- (10) The procuring entity shall establish a reserve price in the case of trade-in under these regulations which the stores, assets or equipment may not be disposed of. The reserve price shall be disclosed to the bidders.
- (11) A procuring entity may negotiate with the selected bidder of the disposal of assets proceedings where the reserve price is not accepted. The negotiations, shall not affect the reserve price.
- (12) Where the negotiations do not result in an agreement, a procuring entity shall cancel all disposal of assets proceedings, subject to approval by the Procurement Committee.

172. Disposal of Public Asset by Donation

- (1) Donation of a public asset shall be used where:
- (a) The procuring and disposing entity cannot obtain payment for the public assets using any of the relevant methods of disposal; or
 - (b) The public asset cannot be transferred to another procuring entity.
- (2) The procuring entity shall identify a recipient of the public assets to be donated and confirm the interest of the recipient to receive the public asset on the terms and conditions offered by the procuring entity.
- (3) A procuring entity shall not dispose of a public asset by donation where the procuring entity will incur expenses except where:
- (a) there is no other way of disposing of the asset; and
 - (b) the cost to be incurred is less than would be incurred if the public asset was destroyed.
- (4) These Regulations shall not apply to an asset that is procured by a procuring entity for the purpose of donation to any person.
- (5) A procuring entity shall confirm the donation of a public asset using appropriate procedural form issued by the Authority.

CHAPTER XIV DEVIATIONS AND ACCREDITATION

173. Procedure for Applying for a Deviation

- (1) An application for a deviation from the use of standard bidding documents, process, forms or other documents issued by the Authority shall be submitted to the Authority in writing.
- (2) An application for a deviation shall include:
 - (a) a statement of the method, rule, process or document from which a deviation is required;
 - (b) the reasons for deviation from a procurement method, rule, process or document, including an explanation of the exceptional requirements, market conditions, international
 - (c) standards or practices which regulate or govern the requirement;
 - (d) an explanation of the proposed alternative method, rule, process or document;
 - (e) a statement of whether the deviation is required for a single requirement or for a number of requirements of the same class over a period of time; and
 - (f) any other relevant information.
- (3) The Authority shall consider each application and issue its decision within ten working days from receipt of the application.
- (4) The Authority may approve an application as submitted, approve an application with modifications or conditions, or reject an application stating the reasons for the rejection.
- (5) An approval of an application to deviate from use of a standard bidding document, process form or other documents shall state whether the approval is for a single requirement or for a number of requirements of the same class.
- (6) Where the approval is for a number of requirements, the Authority shall state the duration, maximum value or other limitations, circumstances or conditions of use of the alternative.
- (7) A deviation granted for a specified period of time may be resubmitted to the Authority for renewal and any application for renewal shall include the information in sub-regulation (2) of this regulation.
- (8) Where a deviation is requested from a standard document, the Authority may, where it considers it appropriate, adopt the proposed alternative document as an additional standard document for use by other procuring entities.

174. Monitoring and Profile Analysis of Deviation

- (1). The Authority shall maintain a register of all deviations issued to procuring entities.
- (2). The register shall contain details necessary for the Authority to:
 - (a) monitor compliance with the terms of any deviation granted;
 - (b) assess the effectiveness of any deviations granted; and
 - (c) analyze trends in the profile of deviations granted.
- (3) Where a procuring entity does not comply with the terms of a deviation granted, the Authority may require the Accounting Officer to take steps to ensure compliance or revoke the deviation in writing, stating the reasons.

- (4) The Authority shall assess the effectiveness of an individual deviation, to determine whether it provided an effective solution to the problem that led to the need for the deviation.
- (5) The Authority shall analyze trends in the profile of a deviations granted on a periodic basis, to determine whether:
 - (a) any changes are required to the Act, Regulations, or standard bidding documents;
 - (b) additional circulars or instructions, providing further rules and guidance on a particular issue should be issued; or
 - (c) additional standard bidding documents are required to meet a particular need.
- (6). The Authority shall report to the Minister:
 - (a) all applications requesting deviations; and
 - (b) all decisions of the Authority in respect of those applications received.

175. Procedure for Accreditation of Alternative Procurement System

- (1) An Accounting Officer of a procuring entity operating under competitive market conditions may submit an application for accreditation of an alternative system in accordance with the provisions of these regulations supported by:
 - (a) full details of the alternative system;
 - (b) an analysis of the ways in which the alternative system differs from these Regulations; and
 - (c) a justification for using an alternative system, including a copy of any relevant agreement or legislation.
- (2) The Authority shall issue its decision within fifteen working days from the date of receipt of the application for accreditation and all required information.
- (3) The Authority may accept an application for accreditation, reject an application for accreditation or accept an application for accreditation subject to changes.
- (4) Where the Authority rejects an application or requires changes to a system, it shall give its reasons in writing.
- (5) The Authority shall monitor the operation of an accredited procurement system and may require changes to the system or withdraw the accreditation, where appropriate.
- (6) The Authority shall report to the Minister:
 - (a) all applications requesting accreditation; and
 - (b) all decisions of the Authority in respect of those applications received.

CHAPTER XV

BIDDERS AND PROVIDERS

176. Eligibility

- (1) A procuring entity shall clearly state in the bidding documents any documentation required as evidence of a bidder eligibility, which may include the following:
 - (a) copies of the bidder's certificate of registration, certificate of incorporation, trading license or similar document;
 - (b) copies of the bidder's tax registration, value added tax registration, tax clearance certificates or the equivalent documents;
 - (c) a signed statement that the bidder does not have a conflict of interest in relation to the procurement;
 - (d) a signed statement that the bidder, or any of its directors or officers, has not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
 - (e) a signed statement that the bidder is not subject to debarment or that any of its directors or officers have not been involved in a provider currently subject to debarment.
- (2) In determining the documentation required as evidence of a bidder's eligibility, the procuring entity shall permit the submission of equivalent documents from the relevant authorities in the bidder's country of origin or the submission of statements certifying that equivalent documentation is not issued in the bidder's country of origin.
- (3) The Authority may issue public procurement circulars providing guidance on documentation required for the verification of bidders' eligibility.

177. Beneficial Ownership

- (1) Bidders competing in a procurement proceeding shall not share the same beneficial ownership as measured by the criteria set forth in sub-regulation (2) of this regulation.
- (2) One or more of the following conditions constitutes beneficial ownership:
 - (a) Directly or indirectly holding by a natural person of twenty five percent or more of the shares;
 - (b) Directly or indirectly holding by a natural person of twenty five percent or more of the voting rights;
 - (c) A natural person directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the bidder.
- (3) The bidding documents shall require bidders, using forms issued by the Authority and included in standard bidding document packages, to provide information or certifications concerning beneficial ownership. In case of groupings (such as joint ventures, consortia), beneficial ownership information shall be submitted by each member of the grouping.

178. Verifications of Qualifications

- (1) A procuring entity shall verify the qualifications of bidders where the successful implementation of the contract is, to a significant extent, dependent on the provider's qualifications.
- (2) A procuring entity may verify the qualifications of bidders through either pre-qualification proceedings or post-qualification proceedings in accordance with the provisions of these Regulations.
- (3) A bidders' qualifications for consulting services shall be verified as part of the short-listing process, based on information provided in the expressions of interest.

179. Qualification Criteria

- (1) Qualification criteria shall be designed to ensure, on a pass or fail basis, that the bidder is capable of effectively performing the proposed contract.
- (2) Qualification criteria shall be limited to those necessary for the effective performance of the proposed contract and shall not be unduly restrictive or designed to reduce competition.
- (3) Qualification criteria shall be prepared for each procurement requirement, taking into account the size, complexity and technical requirements of the proposed contract.
- (4) Qualification criteria may relate to:
 - (a) technical competence and resources, including the availability of sufficient workforce, the qualifications and experience of key personnel or managers, available equipment,
 - (b) manufacturing or construction facilities;
 - (c) available capacity to perform the proposed contract, including available manufacturing or production capacity, taking into account other commitments or manufacturer's authorizations to supply;
 - (d) financial position, including financial soundness, sufficient turnover or sufficient cash flow; or
 - (e) experience and satisfactory performance of similar contracts, taking into account relevant factors, including references and litigation record.
- (5) A procuring entity shall state in pre-qualification or bidding documents, the documentary evidence required from bidders, as evidence of their qualifications.

180. Requirement for Subcontractors and Joint Venture Partners

The bidding documents shall state clearly: -

- (a) whether qualification criteria apply to lead providers, sub-contractors or partners in a joint venture, consortium or association;
- (b) whether criteria will be applied individually or collectively to each provider, sub-contractor or partner; and
- (c) any alternative criteria which apply to sub-contractors or partners in a joint venture, consortium or association.

181. Preference Schemes

- (1) The procurement of goods, works or services may be subject to a preference or reservation scheme, consistent with Government's economic and social policies.
- (2) A preference scheme shall have as its objective the development of businesses among target groups, through giving such businesses a competitive advantage by adding a specified margin to the evaluated price of bidders who are not eligible for the preference during the financial evaluation of bids. A reservation scheme shall establish a set-aside of certain contracts for a group targeted for preferential treatment.
- (3) Any instrument or document issuing a preference scheme shall clearly state:
 - (a) eligibility for the margin of preference or reservation, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with local partners or any other relevant factor;
 - (b) the documentation required as evidence of eligibility for the margin of preference or reservation; and
 - (c) the percentage of the margin of preference and the manner in which it will be applied during the evaluation.
- (4) The details in sub-regulation (3) of this regulation shall also be clearly stated in the bidding documents, with summary details provided in any bid or pre-qualification notice.
- (5) The percentage of preference in schemes to be applied shall be no more than fifteen percent in accordance with the provisions of the Act and these Regulations.

182. Reservation Schemes

- (1) The procurement of goods, works or services may be subject to a reservation scheme, consistent with Government's economic and social policy.
- (2) A reservation scheme shall have as its objective the development of businesses among target groups, by reserving certain public procurement contracts for such target groups.
- (3) Procurement under a reservation scheme shall require competition among eligible bidders and shall require the provider to be qualified to perform the contract.
- (4) The application of a reservation scheme and eligibility to participate shall be clearly stated in bidding documents and any bid or pre-qualification notice.

183. Provider Databases of Lists

- (1) The Authority may, where it considers it would be efficient or effective, designate a body responsible for organizing and maintaining a provider database or list on a central basis or in a particular field; and the designated body may include the following:
 - (a) a central agency or unit with responsibility for the procurement of common use items in accordance with these Regulations; and
 - (b) a procuring entity with specialised knowledge or responsibilities in a particular field.
- (2) Provider databases or lists may be used to record potential bidders who are eligible for any preference or reservation scheme.

- (3) The selection of a bidder from a provider database or list shall not relieve the procuring entity of the need to advertise procurement opportunities or to verify the eligibility and qualifications of a bidder.
- (4) The establishment and existence of lists of providers is subject to prior and ongoing advertisement, including on the Authority's central web portal of the procurement and disposal of assets system. That publication shall notify potential bidders how to apply for inscription on the list or re-inscription.
- (5) The procuring entity shall process applications in a timely manner and inform applicants of the disposition of their applications.
- (6) Providers shall be informed promptly of their inscription, re-inscription or removal from the list.

184. Recommendation to Debar Provider

- (1) A member of Procurement Committee may recommend to Accounting Officer the debarment of a provider under these regulations.
- (2) Subject to the provisions of these regulations, a provider shall be recommended for debarment from participating in public procurement or disposal of assets proceedings if:
 - (a) corrupt, fraudulent, collusive, coercive or obstructive practices or inducement is established against the bidder, in which case the provider shall be barred for a period of ten years;
 - (b) the bidder fails to abide with a bid securing declaration, in which case the provider shall be barred for a period of not less than six months and not exceeding two years;
 - (c) it is established that the provider fails to implement a procurement or disposal of assets contract, in which case the provider shall be barred for a period of not less than one year and not exceeding five years;
 - (d) the bidder makes false representation about the provider's qualification during bid proceedings, in which case the provider shall be barred for a period of not less than one year and not exceeding five years;
- (3) Where a bidder is barred from participating in public procurement or disposal of assets on grounds other than those specified in sub-regulation (2) of this regulation, the period of debarment may be determined by the Authority depending on the gravity of the offence.
- (4) Any recommendation made, in accordance with sub-regulation (1) of this regulation, shall be submitted to the Accounting Officer in writing, stating:
 - (a) the name of the provider;
 - (b) the grounds for the recommendation to debar;
 - (c) details of the procurement proceedings or contract to which the recommendation relates;
 - (d) documentary or other evidence supporting the recommendation; and
 - (e) any other information relevant to the recommendation.

185. Investigation of Debarment by Accounting Officer

- (1). The Accounting Officer shall, upon receipt of a recommendation to debar, in accordance with these Regulations, immediately:
 - (a) notify the provider, giving full details of the recommendation to debar and inviting the provider to submit information or evidence in defense; and
 - (b) institute an investigation.
- (2). The Accounting Officer shall, in investigating the recommendation to debar a provider consider:
 - (a) the information contained in the written recommendation;
 - (b) additional information provided by the procuring entity;
 - (c) information submitted by the provider; and
 - (d) any other relevant information.
- (3). The Accounting Officer may obtain additional information through written requests for information, an examination of the relevant procurement records or interviewing staff of the procuring entity or any external contract manager.
- (4). A provider who is subject to a recommendation for debarment shall be permitted to submit information or evidence in their defense either in person, through presentation of witnesses, in writing or through a representative.
- (5). The Accounting Officer shall issue its decision within fifteen working days of receipt of the recommendation; which decision shall state:
 - (a) whether the recommendation is upheld and a recommendation to that effect is to be made to the Authority, or rejected;
 - (b) the reasons for the decision; and
 - (c) the period of any debarment would be recommended to the Authority, in accordance with these regulations.

186. Determination of Period for Debarment

- (1). In determining the period of any debarment for recommendation to the Authority, the Accounting Officer shall take into account:
 - (a) the nature and severity of the offence;
 - (b) any mitigating circumstances;
 - (c) any previous debarments; and
 - (d) the period of debarment imposed in comparable cases.
- (2) A decision to recommend the debarment of a provider shall be submitted by the Accounting Officer to the Authority within five days of the decision being made.

187. Contents of Recommendation to Debar

A recommendation to debar a provider from participation in public procurement shall be in writing to the Authority and signed by the Accounting Officer and shall:

- (a) state the name and contact details of the provider; and

- (b) provide details of the procurement requirement to which the recommendation for debarment relates, including any reference number.

188. Investigation by Authority of Recommendation to Debar

- (1) The Authority shall, in investigating a recommendation to debar a provider from the list of providers, consider:
 - (a) the information contained in the written recommendation by the Accounting Officer;
 - (b) supplementary information requested by the Authority from, or submitted in writing by, the Accounting Officer, provider or any other staff of the procuring entity where appropriate;
 - (c) information obtained through an examination of the relevant procurement records;
 - (d) information obtained by examining staff of the procuring entity, provider, or the Accounting Officer, other bidders or any other relevant parties through means of statements or a hearing;
 - (e) additional information or statements from other parties as may be necessary for the fair resolution of the recommendation to debar; and
 - (f) any other relevant information.
- (2) The Authority may, at the request of a party or their own initiative; conduct a hearing in connection with a recommendation to debar and in such a case, all parties participating and having a direct interest in the matter shall be invited by the Authority to attend the hearing.
- (3) Any hearings held as part of an investigation shall be recorded or transcribed and any party may obtain a copy at its own expense.

189. Disclosure of Information and Special Measures for Confidentiality During Consideration

- (1) Where the provider requests specific documents required for the effective execution of its defense, such documents shall be made available promptly, unless such disclosure would be contrary to the requirement for confidentiality set out in the Act and these Regulations.
- (2) The Authority or the procuring entity may request that the provider produce relevant documents or information that are not in their possession.
- (3) At the request of a party, or on its own initiative, the Authority may apply special measures controlling the treatment of proprietary or confidential information or other information the release of which would be contrary to the requirements for confidentiality.
- (4) The Authority shall review in camera all information not released to the parties.

190. Dismissal of Recommendation to Debar

A recommendation to debar a provider may be denied by the Authority for:

- (a) failure to comply with the requirements of these Regulations except that minor non-compliances shall not be grounds for dismissal;
- (b) setting forth only allegations that do not state a valid basis for a recommendation to debar or that do not set forth a detailed legal and factual statement; or
- (c) not being submitted in a timely manner.

191. Issue of Decisions by Authority

- (1) Any debarment imposed by the Authority shall be communicated to the provider in writing, stating:
 - (a) that the provider is excluded from participation in all public procurements and disposal of assets processes for a specified period;
 - (b) the grounds for the debarment;
 - (c) that the debarment also applies to any "successor in interest", which shall include any entity that is substantially similar to a debarred entity or which employs, or is associated with any partner, director or named officer of a debarred provider; and
 - (d) that the debarment does not relieve the provider of responsibility for obligations under any existing contracts placed prior to the debarment.
- (2) Notwithstanding the provisions of sub-regulation (1) (d) of this regulation, the Authority may recommend to the procuring entity the termination of a contract with a debarred provider, in accordance with the conditions of the contract.
- (3). Where a provider is debarred, the Authority shall immediately:
 - (a) place the provider on its list of debarred providers, including the names of partners, directors or other officers considered as successors in interest; and
 - (b) notify all procuring entities of the debarment and add the provider to the list of debarred providers, which should be published on the Authority's central web portal of the procurement system.
- (4) All procuring entities shall enforce the list of debarred providers by ensuring that they do not:
 - (a) award contracts to a debarred provider;
 - (b) sell or issue bidding documents to a debarred provider or in any other way invite bids from the list of debarred providers; and
 - (c) enter into any other dealings or communications with a debarred provider, except in respect of existing contracts placed prior to the debarment.
- (5) A debarred provider may appeal against the decision of the Authority to the High Court.

192. Copy of Decision of Authority

- (1) A copy of the decision of the Authority shall be provided to the debarred provider; and the Accounting Officer.
- (2) Notwithstanding the provisions of sub-regulation (1) of this regulation, where a decision contains information which are subject to special measures for confidentiality:
 - (a) a copy of the decision shall be provided only to individuals granted access to the information pursuant to the special measures; and
 - (b) a public version of the decision omitting the confidential information shall be issued to the other parties, wherever possible.
- (3) The Authority shall publicize its decision on the debarment of a provider in any media of general circulation in South Sudan and on any regional and Government websites.

- (4) Any provider debarred by an international body or country shall not be eligible to participate in public procurement and disposal of assets in South Sudan.
- (5) Debarment by the Authority shall include the directors of the provider at the time of the debarment.

CHAPTER XVI PROCEDURE FOR ADMINISTRATIVE REVIEW

193. Complain Review Process

- (1) A bidder may seek administrative review of any decisions taken by omission of the provisions of bidding documents by a procuring entity:
 - (a) Complaints concerning the terms of advertisement or other forms of solicitation, pre-qualification or short-listing or decisions or actions taken by the procuring entity in pre-qualification or shortlisting proceedings shall be submitted prior to the deadline for submission of bids;
 - (b) complaints concerning other decisions, actions, or omissions shall be submitted within the standstill period;
 - (c) Where no standstill period has been applied, as of the time when the complainant became aware of the circumstances giving rise to the application or when the applicant should have become aware of those circumstances, whichever is earlier, but not later than seven working days after the entry into force of the procurement contract or the framework agreement or a decision to cancel the procurement.
- (2) Where an administrative review has been lodged, the process of procurement or disposal of assets shall be suspended immediately.

194. Applications for Review by Procuring Entity

- (1) An application for review shall, in the first instance, be submitted in writing to the Accounting Officer and a copy to the Authority.
- (2) The application for review shall include:
 - (a) details of the procurement or disposal of assets requirement to which the complaint relates;
 - (b) details of the rule or provision which has been breached or omitted;
 - (c) an explanation of how the rule or provision has been breached or omitted including the dates and name of the responsible public officer, where known;
 - (d) documentary evidence supporting the complaint where available; and
 - (e) And other information relevant to the complaint.
- (3) On receiving the complaint, the Accounting officer shall immediately suspend the process, unless the complaint is accepted and the requested relief granted, shall not take any step to award the contract or bring it into force until the expiry of the deadline for submission of the complaint to the Complaints Review Committee has lapsed, or the Committee has issued a

decision on the complaint or has otherwise authorized a lifting of the suspension pending a decision.

195. Timing of Complaints and Applications for Review

- (1) An application for complaint review to the procuring entity shall be in writing and signed by the bidder or their representatives, and shall be made within ten working days of the decision or stage of the procurement proceedings to which it relates, or during the standstill period.
- (2) Applications for review concerning the terms of a solicitation of bids shall be submitted prior to the expiry of the deadline for submission of bids.
- (3) Complaints regarding the conditions for soliciting bids, proposals, prequalification or a short list compilation, or decisions or actions taken by the procuring entity under the bid proposals solicitation procedure, prequalification or a short list compilation, shall be submitted before the deadline for submission of bids, proposals or applications.
- (4) The Accounting Officer shall not accept the complaint for consideration after the entry into force of the procurement contract.

196. Consideration of Complaint by Procuring Entity

- (1) Immediately after acceptance of the complaint, the procuring entity shall publish a complaint notice on the Authority's central web portal of the public procurement and disposal of assets system.
- (2) The Accounting Officer shall institute an investigation to consider:
 - (a) the information and evidence contained in the application;
 - (b) the information in the record kept by a procuring entity;
 - (c) information provided by staff of procuring entity;
 - (d) information provided by bidders; and
 - (e) any other relevant information.
- (3) An Accounting Officer shall issue a decision in writing within ten working days after receipt of the application and the decision shall indicate:
 - (a) whether the application is upheld or rejected;
 - (b) the reasons for the decision; and
 - (c) any corrective measures to be taken.
- (4) The Accounting Officer shall submit a copy of the decision to the Authority.
- (5) The procuring entity shall take no step to award the contract or bring it into force until the deadline to apply for review by the Complaint Review Committee has lapsed.

197. Application to Complaints Review Committee

- (1) If the procuring entity does not issue a decision in a timely manner, or if the applicant is not satisfied with the decision, the complainant may immediately apply for review by the Complaints Review Committee, provided the application is submitted within seven working days following the communication of the decision, or expiry of the deadline for issuance of the decision. If such proceeding is commenced, consideration of the relevant application shall not be within the competence of the procuring entity.

(2) The application for review shall:

- (a) state the name and contact details of the bidder;
- (b) state the name of the procuring entity to which the application relates;
- (c) a copy of the original complaint to an Accounting Officer and supporting documents;
- (d) a statement by the complainant that the Accounting Officer did not issue a decision on the complaint, or an explanation of why a bidder is not satisfied with the decision of Accounting Officer where applicable;
- (e) provide details of the procurement requirement to which the complaint or application relates, including any reference number;
- (f) state the legal and factual grounds of the complaint or application, including documentary or other evidence supporting the application or appeal, and an indication of the relief being sought;
- (g) provide information establishing that the bidder is an actual or prospective bidder, who has suffered, or that may suffer, loss or injury, due to a breach of duty imposed on a procuring entity;
- (h) provide information establishing the timeliness of the application, including the date that the bidder became aware of the circumstances giving rise to the complaint or application and the dates of any contract award, complaint to the Accounting Officer or decision by the Accounting Officer;
- (i) include a copy of any complaint submitted to the procuring entity and any decision issued by the Accounting Officer; and
- (j) request that a review or an appeal be conducted by the Complaints Review Committee.

(3) In addition to the contents specified in sub-regulation (2) of this regulation, an application for appeal or review, may:

- (a) request special measures for the handling of proprietary commercial or other confidential information;
- (b) request specific documents required by the bidder for the effective prosecution of its complaint or application, explaining the relevance of such documents to the grounds of the complaint or application; or
- (c) request that a hearing be held, explaining the reasons why a hearing is needed to resolve the complaint or application.

(4) An appeal for review shall be accompanied by payment of the prescribed fee in accordance with these Regulations.

198. Fee for Appeal or Review

- (1) The Authority shall set fees for complaints and applications for appeal or review through issue of public procurement circulars.
- (2) The Authority shall promptly make information on fees publicly accessible.
- (3) The level of fees shall be sufficient to deter frivolous complaints and applications, but shall not be set so high as to discourage genuine complaints and applications for review.
- (4). In the absence of any circular setting fees, no fee shall be charged.

199. Notice of Application for Review

- (1) After receiving the application for review, the Complaint Review Committee shall immediately notify the procuring entity and all known bidders of the application and its contents, as well as publish a notice about the application for review on the Authority's central web portal.
- (2) Any bidder participating in the procurement proceedings or any procuring entity whose interests are or could be affected by the review proceedings has a right to participate in the review proceedings. A bidder duly notified of the proceedings that fails to participate in the review proceedings is barred from subsequently making the same type of claim.

200. Initial Appraisal by Committee

- (1) The Complaint Review Committee shall decide promptly, not later than three working days after receipt of the complaint, whether the complaint shall be entertained or dismissed. The Committee may dismiss the complaint if it decides that the complaint is manifestly without merit, the complaint was not submitted within the deadlines set out in these Regulations or the applicant is without standing to submit a complaint.
- (2) The Complaint Review Committee shall promptly notify the applicant, the procuring entity and all other participants in the procurement proceedings of the complaint's rejection and its reasons, as well as termination of the current suspension.

201. Suspension of Procurement Proceedings

- (1). The Complaint Review Committee shall order the suspension of the procurement proceedings or of the performance of a procurement contract or of the operation of a framework agreement, as the case may be, for a period of ten working days.
- (2). The Complaint Review Committee may also order that any suspension applied be extended or lifted, taking into account the aforementioned considerations.

202. Time and Place of Hearing

- (1) The Complaint Review Committee shall if one is to be held, fix the date, time and place of hearing as soon as an application is received, but not later than three working days after such receipt.
- (2) The Complaint Review Committee shall inform all relevant parties and witnesses, if any, of the date, time and place of the hearing.

203. Hearing of Application

- (1) Any hearing shall be held in public.
- (2) At a hearing, the applicant may appear in person or be represented by a legal practitioner.
- (3) A hearing shall be concluded within fifteen days of receipt of the application for review.
- (4) The participants to the proceedings shall have the right:
 - (a) to be heard prior to a decision of the Complaint Review Committee being made on the application;
 - (b) to have access to all proceedings;
 - (c) to request that evidence and witnesses may be presented; and

(d) to seek access to the record of the challenge proceedings.

(5) Information shall not be disclosed in review proceedings and public hearing shall not take place if it may impair the protection of essential security interests of the State, prejudice the legitimate commercial interests of the providers or impede fair competition.

204. Investigation of Complaints and Applications for Review by Complaints Review Committee

(1) The Complaints Review Committee shall, in investigating a complaint or application for appeal or review, consider:

- (a) the information contained in the written complaint or application for appeal or review;
- (b) supplementary information requested from or submitted by the applicant, in writing;
- (c) information obtained through an examination of the relevant procurement records;
- (d) written comments provided by the procuring entity;
- (e) information submitted by other bidders;
- (f) information obtained by examining staff of the procuring entity, the applicant, or any other relevant parties through means of statements or a hearing;
- (g) additional information or statements from other parties as may be necessary for the fair resolution of the complaint or application;
- (h) information provided by procuring entity; and
- (i) any other relevant information.

(2) Any hearings held as part of an investigation shall be recorded or transcribed and any party may obtain a copy at its own expense.

(3) The Complaints Review Committee shall issue its decision in writing within twenty-one working days after receipt of the application.

(4) The decision of the Complaints Review Committee shall, whether the application was upheld or rejected:

- (a) the reason for its decision; and
- (b) any corrective measures to be taken.

205. Disclosure of Information and Special Measures for Confidentiality

(1). Where the applicant requests specific documents required for the effective prosecution of the applicant's complaint or application in accordance with these Regulations, the procuring entity shall promptly make such documents available, unless such disclosure would be contrary to the requirement under these Regulations and for confidentiality set out in the Act.

(2). The procuring entity may request that the applicant produce relevant documents or information that are not in the procuring entity's possession.

(3). At the request of a party, or on its own initiative, the Complaint Review Committee may apply special measures controlling the treatment of proprietary or confidential information or other information the release of which may be contrary to the requirements under these Regulations.

206. Decisions of the Complaint Review Committee

- (1) A copy of the decision of the Complaint Review Committee shall be provided to:
 - (a) the applicant;
 - (b) any other bidders or parties who participated in the review proceedings; and
 - (c) the Accounting Officer, for distribution to the Procurement Committee and head of the Procurement Unit.
- (2) Notwithstanding the provisions of sub-Regulation (1) of this regulation or any other Regulation, where a decision contains information subject to special measures for confidentiality:
 - (a) a copy of the decision shall be provided only to individuals granted access to the information pursuant to the special measures; and
 - (b) a public version of the decision omitting the confidential information shall be issued to other parties, wherever possible, and shall be published on the Authority's central web portal of the public procurement and disposal of assets system.
- (3) A decision of the Complaint Review Committee shall be binding on all parties concerned.

207. Remedies

- (1) In the event that the Complaints Review Committee does not reject a complaint, it may provide one or more of the following remedies:
 - (a) declare the legal norms or principles governing the subject matter of the complaint;
 - (b) prohibit the procuring entity to commit illegal actions, take illegal decisions or to apply unlawful procedures;
 - (c) request from the procuring entity that has committed illegal actions or made an unlawful decision to act lawfully or to take a lawful decision;
 - (d) repeal the illegal action or decision of the procuring entity in whole or in part;
 - (e) review the illegal decision of the procuring entity or replace it with its own decision;
 - (f) require compensation of all reasonable costs incurred by the bidder that submitted a complaint in connection with the procurement proceedings as a result of the unlawful action, decision or procedures of the procuring entity, including reasonable costs associated with filing the complaint;
 - (g) take a decision on termination of procurement procedures;
 - (h) confirm the decision of the procuring entity;
 - (i) cancel the award of a procurement contract or framework agreement if they took effect contrary to the provisions of the Act and, if a notice of the procurement contract or framework agreement award was published, to request the publication of a notice of the award cancellation; and
 - (j) take other measures in the light of the circumstances.
- (2) The Complaints Review Committee shall, in determining the appropriate remedy, consider all circumstances surrounding the procurement, including:
 - (a) the seriousness of the breach by the procuring entity;
 - (b) the degree of prejudice to other parties or to the integrity of the procurement system;
 - (c) the good faith of the parties;

- (d) the cost to the procuring entity and the Government;
- (e) the urgency of the procurement; and
- (f) the impact of the remedies on the fulfillment of the procuring entity's functions.

CHAPTER XVII GENERAL PROVISIONS

208. Records

- (1) A procuring entity shall keep the following records relating to procurement and disposal of assets proceedings, which records shall be open to inspection by the Authority:
 - (a) records arising from the procurement or disposal of assets process;
 - (b) records relating to contracts management;
 - (c) all records of the Procurement Committee; and
 - (d) any record of the Accounting Officer which relate to the public procurement and disposal of assets process, contracts management, investigations of complaints or any other matter related to the Act and these Regulations.
- (2) All procurement or disposal of assets records shall be maintained by the Procurement Unit in a procurement file. A procuring entity shall establish a procurement file which shall contain at least the following documents, where appropriate:
 - (a) the request to initiate procurement proceedings;
 - (b) a copy of any published notices;
 - (c) any shortlist or list of pre-qualified bidders, and, when a list of pre-qualified bidders is used, a description of how the list was used and, if applicable, what steps were taken to ensure rotation of providers;
 - (d) a copy of the pre-qualification and bidding documents, and any amendments or clarifications on the same;
 - (e) the records of bids received;
 - (f) the records of bid openings;
 - (g) copies of all bids evaluated and any clarifications requested and responses received;
 - (h) the evaluation report;
 - (i) minutes of any meetings related to the procurement, including pre- bid and negotiation meetings;
 - (j) the notice of best evaluated bidder;
 - (k) the letter of bid acceptance;
- (l) all submissions to and all decisions of the Procurement Committee related to the procurement, including:
 - (i). the choice of procurement method;
 - (ii). authorization of bidding documents;
 - (iii). authorization of evaluation reports;
 - (iv). authorization of contract documents, contract award and
 - (v). contract amendments; and

(vi). any decision to debar or cancel procurement proceedings.

(3) All contract management records shall be maintained by the User Department in a contract file. A procuring entity shall establish a contract file which shall contain the following documents, including:

- (a) the signed contract document including any signed contract amendments;
- (b) any variations issued under the contract;
- (c) all post contract documentation relating to the fulfillment of contract obligations, in particular copies of performance guarantees or advance payment guarantees;
- (d) minutes of any meetings related to contracts management, including contract progress or review meetings;
- (e) all documentation evidencing deliveries of goods or completion certificates in relation to contracts for works or services;
- (f) copies of all invoices for goods, works and services including work papers verifying the accuracy of payments claimed and details of the actual payment authorized by a contracts manager;
- (g) copies of cumulative payment worksheets evidencing management of all payments made;
- (h) copies of any claims made by a contract manager on behalf of the procuring entity in respect of any warranty, non -warranty, short supply, damage and other claims upon the provider or upon the procuring entity;
- (i) all correspondence between the procuring entity and the provider; and
- (j) all submissions to and all decisions of the Procurement Committee related to contracts management, including the authorization of any contract amendment.

(4) Any record maintained in accordance with the Act and these Regulations may be accessible to any person authorized by the Authority, with a view to maximizing transparency in accordance with Open Contracting and Open Government principles and applicable access to information laws of South Sudan.

209. Communication and e-Procurement

- (1) The medium of communication shall be specified in all bidding documents.
- (2) Any meeting between a procuring entity and a provider shall be minuted and any agreements confirmed in writing.
- (3).Any communication between a procuring entity and a provider shall be made in writing or electronic forms that provide record of the content of communication.
- (4) The establishment, operation and maintenance of an e-procurement system to be used by procuring entities shall be in accordance with the Act and the Second Schedule of these Regulations.

210. Publication and Distribution of Notices

- (1) Any notice inviting potential bidders to participate in procurement proceedings and any contract award notice shall be published:
 - (a) in the print media, including at least one English language publication in South Sudan, which must be of wide enough circulation to reach sufficient potential bidders to ensure effective competition;
 - (b) on the Authority's central web portal of the procurement and disposal of assets system; and
 - (c) on the notice board or other prominent place in the procuring entity's office.
- (2) Information communication technology may be used in the public procurement process in accordance with the Act, and the Second Schedule of these Regulations. These may include:
 - (a) publication of general procurement notices;
 - (b) advertisement of procurement opportunities;
 - (c) publication of a summary of evaluation results;
 - (d) conducting e-procurement proceedings and processes through the central e-procurement system;
 - (e) requesting for information on the procurement and disposal of assets procedures; or
 - (f) dissemination of laws and standard bidding documents and guidelines related to public procurement and disposal of assets.
- (3). Where open international bidding, or international solicitation for expressions of interest in request for proposals is used, the notice shall also be published in media of wide regional or international circulation or, in any case, on the Authority's central web portal of the public procurement and disposal of assets system.
- (4). In addition, where the procuring entity believes it is necessary to ensure wide competition, it may, after the date of publication of the notice, send invitation notices directly to:
 - (a) potential bidders, who may be registered bidders, past providers or any other identified association;
 - (b) professional or industry associations; or
 - (c) embassies of the Republic of South Sudan in countries which are likely to participate or foreign embassies of those countries in the Republic of South Sudan where open international bidding, or international solicitation of expressions of interest in a request for proposals is used.
- (5). A procuring entity shall keep a record of any bidder or provider to whom an invitation notice is sent directly, which shall form part of the procurement record.

211. Currency for Procurement

- (1) The South Sudan Pound or any foreign currency specified in the bidding document shall be used in any procurement proceeding.
- (2) Where a bidder provides an offer in foreign currency, the Central Bank of South Sudan shall be the source of the exchange rate to be used for currency conversion.

- (3) The bidding documents shall specify the effective date for the conversion of the foreign exchange to the South Sudan Pound.

212. One Bid per Bidder Rule

- (1) A bidder may submit or participate in only one bid in a procurement proceeding, except for permitted alternative bids, and if applicable, in only one prequalification proceeding, either individually or as a partner in a grouping.
- (2) An applicant who submits or participates in more than one application in the same prequalification process, or a bidder that submits or participates in more than one bid in the same procurement proceedings, will cause all the applications in which the applicant or bidder has participated or has submitted to be disqualified. This does not however, prevent bidders, either legal entities or individuals from participating as sub-consultants or sub-contractors in more than one bid or proposal or as bidder or consultant and sub-contractor simultaneously.

213. Grouping

- (1) Bidders may form a grouping in the form of a joint venture or consortium to increase their capacity and competitiveness for bidding purposes.
- (2) Where bidders form a grouping for purposes of bidding, one of the bidders shall be considered as the lead bidder and serve as their representative in all activities related to the bid.
- (3) A bid submitted by a grouping shall be a single document and bear the name of the grouping or the lead bidder.
- (4). A bidder shall not participate in multiple groupings in the same bid. A bidder participating in multiple groupings shall cause all the bids from the groupings to be disqualified.
- (5) A person shall not submit a bid in that person's own name and as part of a grouping for the same bid.
- (6) Persons participating in a grouping shall be individually and collectively liable towards the procuring entity.

214. Cancellation of Procurement or Disposal Proceedings

- (1) The cancellation of procurement proceedings shall be avoided whenever possible, but may be approved by the Procurement Committee where:
 - (a) the procurement need has ceased to exist or changed significantly;
 - (b) there is no sufficient funding for the procurement;
 - (c) there is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the re-commencement of proceedings is necessary;
 - (d) no responsive bids are received;
 - (e) there is evidence of collusion amongst bidders;
 - (f) it is otherwise in the public interest; or
 - (g) there is evidence of corrupt practices by public officers.

- (2) A Procurement Unit, in consultation with the user department which issued the requisition, shall prepare a written request for authorization by the Procurement Committee to cancel a procurement or disposal of assets proceeding, which shall clearly state:
 - (a) detailed reasons for recommending cancellation;
 - (b) the status of the procurement or disposal of assets proceeding, including in particular, whether bids have already been opened under open or selective bidding or selection; and
 - (c) whether new procurement or disposal of assets proceedings are recommended and, if so, the modifications recommended.
- (3) Where procurement or disposal of assets proceedings are cancelled prior to bid opening, any bids received shall be returned unopened.
- (4) The Procurement Unit shall promptly inform the Authority of the cancellation of the procurement proceeding, including providing the Authority with copy of the request referred to in sub-regulation (2) of this regulation.

215. Rejection of Abnormally Low Bids

- (1) The procuring entity may reject a bid if the procuring entity has determined that the price in combination with other constituent elements of the bid is abnormally low in relation to the subject matter of the procurement, scope of works or services, and raises concerns as to the ability of the bidder that presented that bid to perform the contract.
- (2) Before rejecting an abnormally low bid, the procuring entity shall request the bidder for an explanation of the bid or of those parts which it considers contribute to the bid being abnormally low; take account of the evidence provided in response to a request in writing; and subsequently verify the bid or parts of the bid being abnormally low. The detailed information sought from the bidder may include in particular:
 - (a) economic aspects of the construction method, the process of production or delivery of services;
 - (b) selected technical solutions and or the extremely favorable conditions available to the bidder for the performance of work, supply of goods or delivery of services;
 - (c) originality of works, goods or services offered by the bidder; and
 - (d) compliance with labor protection requirements and working conditions in force at the place where the work to be performed, services to be provided or goods to be delivered.
- (3) The decision of the procuring entity to reject a bid and reasons for the decision shall be recorded in the procurement proceedings and promptly communicated to the bidder concerned with the copy to the Authority.
- (4) The procuring entity shall not incur liability solely by rejecting abnormally low bid.
- (5) For purposes of this regulation “Abnormally low bid” means, in the light of the procuring entity’s estimate and of all the bids submitted, the bid appears to be abnormally low by not providing a margin for normal levels of profit.

216. Unsuccessful Procurement or Disposal of Assets Proceedings

- (1) Where no responsive bids are received, or procurement or disposal of assets proceedings are otherwise unsuccessful, the Procurement Committee shall prepare and submit to the Accounting Officer a report on the unsuccessful proceedings.
- (2) The report on failed procurement or disposal of assets proceedings shall cover all relevant issues, which may include the following:
 - (a) whether the bidding period was sufficient, considering the minimum bidding periods recommended in the First Schedule;
 - (b) whether the requirements of the bidding document and the terms and conditions of the proposed contract were reasonable and not so as to deter competition;
 - (c) whether any invitation notice was published in an appropriate publication and on the required date;
 - (d) whether any shortlist included sufficient bidders and whether the bidders included provide the goods, works or services required;
 - (e) whether there was any delay in issuing the bidding documents;
 - (f) whether any amendments or clarifications to the bidding documents allowed sufficient time for bidders to take them into account in preparing their bids;
 - (g) whether there were other extraneous events or circumstance which may have affected the ability of bidders to respond;
 - (h) whether the evaluation process was conducted in accordance with these Regulations and the bidding document and whether staff responsible for the evaluation had adequate skills and resources;
 - (i) whether there is any suspicion of collusion between potential bidders; and
 - (j) whether the original choice of procurement method was appropriate.
- (3) A report prepared under sub-regulation (2) of this regulation, shall include the recommendations on how any new procurement or disposal of assets proceedings should be managed, which may include the following:
 - (a) the use of an alternative method of procurement;
 - (b) amendments to the bidding document, including bidding requirements, the type of contract or the terms and conditions of the proposed contract;
 - (c) alternative publication of any invitation notice or a revised shortlist; or
 - (d) the introduction of regional or international competition.

**SCHEDULES:
FIRST SCHEDULE**

A: Thresholds for Use of Procurement Methods for Works, Goods and Non-Consultancy Services (In USD)

[Made under Regulations 8(3), 23(3), 27(1), and 28]

Procurement Method	Works	Goods	Non-Consulting Services
International Competitive Bidding	Above 2,000,000	Above 1,000,000	Above 1,000,000
National Competitive Bidding	Above 100,000 but not Exceeding 2,000,000	Above 75,000 but not Exceeding 1,000,000	Above 75,000 but not Exceeding 1,000,000
Request for Quotations	Below 100,000	Below 75,000	Below 75,000
Low Value Procurement	Below 40,000	Below 20,000	Below 20,000
Single Source	No Limit but must be justified		
Restricted Bidding	No limit but must be justified		

B: Thresholds for Use of Selection Methods for Consultancy Services (In USD)

[Made under Regulations 93(4)]

Selection Method		Ceiling in USD
Consultancy Services Firms	International Competitive Selection	Above 1,000,000
	National Competitive Selection	Above 100,000 to below 1,000,000
	Consultant's Qualifications Selection	Below 100,000
Individual Consultants		Up to 50,000

C: Limits for Exclusive Preference

[Made under Regulations 23(4)]

Procurement type	Maximum Limit in USD
Works	1,000,000
Goods	400,000
Non-Consultant Services	400,000
Consultants –Firms	500,000
Consultants - Individual	25,000

D: MINIMUM BID PROCESSING TIME FOR BIDS FOR GOODS, WORKS AND NON-CONSULTANCY SERVICES

[Made under Regulations 58(3), and 64(2)]

Time given under this Schedule is intended to give bidders adequate time to prepare their bids and shall not be reduced by Procuring Entity under any circumstances, except where a bid has been rejected and is being re-bided provided that:

- (a) during re-bidding there are no major changes which necessitate preparation of new bids by bidders; and
- (b) the same bidders are invited, in which case the minimum processing time may be reduced by half.

Procurement Method	Period (Calendar Days)
Pre-qualification Stage	
International Competitive Bidding	21
National Competitive Bidding	14
Bidding Stage	
International Competitive Bidding	45
National Competitive Bidding	21
Selective Bidding – when shortlisted bidders include Foreign Bidders	21
Selective Bidding – when shortlisted bidders are Nationals Only	14
Request for Quotations	7
Low Value Procurement	3

E: MAXIMUM THRESHOLD FOR NOT PUBLISHING NOTICE OF CONTRACT AWARD

[Made under Regulation 143]

The requirement to publish a notice of contract award shall apply for all Contracts above the values shown below

Procurement type	Minimum Limit in USD
Works	Above 100,000
Goods	Above 75,000
Non-Consultant Services	Above 75,000
Consultancy Services	Above 100,000

F: APPLICABILITY FOR BID AND PERFORMANCE SECURING DECLARATION

[Made under Regulation 143]

Procurement type	Maximum Limit in USD	
	Bid Securing Declaration	Performance Securing Declaration
Works	1,000,000	500,000
Goods	400,000	200,000
Non-Consultant Services	400,000	2000,000
Consultants –Firms	500,000	250,000

SECOND SCHEDULE
FRAMEWORK FOR PROCUREMENT WEB PORTAL AND A CENTRAL
EGOVERNMENT PROCUREMENT SYSTEM

A. General

1. Use of Electronic Means in Procurement

Conducting procurement by electronic means is permissible only in accordance with and to the extent authorized by the Minister pursuant to the Act and these Regulations.

B. Procurement Web Portal

2. Establishment of Central Procurement Web Portal

(1) The Authority, pursuant to the provisions of the Act, shall establish and maintain a central web portal for public procurement in South Sudan. The web portal shall provide the information and perform the functions ascribed to it pursuant to the Act and these Regulations.

(2). Information to be published on or made accessible through the web portal shall include:

- (a) The text of the Act, its implementing Regulations, and standard bidding and contract documents;
- (b) Instructions and interpretative instruments concerning implementation of the Act and these Regulations;
- (c) Manuals for practitioners and other materials for capacity building of participants in the procurement process, as well as information on upcoming capacity-building/training events;
- (d) Notices of upcoming procurement proceedings, including invitations to bid, invitations to apply for prequalification, and solicitations of expressions of interest in being shortlisted, notices of contract award, and other notices and information required to be posted on the web portal in accordance with the Law and these Regulations;
- (e) Information on contract variations, including the scope and the cost and time implications of changes involved;
- (f) Annual procurement plans of procuring entities;
- (g) Decisions of the Complaint Review Board on complaints submitted to it by bidders;
- (h) Information on historical, planned, and currently active procurement proceedings in an online, interactively searchable database accessible to the general public;
- (i) Channels for submission by stakeholder from the public and the private sectors, professional associations, civil society organizations, and members of the general public;
- (j) Annual and other reports prepared by the Authority, including reports on monitoring and measurement of performance of individual procuring entities and of the procurement system;

- (k) Forms and templates to be used to prepare online reports and other documents required pursuant to the Act and these Regulations;
 - (l) Register of debarred providers;
 - (m) The policy applicable to usage of the web portal, including the limitation on liability for technical failures and documentation errors, and the rule governing any inconsistencies between electronic and hardcopy versions of documentation issued by procuring entities.
- (3). Additional functions of the web portal may be enabled as and when determined to be appropriate by the Authority in accordance with the strategy for introduction and phasing in of e-procurement pursuant to article and the remainder of this Schedule.

3. Access to Information

In accordance with the Act, these Regulations, and the Law governing access to information, and Open Government and Open Contracting standards, the general public shall have access to all non-confidential information on the web portal and in e-GPS in which there is a public interest to know, including, but not limited to, annual procurement plans, solicitations of participation in procurement proceedings, summaries of bid evaluation reports and reports on procurement proceedings, contract award notices, contract implementation completion reports, register of suspended and debarred providers, the database on historical and currently active procurement proceedings, procurement performance statistical and analytical reports.

C. South Sudan e-Government Procurement System

4. Establishment of e-GP System

- (1) The Authority shall in due course establish a central electronic government procurement system, (hereinafter “e-GP System”), for use by public sector entities in South Sudan, the implementation of which may be phased as deemed appropriate.
- (2) The e-GP System shall be a centralized web-based facility that publishes a range of information, including procuring entities’ planned procurements, solicitations and contracts awarded, in accordance with the Act and these Regulations. It shall also supports secure conducting of electronic procurement transactions to deliver integrity and efficiency for procuring entities and providers.

5. Functionalities of e-GP System

The e-GP System shall have functionalities including, to one extent or another, but not limited to:

- (a) An online facility for the creation and updating of annual procurement plans;
- (b) Development of the procurement requisition and aggregation of requirements;
- (c) Preparation and advertisement of a solicitation
- (d) Standard templates and forms for the online preparation and submission of notices, communications and reports required pursuant to the Act and these Regulations, and for the online creation of bidding documents based on standard bidding documents, including templates for procurement contracts and purchase orders;

- (e) Provider registration to create provider e-GP System profiles, including registration of providers appearing as joint ventures or consortia, and providers appearing in bids as subcontractors, and integrated into an online database that may be interactively searched by procuring entities and other stakeholders;
- (f) Registration for other authorized users including members of bid opening and Evaluation Committees, the Authority and auditors;
- (g) Interoperability with other electronic databases (e.g., for the purposes of verifying company registration and payment of tax and social security obligations), and with external systems including those of banks;
- (h) Registration of banks interfacing with the e-GP System, including for the purposes of issuance of securities, payment of fees, and payment of invoices;
- (i) Registration of procuring entities (including their designated authorized officials, subject to the applicable delegation of authority as operationalized in the system);
- (j) Recertification of provider profiles;
- (k) Possibility of conducting pre-qualification and shortlisting procedures;
- (l) Downloading of bidding documents and online clarification of bidding documents and pre-bid conferences;
- (m) Online payment of fees related to participation by bidders and e-submission of guarantee instruments;
- (n) Publication of solicitations of bids, applications for prequalification and notices seeking expressions of interest;
- (o) Electronic (and paper) provider bid/proposal submission, including the possibility of bidding on lots and combinations thereof, if applicable, in a secure, anonymous manner, and storage of bids in a secure manner which does not allow bids to be opened or viewed prior to the deadline for submission of bids, and automatic acknowledgment to the bidder of receipt of its bid; withdrawal and modification of bids prior to the deadline for submission of bids
- (p) Electronic opening of bids and enablement of bidder attendance (including online and remotely) at opening of bids and other meetings which bidders, in accordance with the Law and these Regulations, may attend;
- (q) Bid proposal/bid evaluation and award, subject to the award decision being made by natural persons;
- (r) Dashboards to enable participants, including procuring entities and providers, and the Authority, to access e-GP System functionalities and manage their participation in the e-GP System;
- (s) Routing of tasks or documents for implementation and approval workflow, including legal reviews;
- (t) Transaction and workload status tracking
- (u) A mechanism for the online establishment and management of, and direct purchasing from, online framework agreements, [e-catalogues and electronic market places], and registration of procuring entities to access such resources;
- (v) A facility for conducting e-reverse auctions, including in the context of placing orders under framework agreements;

- (w) Submission of complaints from bidders;
- (x) Award notification procedures, including standstill period in accordance with the Act;
- (y) Online finalization and signature of procurement contracts;
- (z) Contract management functionalities (including tracking of deliveries, management of contract modifications, generation of electronic invoicing and management of payment of providers via electronic funds transfer, and disputes);
- (aa) Electronic data capture and record keeping, inclusion of (or interoperability with) a procurement management information system (PMIS) that records information about each stage and step in every procurement transactions including the identities of the personnel involved and the issuers of approvals and authorizations, and publication of data on procurement activities in interactively searchable procurement database, including interactive searching for upcoming procurement opportunities;
- (bb) The generation of reports on the key steps, features, timing and results of each procurement proceeding, including information on participating and rejected bidders, and approvals issued at each stage, as well as on performance vis-à-vis key performance indicators;
- (cc) The capability of automatically capturing data on procurement activities, interventions and participations in the e-GP System for the purposes of automatically establishing an auditable log of all use of and all entries into the system to create, modify or delete records, and to read confidential information, including workflow approvals, including the identification of the type and timing of each event and the identification of the system user and terminal involved.

D. Use and Operation of e-GP System

6. Obligatory Use of e-GP System

- (1) As and to the extent required pursuant to instructions from the Authority and following any testing or piloting deemed necessary by the Authority, every procuring entity shall utilize the e-GP System.
- (2) The e-GP System shall be accessible through the web portal of the procurement system.
- (3) The e-GP System shall be available twenty-four hours a day, seven days a week, to allow access to the above functionalities to the extent they are available.
- (4) Generally, purchases may be made up to any monetary amount unless otherwise limited by the specific mandatory or optional source, contract or framework agreement.

7. Technical Assistance and Capacity Building

- (1) The e-GP System shall provide a help desk to provide assistance to procuring entities as well as to providers.
- (2) The establishment, development and operation of the e-GP System shall be accompanied by the issuance and online availability of user manual and other guidance material for users of the system, including procuring entities and providers.

- (3) The Authority shall ensure that training is made available to procurement officials, the private sector, and other participants and stakeholders in use of the web portal and e-GP System, including through face-to-face sessions and online video tutorials.

E. Participation by Providers

8. Access to Information About Procurement Opportunities

The e-GP System shall display procurement solicitation and opportunities in a freely accessible manner to all visitors to the e-GP System portal. However, in order to respond to a solicitation in the e-GP System, a provider must have registered and created a profile in the e-GP System

9. Technical Standards and Requirements

- (1). For the purposes of accessing information on the web portal and participating in the e-GP System, providers shall only be required to be equipped, with:
 - (a) a computer equipped with a browser;
 - (b) an Internet connection; and
 - (c) a program for reading and writing PDF, in accordance with the minimum requirements disclosed to providers on the central web portal.
- (2) Subject to paragraph 1, the e-GP System shall disclose to providers the hardware and software tools that must be used to ensure that data and documents are exchanged in a proper, timely and secure manner.
- (3) The e-GP System user interfaces shall be operational in all widely used internet browsers and shall be capable of displaying in the English languages.
- (4) The costs related to obtaining the necessary hardware and software required for operating and participating in the e-GP System shall be borne by each party with regard to the performance of its obligations.

10. Access to the e-GP System

Subject to the provisions of the Act and these Regulations, the e-GP System does not assume any responsibility for failure to participate in a procurement or for the impossibility of the provider to participate for reasons other than those related to the e-GP System server and infrastructure.

11. Registration of Providers

- (1) The e-GP System may require the registration of providers as a prerequisite for participating in the e-GP System.
- (2) The e-GP System shall provide an online mechanism for providers to apply for registration and inscription on the list of participating providers, including the submission of qualification information to the extent qualification requirements are applied to the list or to any specific goods or services sectors.

- (3) Registration and Inscription on the list shall be made available at any time, on a continual basis, including through the e-GP System portal.
- (4) Applications for registration and inscription on the list shall be processed promptly. The applicant shall be notified of its inscription promptly. In the event that an applicant is denied inscription, the applicant shall be notified promptly of the grounds for the denial

12. Publicizing of Registration Procedure

- (1) A notice concerning the existence of the procedure for registration inscription on the list of e-GP System providers shall be published online on a continual basis, including on the web portal of the procurement system, together with a hyperlink to the e-GP System portal.
- (2) The notice referred to in paragraph 1 shall include the following information:
 - (a) a description of the goods or services, or categories thereof, for which the list may be used;
 - (b) the conditions for participation to be satisfied by providers for inclusion on the list and the methods that will be used to verify that provider satisfies the conditions;
 - (c) the name, address and contact information of the entity managing the list and other information necessary to contact the entity and obtain all relevant documents relating to the list;
 - (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and

13. Qualifications of Providers

The formulation of eligibility and qualification requirements for registration in the e-GP System, or for the award of procurement contracts through the e-GP System, shall be in accordance with Act, and these Regulations.

14. Creation of Provider Profile

- (1) The e-GP System shall require participating provider, as part of the registration process, to create a provider profile. The e-GP System portal shall provide instructions on the registration process, including the information and documentation to be provided by providers for registration and creation of a provider profile.
- (2) The identification of the goods, works or services provided by a provider shall utilize the applicable classification codes.
- (3) The information contained in the provider profile shall include, at a minimum:
 - (a) Provider Name
 - (b) VAT Number, ID Code (outside EC) and other forms of fiscal identification
 - (c) Registered address, city, province, country and postal code
 - (d) Name and title of main contact official in the provider
 - (e) email address
 - (f) fixed telephone number

- (g) mobile telephone number
 - (h) fax number
 - (i) provider website
 - (j) other offices of the provider
 - (k) product/service UNSPSC classification code
 - (l) turnover
- (4) The e-GP System shall ensure that user personal details and profiles are stored in a secure manner

5. Updating and Renewal of Registration

- (1) The e-GP System shall require the provider to update the information in its profile as needed. A provider is obligated to inform the entity managing the e-GP System of any changes to qualification information on the basis of which registration has been granted. Provided that the changes are deemed acceptable, the e-GP System shall send a message to the provider confirming the update.
- (2) Registration and inscription on any list of e-GP System providers shall be subject to periodic renewal. The e-GP System shall provide providers sufficient prior notice of the renewal requirement, a minimum of seven days prior to the renewal deadline, by a message sent to the email address in the provider profiles.

16. Acceptance of e-GP System Rules

As part of the registration process, the e-GP System shall provide an acceptance form downloadable or otherwise operable from the e-GP System S portal, which, once filled out and sent to the e-GP System by the provider constitutes an acknowledgment of having read and adherence to and acceptance of the rules applicable to the e-GP System.

F. Security and Access Issues

17. Security of the e-GP System

- (1) The e-GP System shall possess the appropriate level of security taking in to account the nature and value of the procurement, the cost of security measures, as the risks involved and other relevant factors.
- (2) The e-GP System shall be built in a manner that safeguards its reliability in the context of multiple access events and disruptions such as power, software, hardware, communications and internet connectivity failures, and malicious attacks and security breaches, and protects the integrity of and precludes modifications of any type to be made to documents and communications exchanged or data recorded in the system.

18. Authorization of Access

- (1) The security tools that may be required include user ID and passwords, which are used in combination to identify providers and to provide them access to participation in the e-GP System.

- (2) The e-GP System shall support authentication of users through user ID and password authentication methods or other reasonable security tools. The e-GP System may require the use of a digital signature to be issued by an accredited certifier generated using a system for creating secure signatures. However, digital signature logon requirements may be adopted but only after a cost-benefit analysis of the cost-benefit of such an approach, taking into account evolving international standards and practices in e-procurement.
- (3) The e-GP System may assume that persons who access the system to create and submit a bid are duly authorized by the provider with regard to the maximum amount estimated for the solicitation.

19. Confidentiality of Access Information

- (1) It is the provider's obligation to keep the access information confidential. The provider is responsible for the actions that it takes on the e-GP System, as well as the actions of third parties that have gained access to the provider's access information. The provider shall indemnify and hold harmless from liability the e-GP System resulting from the unauthorized use of access information.
- (2) The provider shall promptly notify the entity managing the e-GP System of any discovery of unauthorized use of its access information.

20. Submission of Bids by Groupings

- (1) Submission of bids in the e-GP System by groupings of providers is subject the provisions of the Act and these Regulations, governing participation by groupings, as well as to the provisions on registration for the e-GP System.
- (2) A grouping that has not been registered with the e-GP System and has not created a provider profile for the grouping, may participate in the e-GP System, provided that
 - (a) all the members of the grouping are registered with the e-GP System, and
 - (b) the members of the grouping provide the entity administering the e-GP System, in accordance with the applicable instructions, with a declaration signed by each of the members, authorizing the lead member of the grouping to submit bids, sign documents on behalf of the grouping, and conclude the procurement contract.
- (3) Only the lead grouping member shall access the e-GP System on behalf of the grouping, using its own access information.
- (4) A grouping that has already undergone the registration and qualification process referred to in articles 13 and 14 may participate either directly through the access information provided to the grouping upon its registration, or through the access information of the lead member of the grouping.

21. Withdrawal of Authorization

- (1) The e-GP System may reserve the right to withdraw authorizations of access to the system only in accordance with the Law and these Regulations. Any withdrawal of an authorization is subject to prior written notice to the provider. In emergency circumstances, the e-GP System may suspend an authorization, followed by written notice to the provider by a message to the email address in the provider's profile.

- (2)The e-GP System may provide for withdrawal of a provider’s authorization to access the system due to prolonged inactivity, provided that any such period of inactivity is at least one year in duration, and any withdrawal is subject to prior notice to the provider. Upon receipt of the notice, the provider may elect to renew its access authorization.
- (3)A provider may at any time request withdrawal of its authorization. However, such a withdrawal shall not affect obligations that have already been incurred.

G. Communication and Electronic Document Exchange in the e-GP System

22. Communications

The e-GP System shall inform providers of the manner in which valid communications are to be made among the parties.

23. Electronic Document Exchange

- (1) Access to electronic exchange of documents in connection with the eGP System shall be through connecting to the e-GP System portal.
- (2) The e-GP System shall specify on the relevant portal the formats and record layouts for documents exchanged electronically.
- (3) When the entity administering the e-GP System introduces changes or adds to formats or record layouts, sufficient advance notice shall be provided to providers to the e-mail address in their profiles. When the types of documents that may be exchanged electronically are expanded, prior notice shall be provided to providers’ profile email addresses.

24. Storage of Electronically Exchanged Documents

- (1)The provider is responsible for ensuring that the documents its exchanges are stored and recorded. At the same time, the e-GP System shall ensure the complete and chronological storage of the documents in the format in which the documents were transmitted and received.
- (2)The storage of documents by the e-GP System referred to in paragraph 1 shall be implemented on the e-GP System server and shall allow the respective provider direct online access to the documents for at least [6] months following the creation of the documents. The duration of the further, offline storage of the documents is subject the rules applicable to the archiving of documents by public sector entities.
- (3)Nothing in these rules on e-procurement is intended to alter or supplant the applicability of any mandatory rules concerning the storage of certain types of documents in paper form for the period of time prescribed by or pursuant to law.

25. Documentation of Transactions

- (1) The e-GP System shall automatically generate a log file that evidences the content and time-stamping of all electronic documents and messages exchanged in the system, and any

access of the system for writing purposes, including but not limited to bid submission, notices and other communications published in the system or sent to providers to their profile e-mail addresses.

- (2) When it is not feasible to document a transaction in the e-GP System electronically in its entirety (e.g., as in the case of large drawings), a procedure shall be made available for the transmission of hard copies of documents, and a reference shall be included to the documents that are exchanged and stored as hard copies only.

26. Data Privacy

The handling of personal data exchanged in the e-GP System is subject to the applicable data privacy protection rules in accordance with the laws and international obligations of South Sudan.

27. Technical Problems and Malfunctions

- (1) The e-GP System shall require the administering entity and participating providers to notify each other of problems that affect the usage of the system.
- (2) The e-GP System shall assume no liability for malfunctions or problems in connectivity to its server deriving from causes independent of its server.

28. Integration of Systems

Where necessary, and feasible, to capture data in entity enterprise resource planning systems and to eliminate or avoid duplicate or manual data entry in such agency systems, procuring entities shall integrate their enterprise resource planning systems with the e-GP System.

H. e-Mall

29: e-GP System e-Shopping Mall

The e-GP System may include an Electronic Mall (e-Mall), in which procuring entities can browse and shop from mandatory sources and mandatory use and optional use framework agreements, surplus property and non-contract sources, all displayed as electronic catalogs. In such an e-mall, a search for an item will reveal any available mandatory source, mandatory use framework agreement or optional use framework agreement.

30. Sufficiency of Single Quotation

A procuring entity may accept an e-GP System e-Shopping Mall catalog (non-contract) price, without searching for the lowest catalogue price, when the value of the purchase is less than the amount specified in [Annex A]. The selection shall be based on the product that best meets the need and the required delivery date, provided that the price is considered fair and reasonable.

I. Miscellaneous

31. Duration of Solicitations

The period of time during which solicitation of bids posted on the e-GP System shall be set in accordance with the Act and these Regulations, in order to ensure that providers have a sufficient period of time to respond.

32. Fees

- (1) Option A: Use of the e-GP System by procuring entities and providers may be subject to the imposition of fees. However, any such fee shall be kept to a minimum in order to facilitate the widest possible participation, including by Small and Medium Enterprises and new businesses.
- (2) Option B: Procuring entities and vendors shall pay the e-GP System fees as set forth on the e-GP System Fee Schedule published on the e-GP System billing and payment portal.

33. Use of Purchase Cards

- (1) The e-GP System may provide for the use of purchase cards to make payment for small purchases below the monetary limit specified in [Annex B]. Once such a facility is in place, and a purchase card for small purchases has previously been entered into the e-GP System, it should be used to affect payment of all purchase transactions up to the above-mentioned monetary limit through vendors accepting the card.
- (2) Whenever a card is issued or cancelled, or when a limitation applicable to a card is changed, the e-GP System shall be updated as soon as practicable.

34. Prior Approvals and Controls

The e-GP System shall incorporate the relevant ex ante approval and control processes at the pertinent stages of the procurement process.

35. Performance Measurement and Monitoring

While implementing the e-GP System, the Authority shall establish performance indicators and targets and shall monitor and measure the implementation and performance of the system.

THIRD SCHEDULE
**SUPPLEMENTAL PROCEDURES FOR PROCUREMENT OF PUBLIC-
PRIVATE PARTNERSHIPS (PPP)**

Section A. General

1. Purpose and Principles

- (1) The purpose of this annex is to supplement the Procurement Regulations with provisions elaborated specifically for the procurement of public private partnership project agreements, including an additional possible procurement method, in line with the principles enunciated the Act and in Regulation.
- (2) The procuring entity shall not provide information in a discriminatory manner which may give some bidders an advantage over others.

2. Definitions

“Public-Private Partnership (PPP)” means a contractual arrangement between a procuring entity on one side and a private sector entity on the other, for the provision of public assets, infrastructure and/or public services, where

- (a) Investments are made and/or management is undertaken by the private sector entity, for a specified period of time,
- (b) there is a well-defined allocation of risk between the private sector and the public entity, and
- (c) the consideration for which consists either solely in the right to exploit the works or services that are the subject of the agreement or it may be stipulated that the private entity receives performance linked payments that are triggered when performance, measurable by the public entity or its representative, achieves specified and pre-determined performance standards.

“Unsolicited Proposal” means a proposal for a public private partnership Project submitted by a private entity on its own initiative rather than in response to a request from the procuring entity.

"Initial unsolicited proposal" means the first document submitted to the procuring entity in order to be granted a preliminary approval.

"Preliminary Approval" means the approval granted by the procuring entity on the basis of the initial unsolicited proposal which allows the proponent to submit a final unsolicited proposal.

"Final Unsolicited Proposal" means the final unsolicited proposal submitted by the proponent after it has been granted the preliminary approval.

“Direct Negotiation” occurs when a Procuring entity awards a public private partnership Project without using a competitive procedure “Regulations” means the Public Procurement

Regulations adopted by the Government of South Sudan, of which this Schedule forms an integral part.

3. Scope of Application

The selection of public private partnership providers and the awarding of procurement contracts on a public private partnership basis shall be conducted in accordance with the Act and the Regulations, subject to the provisions of this Schedule

Section B. Planning and Preparation of PPP Procurement

4. Prerequisites for PPP Procurement

Prior to initiating a PPP procurement proceeding, the procuring entity shall ascertain fulfillment of all the necessary requirements for identifying, conducting feasibility assessments and any required environmental impact assessments, and obtaining approval of the Minister pursuant to the implemented procedure for inclusion of the proposed projects by the contracting authorities in the annual investment budget.

5. Project Officers and Advisors

- (1). The procuring entity shall designate a person possessing the requisite knowledge and experience, drawn either from inside or from outside the procuring entity, as a project officer for the public private partnership project. The duties of the project officer shall include managing the project through the procurement planning and acquisition stages, and monitoring the proper implementation of the project.
- (2) .In addition, the project officer may be assisted, for the acquisition phase, by a procurement and negotiation team, as well as by a transaction advisor. The transaction advisor shall possess experience in similar projects, and in all phases of the public private partnership project, and, unless the advisor is a multilateral intergovernmental organization or bilateral donor agency, shall be appointed by way of a competitive procedure in accordance with the Act and the Regulations.

6. Formulation of Specifications

Technical specifications for a PPP project shall be formulated on the basis of the performance and/or outputs required by the procuring entity, in an objective manner so as to maximize competition and avoid creating unnecessary obstacles to participation by bidders in the procurement proceedings.

7. Cost Estimation

- (1) For the purposes of establishing its cost estimate for the PPP procurement, the procuring entity shall take into account the financial models elaborated in the feasibility assessment phase of the project, and updated to reflect any additional, more detailed definition of the project as presented in the request for proposals.
- (2) For the purposes of facilitating a proposal evaluation and negotiation process that enables the procuring entity to achieve best value for money, the procuring entity may refer, as a comparative reference, to the cost of utilizing the option of delivery of the infrastructure or service by the public sector.

Section C. PPP Procurement Procedures

8. Solicitation of Proposals

- (1) The procuring entity shall solicit proposals from qualified bidders, which can be ensured by way of a prequalification proceeding in accordance with the Regulations, or by a call for expressions of interest followed by the establishment of a short list of bidders who will be invited to submit proposals. When the procuring entity establishes a short list of providers it shall ensure that the list includes a sufficient number of bidders to provide effective competition, provided that number of bidders is not less than five if feasible.
- (2) In order to establish the shortlist of bidders from whom proposals will be solicited, the procuring entity shall publish notice in local and internationally widely distributed organ of press, and on the central web portal of the procurement system. The notice shall contain the following information:
 - (a) The name, address and contact information of the procuring entity;
 - (b) A description of the subject matter of the public private partnership procurement, to the extent known, the type of public private partnership arrangement involved, and the desired or required time and location for the provision of such subject matter;
 - (c) An indication of how the prequalification documents or, if a shortlisting approach is being applied, any shortlisting documents, may be obtained providing additional, more detailed information about the project;
 - (d) An indication of the application of the procedures in this Schedule.
 - (e) The criteria and procedures to be used for ascertaining the qualifications of bidders or, if applicable, establishing a shortlist with a limitation on the number of bidders that will be invited to participate, and any documentary evidence or other information that must be presented by bidders about their companies, and to demonstrate their qualifications, in conformity with the Act and the Regulations;
 - (f) If a price is to be charged for the request for proposals, the means and currency of payment;
 - (g) The language or languages in which the request for proposals is available;
 - (h) The manner, place and deadline for presenting proposals;
 - (i) that it will request proposals only from bidders that have been prequalified or, if shortlisting is applied, only from the shortlisted bidders;
- (3) In order to be prequalified or, if applicable, shortlisted, interested bidders must meet objectively justifiable criteria that the procuring entity considers appropriate in the particular proceedings, as stated in the prequalification or short listing documents. Those criteria shall be confined to the types of eligibility and qualification criteria referred to in

the Act and the Regulations, and shall include, in addition to eligibility criteria, the following:

- (a) Adequate professional and technical qualifications, human resources, equipment and other physical facilities as necessary to carry out all the phases of the project, including design, construction, operation and maintenance;
 - (b) Sufficient ability to manage the financial aspects of the project and capability to sustain its financing requirements; and
 - (c) Adequate managerial and organizational capability, reliability and experience, including previous experience in operating similar infrastructure facilities.
- (4) When the prequalification approach is applied, all bidders that meet the criteria disclosed in the prequalification documents shall be permitted to participate in the procurement proceeding. When the shortlisting approach is applied, the procuring entity shall select bidders for inclusion in the short list that acquired the best rating, up to the maximum number indicated in the pre-selection documents but at least five, if feasible.

9. Participation by Consortia

- (1) The procuring entity, when first inviting the participation of bidders in the procurement proceedings, shall allow them to form bidding consortia. The information required from members of bidding consortia to demonstrate their qualifications in accordance with article 8.3 of this Schedule shall relate to the consortium as a whole as well as to its individual participants.
- (2) Each member of a consortium that submits a proposal is bound jointly and severally for the obligations of the consortium as a bidder.
- (3) At later stages, when the procuring entity may be dealing with a single entity project company established to implement the project, that project company may be solely responsible for meeting all the requirements under the project agreement.
- (4) Each member of a consortium may participate, either directly or indirectly, in only one consortium submitting a bid, and not also in another proposal at the same time. A violation of this rule shall cause the disqualification of the consortium and of the individual members and the rejection of all the proposals involved in the overlapping participation. This rule shall not, however, preclude a firm from being a subcontractor in more than one proposals, or an individual to be a team member in more than one proposal.
- (5) When considering the qualifications of bidding consortia, the procuring entity shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are adequate to meet the needs of all phases of the project, in accordance with the qualification requirements specified in the advertisement.
- (6) A procuring entity may disqualify, or review the terms of a project agreement concluded with, a consortium where one of its members is replaced.

10. Request for Proposals

- (1) The request for proposals shall be provided by the procuring entity to each prequalified or shortlisted bidder, provided that the bidder pays the fee, if any. The request for proposals shall include at a minimum the following information:
 - (a) name, address and contact information of the procuring entity;
 - (b) description of the object of the procurement including technical, performance indicators and other parameters, service levels, which proposal shall meet, as well as the required time and location for the performance of the contract, including the procuring entity's requirements regarding safety and security standard and environmental protection;
 - (c) the level of financial support that the procuring entity is prepared to offer guarantees, early milestone payments (payments made in the development and early stages of the PPP project, before availability of the asset), etc., as agreed upon in the project agreement;
 - (d) the draft PPP project agreement, with, subject to subparagraph j, an indication that the draft project agreement shall be discussed with all qualified bidders and that a final draft shall be provided to all bidders prior to the proposal submission date;
 - (e) The means by which, in accordance with these Regulations, bidders may seek clarification of the request for proposals and a statement as to whether the procuring entity intends to convene a meeting of bidders at this stage;
 - (f) Any element of the description of the subject matter of the procurement or term or condition of the project agreement that will not be the subject of negotiation during the procedure;
 - (g) Instructions for preparing and presenting proposals;
 - (h) The criteria for evaluation of proposals, the relative weight of the criteria, and the manner in which they will be applied in the evaluation and comparison of proposals, in accordance with article 11.2 of this Schedule;
 - (i) The desired format and any instructions, including any relevant timetables, applicable in respect of the proposal, including that technical and financial proposals shall be submitted in separate, sealed envelopes;
 - (j) Notification of the possibility of negotiations with participating bidders, if the procuring entity intends to engage in negotiations
 - (k) Any other requirements that may be established by the procuring entity in conformity with the Act and the Regulations relating to the preparation and presentation of proposals and to the procurement proceedings.
- (2) The request for proposals may establish thresholds with respect to quality, technical, financial and commercial aspects. Proposals that fail to achieve the thresholds shall be regarded as non-responsive and rejected from the procurement proceeding.

- (3) The procuring entity shall respond promptly to any request by a bidder for clarification of the request for proposals, submitted to the procuring entity within a reasonable time, as specified, in the request for proposals, prior to the deadline for the submission of proposals, and shall promptly circulate the response to all bidders without revealing the source of the request.
- (4) The request for proposals shall recommend, when appropriate, for bidders to visit and examine the project site and surrounding area to obtain, on their own responsibility, any necessary information for preparing the proposal. Bidders shall bear any costs arising from any such visits.
- (5) The procuring entity may hold a preliminary conference with the bidders that have been prequalified, or shortlisted, for the purposes of clarifying the request for proposals. All requests for clarification and responses thereto shall be reflected in minutes of the conference, which shall be provided to all prequalified or shortlisted bidders.
- (6) Any modification of the request for proposals, including modification of the criteria for evaluating proposals referred to in Article 10(1h) of this Schedule, shall be communicated to all bidders participating in the request-for-proposals proceedings.
- (7) The request for proposals shall set forth the requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of any required bid security, and the same information
for any performance security that might be required by the procuring entity.
- (8) A bidder shall not forfeit any bid security that it may have been required to provide, other than in cases referred in the Act, and in case of:
 - (a) Failure to submit its best and final offer, if applicable, within the time limit prescribed by the procuring entity pursuant to article 11.10 of this Schedule;
 - (b) Failure to provide required security for the fulfillment of the project agreement after the proposal has been accepted or to comply with any other condition prior to signing the project agreement specified in the request for proposals.

11. Opening and Evaluation of Proposals and Negotiation

- (1) The procuring entity shall open the proposals at the expiry of the proposals submission deadline, as specified in the request for proposals, at the place specified in the request for proposals, and in the presence of the Bidders who choose to attend.
- (2) If proposals are submitted in the form of two separate envelopes for technical and financial proposals, the proponents shall be invited to the opening of the technical proposals as well as to the opening of the financial proposals if those are opened separately, as may be specified in the request for proposals.
- (3) The procuring entity shall set and disclose to bidders in the request for proposals the criteria for assessment of proposals, including the relative weight of each such criterion and the evaluation methodology and procedures to be applied in the proposals assessment process. Such criteria apply to:

- (a) the managerial and technical competence of the bidder;
 - (b) the effectiveness of the proposal submitted by the bidder in meeting the requirements of the procuring entity as set forth in the request for proposals;
 - (c) the price or financial proposal submitted by the bidder for carrying out its proposal and the cost of operating, maintaining and repairing the proposed goods, construction or services.
- (4) A proposal Evaluation Committee shall be constituted for the purposes of evaluating the proposals received in a public private partnership procurement proceeding. The committee shall consist of:
- (a) technical experts, including legal and other relevant expertise, from the procuring entity and/or experts outside of the procuring entity;
 - (b) a representative of the relevant sectoral or other regulatory body;
 - (c) a representative of the Ministry of Finance
- (5) The procuring entity shall examine all proposals received against the established minimum requirements and shall reject each proposal that fails to meet these minimum requirements on the ground that it is nonresponsive. A notice of rejection and the reasons for the rejection shall be promptly dispatched to each respective bidder whose proposal was rejected.
- (6) The criteria for the evaluation and comparison of the technical proposals, as disclosed in the request for proposals, shall include at least the following-
- (a) Technical soundness;
 - (b) Compliance with environmental standards;
 - (c) Operational feasibility;
 - (d) The extent to which the proposal demonstrates the bidder's ability to meet the required performance standards over the life of the project agreement as outlined in the request for proposals.
- (7). The criteria for the evaluation and comparison of the financial and commercial proposals, as appropriate and as disclosed in the request for proposals, shall include:
- (a) The present value of the proposed tolls, unit prices and other charges over the operational period, if the request for proposals leaves it up to bidders to propose the levels of such charges and applying a discount rate specified in the request for proposals;
 - (b) The present value of the proposed direct payments by the procuring entity, if any, and applying a discount rate specified in the request for proposals;
 - (c) Other financial criteria as may be specified in the request for proposals taking into account the nature of the public private partnership contract;
 - (d) Where applicable and to be determined on a competitive basis, the extent of financial support from the procuring entity in the form of availability payments, if any, expected from any public authority;

- (e) The soundness of the proposed financial arrangements; and
 - (f) The social and economic development potential offered by the proposals
- (8) If the request for proposals provides for a negotiation stage, the procuring entity shall invite each provider that presented a responsive proposal, within any applicable maximum, to participate in the negotiation.
- (9) Any negotiations between the procuring entity and a provider shall be confidential. The procuring entity shall treat proposals in such a manner so as to avoid the disclosure of their contents to competing bidders, and one party to the negotiations shall not reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party;
- (10) Any requirements, guidelines, documents, clarifications or other information that is communicated by the procuring entity to a bidder shall be communicated at the same time and on an equal basis to all other bidders, unless such information is specific or exclusive to that provider or such communication would be in breach of the confidentiality provisions of article 11(7c) of this schedule.
- (11) During the negotiations, the procuring entity shall not modify the subject matter of the procurement, any qualification or evaluation criterion, any minimum requirements, or any term or condition of the project agreement that is not subject to the negotiation as specified in the request for proposals in accordance with article 1.1. f of this Schedule.
- (12) Following the completion of negotiations, the procuring entity shall request all bidders remaining in the proceedings to present a best and final offer with respect to all aspects of their proposals, which shall not be subject to negotiation. The request shall be in writing and shall specify the manner, place and deadline for presenting best and final offers.
- (13) The procuring entity shall rank all responsive proposals on the basis of the evaluation criteria. The successful proposal shall be the proposal that best meets the needs of the procuring entity as determined only in accordance with the criteria and procedure for evaluating the proposals set out in the request for proposals and any modification to the request for proposals.
- (14) In the case of less complex and smaller projects, such as the selection of a concessionaire to operate already existing infrastructure, the procuring entity may decide to forego the best and final offer stage referred to this Schedule.

12. Direct Negotiation

- (1) When, in response to a solicitation published in accordance with article 8.2 of this Schedule, less than two bidders that meet the qualification requirements respond, the procuring entity shall re-advertise the solicitation of proposals. Re-advertisement shall take place only after the procuring entity has investigated the grounds for lack of adequate response to the initial solicitation, including ascertaining whether the qualification criteria have been set appropriately or whether the project has been designed appropriately, and has taken any necessary remedial steps, including revision and updating of solicitation documents, if need be.

(2). If, following the re-advertisement,

- (a) No bidder responds or only one bidder responds and that bidder meets the qualification requirements set forth in the advertisement, presents itself and subsequently presents a responsive proposal; or
- (b) more than one bidder responds, but only one bidder meets the qualification requirements set forth in the advertisement, presents itself and subsequently presents a responsive proposal; or
- (c) more than one bidder is included in the short list, but only one bidder submits a responsive proposal, the procuring entity may directly negotiate the project agreement with that bidder.

(3). Award of a project agreement on the basis of direct negotiation is also permissible, subject to adhering to the implemented procedure for inclusion of the proposed projects by the contracting authorities in the annual investment budget at the Ministry of Finance and Planning, in the following cases:

- (a) When there is an urgent need for ensuring continuity in the provision of the service and engaging in a competitive selection procedure would therefore be impractical.
- (b) Reasons of national defense or national security.
- (c) Cases where there is only one source capable of providing the required service (for example, because it requires the use of patented technology or unique know-how).
- (d) When an invitation to the pre-selection proceedings or a request for proposals has been issued in the past but no proposals were submitted or all proposals failed to meet the evaluation criteria set forth in the request for proposals.

Section D. Unsolicited Proposals

13. Admissibility of Unsolicited Proposals

(1)As an exception to article 8 of this Schedule, the procuring entity may consider unsolicited proposals pursuant to the procedures set forth in article 13(2) to 13(4) of this Schedule, provided that

- (a) such proposals do not relate to a project for which procurement procedures have been initiated or announced, and,
- (b) at the outset, the proponent of the unsolicited proposal and the procuring entity sign a memorandum of understanding acknowledging the applicability of the procedures set forth in this article.

(2) Procedures for determining the admissibility of unsolicited proposals include:

- (a) First, there should be a preliminary phase where the proponent submits a short initial unsolicited proposal to the procuring entity. The purpose of this preliminary phase is
 - (i). to verify whether the admissibility conditions for an unsolicited proposal are met and
 - (ii). to lay out in advance the rules governing the treatment of the final version of the unsolicited proposal.
- (b) Following receipt and preliminary examination of an unsolicited proposal, the procuring entity shall promptly inform the proponent whether or not the project is considered to be potentially in the public interest, taking into account factors including the appropriateness of the contractual arrangements and the reasonableness of the proposed project risks.
- (c) If the project is considered to be potentially in the public interest, and is granted preliminary approval by the procuring entity, it shall invite the proponent to submit a comprehensive final unsolicited proposal, containing the detailed information on the proposed project to allow the procuring entity to make a proper evaluation of the proponent's qualifications, the technical and economic feasibility of the project, including a technical and economic feasibility study, an environmental impact study and satisfactory information regarding the concept or technology contemplated in the proposal; and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the procuring entity.
- (d) In considering an unsolicited proposal, the procuring entity shall respect the intellectual property, trade secrets or other exclusive rights contained in, arising from or referred to in the proposal. The procuring entity shall not make use of information provided by or on behalf of the proponent in connection with its unsolicited proposal other than for the evaluation of that proposal, except with the consent of the proponent. Except as otherwise agreed by the parties, the procuring entity shall, if the proposal is rejected, return to the proponent the original and any copies of documents that the proponent submitted.

(3) In the case of unsolicited proposals that do not involve intellectual property, trade secrets or other exclusive rights, and the procuring entity therefore considers that-

- (a) The envisaged output of the project can be achieved without the use of any intellectual property, trade secrets or other exclusive rights owned or possessed by the proponent; and
- (b) The proposed concept or technology is not truly unique or new.

(4) Except in the circumstances set forth in the Act, the procuring entity shall, if it decides to implement the project, initiate a procurement proceeding in accordance with section C,

including the solicitation procedures in accordance with article 8 of this Schedule. The proposal price of the original proponent shall not be disclosed and the original proponent shall be required to resubmit a formal proposal.

- (5) The proponent shall be invited to participate in the procurement proceedings initiated by the procuring entity pursuant to subparagraph a and may, if so and to the extent provided in the memorandum of understanding referred to in article 13(1) of this Schedule,
- (a) be compensated for costs associated with the preparation of the unsolicited proposal, and
 - (b) be granted such other privileges as specified in the memorandum of understanding, including a guaranteed right of the original proponent to participate in a best and final offer round.
- (6) Following the receipt, evaluation and ranking of the proposals, the procuring entity shall select the two best ranked-proposals for participation in the second stage, involving submission of best and final offers. The original proponent shall be automatically invited to participate in that second stage even if the original proponent's proposal was not among those selected following completion of the first stage for participation in the best and final offers stage. The winning proposal shall only be selected following the best and final offers stage.
- (7) In the case of unsolicited proposals involving intellectual property, trade secrets or other exclusive rights
- (a) If the procuring entity determines that the conditions of article 13(3a) of this Schedule are not met, it shall not be required to carry out a procurement procedure pursuant to section C of this Schedule. However, the procuring entity may still seek to obtain elements of comparison for unsolicited proposal, the procuring entity shall publish a description of the essential output elements of the proposal with an invitation for other interested providers to submit proposals by a specified deadline.
 - (b) If no proposals are received, the procuring entity may engage in negotiations with the original proponent.
 - (c) If the procuring entity receives proposals in response to an invitation issued pursuant to article 13(4a) of this Schedule, the procuring entity shall invite the proponents to negotiations. In the event that the procuring entity receives a sufficiently large number of proposals, which appear prima facie to meet its infrastructure needs, the procuring entity shall request the submission of proposals pursuant to section C of this Schedule, subject to any incentive or other benefit that may be given to the provider that submitted the unsolicited proposal in accordance with article 13(3b) of this Schedule.

Section E. Project Implementation

14. Project Agreement

- (1) The procuring entity shall enter into the project agreement in writing with the successful bidder. The project agreement shall stipulate at a minimum the following:
 - (a) the rights and the obligations of the procuring entity and of the private sector party, including the required level of service to be provided by the private sector party;
 - (b) the duration of the project agreement;
 - (c) delineation of public and private assets, and provision for transfer of public assets to the private sector party;
 - (d) the required structure for management by the private sector party of its performance;
 - (e) provision of assistance by the procuring entity to the private sector party in obtaining licenses and permits needed to implement the project;
 - (f) financial arrangements, including the source and nature of payments to the private sector party, financial controls, financial accountability and financial reporting requirements;
 - (g) allocation of risks as between the parties;
 - (h) remedies available to the parties in case of default in performance;
 - (i) the return of assets to the procuring entity at the expiry of the project agreement; (j) applicable law;
 - (k) dispute settlement.
- (2). The Authority may issue standardized provisions, particularly for clauses such as force majeure, termination, compensation, change in law and dispute settlement (including international arbitration).


15. Project Agreement Signature

- (1). After obtaining the necessary approvals of the project agreement, the authorized person in the procuring entity shall sign the project agreement on behalf of the procuring entity.
- (2). The project agreement shall be registered and copies distributed in accordance with applicable procedures.

CERTIFICATE OF AUTHENTICATION

This is to certify that the august House of the Transitional National Legislative Assembly pursuant to its Ordinary Sitting No. 29/2024, of the First Session, dated 12th August, 2024, pass and adopt the “Public Procurement and Disposal of Assets Regulations, 2024” and in accordance with the power conferred upon me under Section 83 of the Public Procurement and Disposal of Assets Act, 2018.

Issued under my hand in Juba on this 17 day of OCTOBER in the year, 2024


Hon. Marial Dongrin Ater (Ph.D)
Minister
Ministry of Finance and Planning
Republic of South Sudan
Juba.

