



FEDERAL REPUBLIC OF SOMALIA

PUBLIC PROCUREMENT, CONCESSIONS AND DISPOSAL ACT

CONTENTS	PAGE
PART I – PRELIMINARY	4
<i>PART II GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS</i>	12
<i>PART III: INSTITUTIONS ESTABLISHED FOR MANAGING PUBLIC PROCUREMENT</i>	24
A. PUBLIC PROCUREMENT AUTHORITY.....	24
B. INDEPENDENT PROCUREMENT REVIEW PANEL.....	32
C. PROCURING ENTITIES.....	33
D. PROCUREMENT COMMITTEES.....	35
E. PROCUREMENT UNITS.....	36
F. BID AND PROPOSAL EVALUATION COMMITTEE.....	37
<i>PART IV – PROCUREMENT METHODS AND PROCEEDINGS</i>	40
A. SELECTING PROCUREMENT METHOD.....	40
B. PROCUREMENT PROCEEDINGS FOR OPEN COMPETITIVE BIDDING.....	42
C. OTHER PROCUREMENT METHODS.....	52
<i>PART V – PROCUREMENT OF CONSULTING SERVICES</i>	56
A. GENERAL PROVISIONS.....	56
B. SELECTION BASED ON QUALITY AND COST.....	57
C. OTHER SELECTION METHODS.....	62
<i>PART VI</i>	66
<i>PROCEDURES FOR PROCUREMENT OF CONCESSION AGREEMENTS</i>	66
A. <i>Definition and Objectives of Concession Agreements</i>	66
B. <i>SCOPE, APPLICATION AND DISQUALIFIED PRIVATE SECTOR ENTITIES</i>	67
C. <i>The Concession Procurement Process Planning</i>	74
D. <i>CONCESSION DOCUMENTS PREPARATION</i>	78
E. <i>PRE-BID MEETING, BID SUBMISSION AND OPENING</i>	79
F. <i>EVALUATION</i>	80
G. <i>POST EVALUATION</i>	81
<i>PART VIII – COMPLAINTS AND APPEALS REVIEW PROCEEDINGS</i>	87
<i>PART IX – GENERAL PROVISIONS</i>	90
SCHEDULE 1:.....	95

CONDUCT OF PUBLIC OFFICIALS, BIDDERS, SUPPLIERS, CONTRACTORS, CONSULTANTS AND
CONCESSIONAIRES..... 95

SCHEDULE 2: 98

PROCEDURES FOR THE INDEPENDENT PROCUREMENT REVIEW PANEL..... 98

PART I – PRELIMINARY

Introduction:

This Public Procurement, Concession and Disposal Bill repeals all provisions related to the tender and award of contracts in the Financial and Accounting Procedures of The State Law No. 02 of December 29, 1961. No. 317 of December 17, 1962. No. 318 of December 18, 1962.

Article 1: Short Title.

This Act may be cited as the *Public Procurement Act*.

Article 2: Purpose of the Act.

The purpose of this Act is to establish institutional structures for managing public procurement and provide procedures for procurement of goods, works, services and other contract terms; administration of concession agreements; and disposal of unserviceable, obsolete, or surplus stores, and equipment by public entities.

This Act is intended to:

- (a) Maximize economy and efficiency in public procurement, and obtain best value for money.
- (b) Promote transparency and competition by providing equal access to bidding opportunities and information
- (c) Promote integrity, fairness, proficiency, and accountability in order to increase public confidence in the procurement system.
- (d) Facilitate promotion of local industry and economic development.

Article 3. Definitions

1. In this Act, unless the context otherwise requires:

Authorizing Officer means the person appointed as the officer in charge of a Procuring Entity.

Authority means the Public Procurement Authority established under Article 35 of this Act.

Bid means a quotation or proposal submitted by a bidder in response to a solicitation by a Procuring Entity.

Bidder means any participant or potential participant in procurement proceedings.

Bid security means bank guarantee or other form of security submitted by a bidder together with a bid to secure the obligations of the bidder participating in a bidding proceeding, including the obligation to sign a procurement contract if the bid is accepted, in accordance with the requirements set forth in the Act and the bidding documents.

Bidding documents mean documents for solicitation of offers, proposals, or quotations and other documents issued by a Procuring Entity on the basis of which bidders prepare bids.

Board means the Board of the Public Procurement Authority established under Part III of this Act.

Board of Survey means a board comprising representatives of departments of a Procuring Entity.

Close relative shall mean and include parents, spouse, children, siblings, in-laws, and first-line uncles, aunts, and cousins.

Concession means the grant of an interest in a public asset by a Contracting Authority to a non-public entity for a specified period during which the asset may be operated, managed, utilized, or improved by the non-public entity for a fee or royalties or other consideration under the conditions specified in the concession agreement.

Country means The Federal Republic of Somalia.

Consultant means the provider of intellectual services, including consultancy services.

Contract means a written agreement between the Procuring Entity and a supplier, contractor, or consultant resulting from procurement proceedings.

Contractor means a physical or juridical person under contract with a Procuring Entity to provide works of any type.

Candidate means a person who has submitted an application for prequalification or expression of interest to a Procuring Entity.

Disposal means selling or giving away of unserviceable, obsolete, or surplus supplies and equipment of a Procuring Entity by any means as provided in this Act.

Goods means objects of every kind and description, including commodities; raw materials; products; equipment; and objects in solid, liquid, or gaseous form.

Government means the Government of Federal Republic of Somalia.

Minister means the Minister of the said Government responsible for matters relating to finance.

Performance security means the bank guarantee or other form of security submitted by a supplier, contractor, or consultant to secure their obligations under a procurement contract, in accordance with the requirements in the bidding documents.

Procurement means the acquisition by any contractual means of goods, works, intellectual services, or other services; and the term is deemed to include concession agreements and disposals.

Public entity means any entity given a budget allocation and responsibility for planning and use of such funds, and embodies the following: the Central Government ministries and their departments and agencies, authorities, other agencies, state-owned enterprises, statutory bodies, public institutions, and any private entity using public funds.

Procurement Committee means the group within the Procuring Entity, comprising officials within the entity, whose functions are as listed in Part III of the Act.

Procurement Plan means the planned activities for a fiscal year (or calendar year, whatever is the practice), consisting of proposed contracts to be procured, prepared by the Procuring Entities.

Procuring Entity means a public entity making a procurement to which this Act applies.

Procurement Unit means the department formally established within the Procuring Entity to carry out the procurement activities of that entity in accordance with the functions as listed in Article 61.

Public funds means any monetary resources of the state budget, or aid, loans, and credits under agreement with foreign donors; or extra-budgetary resources of procuring entities, used in public procurement.

Public officer means a person holding or acting in an office of emolument in the public Service, and includes officers at the local government level.

President shall mean the President of the Federal Republic of Somalia

Review Panel means the Independent Procurement Review Panel established under Article 49 this Act.

Regulations mean the Regulations issued by the Minister to fulfill the objectives and to carry out the provisions of this Act.

Services means any activity of an intellectual nature that does not lead to a measurable physical output.

Supplier means a physical or juridical person under contract with a Procuring Entity to supply goods.

Technical services mean any service that leads to a measurable physical output.

Works means all work associated with construction, installation of equipment or materials and services incidental to construction.

2. Authorizing Officer for Public Bodies and State-Owned Enterprises.

There shall be appointed for each Public Body and State-Owned Enterprise an Authorizing Officer who shall normally be the senior official responsible for such an entity. Authorizing Officer Means:

- a. the Director-General in the office of the President of the Federal Republic of Somalia;
- b. the Director-General in the office of the Prime Minister of the Federal Republic of Somalia;
- c. the Secretary-General of both houses of Parliament;
- d. the Director General in the Supreme Court;
- e. the Auditor General of the Federal Office of the Independent Auditor General;
- f. the Director of the Federal Public Procurement Authority;
- g. the Director General responsible for Finance in a Federal Ministry;
- h. the Director General responsible for Finance in a National Commission;

- i. the Director General responsible for Finance of a Public Body or State Owned Enterprise or any other authorized officer in the Public Body or State Owned Enterprise approved by the relevant Minister.

Article 4. Scope of Application

1. This Act applies to all procurement of goods, works, and services; the disposal of unserviceable, obsolete, or surplus supplies and equipment; and concession agreements by all public entities of the Federal Government.
2. Public procurement shall be decentralized to procuring entities and includes any procurement financed in whole or in part from public funds.
3. This Act applies to the following public entities:
 - a. Central Government ministries and their departments and agencies;
 - b. National Commissions
 - c. Public institutions;
 - d. Enterprises, which are wholly or partially owned by the Government including all enterprises in which government has majority interest; and
 - e. Any entity in the private sector, which is given the responsibility to carry out activities using public funds.
4. For greater certainty the following are not procurements to which this Act applies
 - a. Retaining the services of an individual who works primarily as an employee of a Procuring Entity
 - b. Acquiring goods works and services from another Procuring Entity.
 - c. Acquiring real property, business enterprises, stocks, shares and such other commercial assets or instruments.

Article 5. Non - Application

This Act shall however not apply to the following:

1. To the extent that this Act conflicts with any treaty provisions or with procurement rules of a donor or funding agency pursuant to an agreement entered into by the Government, the requirements of such treaty or agreement shall prevail; but in all other respects, the procurement shall be governed by this Act.
2. Procurement of military or national security equipment subject to the following provisions:
 - i. Where the Minister responsible for Defense, or the head of any national security agency determines that any procurement related to national defense or national security requires the application of special procedures, the procedures set out in this Act may be modified by the Authority for the

- specific purpose, but the modification shall be governed strictly by considerations relating to defense or security.
- ii. For the purpose of Article 5 (2) (i), procurement of items such as general supplies, uniforms, Stationery, office equipment and ordinary vehicles for the military or security agencies shall not be classified as related to national defense or national security.
 - iii. The Authority in consultation with the Procuring Entity charged with responsibility for defense or national security may make general or specific procedures relating to military and national security procurement.

Article 6. Non - eligibility

Goods, suppliers, contractors, and consultants from a country may be ineligible for consideration under this Act if:

1. The law of Federal Republic of Somalia or official regulation prohibits commercial relations with that particular country, or
2. A decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations that prohibits any dealings with that particular country.

Article 7: Conflict of Interest

1. A consultant shall provide professional, objective, and impartial advice without any consideration for future work, and in providing advice will avoid conflicts with other assignments and own corporate interests.
2. A consultant shall not be hired for any assignment that would be in conflict with their prior or current obligations. Consultants shall not be hired by a Procuring Entity under the following circumstances:
 - a. Consultants and any of their affiliates shall not be hired for any assignment that may be in conflict with another assignment of the consultants.
 - b. Consultants (including their personnel and sub-consultants) that have a business or family relationship with a staff member of the Procuring Entity who is directly or indirectly involved in the preparation of the Terms of Reference of the contract, or the selection process for or supervision of such contract, shall not be hired for such a contract.

Article 8: Participation of Women in Public Procurement

In implementing this Act and in compliance with the Constitution of Somalia, which encourages the welfare and participation of women, the Minister may determine by a regulation, the minimum percentage that shall be women in the composition of the Board of the Public Procurement Authority and the Independent Procurement Review Panel.

Article 9: Environmentally and Socially Responsible Procurement

In implementing this Act, procuring entities must ensure that procurement packages and concession agreements do not include any goods and works that have been declared by the relevant national authorities responsible for health and environment as harmful to humans and/or to the environment.

Article 10: Use of e-Procurement

The Authority may authorize Procuring Entities to use electronic communication for publication of invitations to bid, transmission of bidding documents, and submission of bids provided that:

- a. Adequate security is availed by such communication, and
- b. Bidders' access to the procurement documents and opportunities are not unduly restricted.

Article 11: Joint Ventures

Bidders are free to voluntarily bid independently or in joint ventures with any domestic or foreign firms.

Article 12: Professionalism in the Procurement Function

Procurement-related functions shall be carried out by persons trained and knowledgeable in procurement, in accordance with such guidelines and qualification requirements as may be established by the Authority.

Article 13: Conflict with Other Acts and Regulations

The provisions in this Act shall prevail if there is a conflict between this Act and:

- (a) Any other act;
- (b) Regulations under this Act or any other act; and
- (c) Any directive issued by the Authority or other authority.

Article 14: Language

1. Bidding documents for all international biddings should be in English or Arabic Language and for National and local biddings may be in Somali language.”

Article 15: Procurement Regulations, Guidelines and Manuals

1. The Minister shall on the advice of the Authority make Regulations for publication in the National Gazette to fulfill the objectives and for better carrying out of the provisions of this Act in relation to all provisions in the Act that are specified to be subject to Regulations.
2. The Authority shall issue for prudence of users under this Act standard bidding and proposal documents, formats of the Procurement Plans, guidelines and manuals to give effect to this Act. Any regulations, guidelines, manuals or related documents that contradict or are otherwise inconsistent with any of the provisions of this Act shall be null and void.

Article 16: Fraud and Corruption

1. All parties must observe the highest ethical standards during procurement process and contract execution. In this context, any corrupt, fraudulent, collusive, coercive, fraud or obstructive actions taken by public officers, bidders, suppliers, contractors, and their subcontractors and consultants for undue advantage are prohibited.
2. In pursuance of this policy, and for the purposes of this provision, the terms set forth in Article 3 (i) are defined as follows:
 - a. *Corruption* is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.
 - b. *Fraud* is any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party to obtain a financial or other benefit or to avoid an obligation.
 - c. *Collusion* is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
 - d. *Coercion* is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
 - e. *Obstruction* is deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators (auditor general office reports) in order to materially impede an

investigation into allegations of a corrupt, fraudulent, collusive, or coercive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights.

3. A Procuring Entity will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question.
4. A Procuring Entity will forward the name of a firm or individual to the Authority recommending debarment pursuant to Article 30, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in procurement proceedings.
5. For the purpose of this Article, bidding and proposal documents and contract agreements will:
 - a. Include a provision requiring bidders, suppliers, contractors and consultants to permit the officials of the Procuring Entity and other concerned Government officials to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by designated auditors; and
 - b. Require bidders to provide an undertaking to observe, in competing for and executing a contract, laws against fraud and corruption as listed in Sub-Article (2) declaring that “the bidder undertakes that in competing for and executing a contract, the bidder will strictly observe the laws against fraud and corruption in force in Somali Federal Government

PART II GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS

Article 17: Qualification of Bidders

1. Suppliers, contractors, or consultants are permitted to participate in procurement proceedings without limitation or restriction on the basis of nationality, except in cases where the bidder is not eligible under Article 6 or debarred under Article 32.
2. In order to be awarded a contract, or, if prequalification proceedings are being held, in order to participate in the procurement proceedings, a bidder must qualify by meeting the criteria set by the Procuring Entity. Those criteria may include:

- a) Professional and technical qualifications regarding capability, experience, financial resources, equipment, and facilities with capacity to provide what is being procured; ,
 - b) Legal capacity to enter into a contract for the procurement;
 - c) Bidder not insolvent, in receivership, bankrupt, or in the process of being wound up; and not the subject of legal proceedings relating to the foregoing; and
 - d) The Procuring Entity is not precluded from entering into the contract with the bidder under Article 6 or 9 of this Act.
3. Any requirement established pursuant to this Article shall be set forth in the prequalification documents, if any, and in the bidding documents and shall apply equally to all bidders without discrimination. Only those criteria stated in such documents shall be applied.
 4. Publicly owned enterprises and state corporations shall be eligible to participate in procurement proceedings only if they can establish that they are legally and financially autonomous, operate under commercial law, and are not dependent agencies of the relevant Government entities; and shall be subject to the same bidding requirements as other bidders.

Article 18: Disqualification for Inaccurate Information

1. A Procuring Entity may disqualify a bidder if it finds at any time that the information submitted concerning the qualifications of the bidder is materially inaccurate.

Article 19: Prequalification

1. Prequalification proceedings shall be used prior to the invitations for bids with a view to identifying suppliers and contractors that are qualified for procurement in the following situations:
 - a. Large or complex works in which the cost of bid preparation is high; and
 - b. High value or complex contracts or groups of items being bundled together for a large contract.

2. The invitation to pre-qualify shall be published in at least one, widely circulated national newspaper and if feasible in the National Gazette and procurement bulletin or website, and in the case of International Competitive Bidding, in selected international media in accordance with the Authority's guidelines.
3. When prequalification proceedings are held, the Procuring Entity shall provide prequalification documents to all bidders responding to the invitation to pre-qualify. The prequalification documents shall provide bidders with the information required for preparing and submitting applications for prequalification.
4. Bidders shall be allowed adequate time to purchase, prepare, and submit prequalification documents. The period allowed shall not be less than the period allowed for bidders to submit bids under both National Competitive Bidding and International Competitive Bidding. The period for prequalification shall be prescribed by the Minister in the Regulations.
5. When prequalification proceedings are held, the Procuring Entity shall promptly make available to each applicant the results of the assessment of qualifications.
6. All applicants who meet the minimum criteria for prequalification shall be invited to bid.
7. Where prequalification proceedings are not conducted, post-qualification, in which the Procuring Entity verifies the qualifications of the bidder selected for award against the criteria stated in the bid documents, shall be used.
8. Prequalification documents may be sold in order to recover costs, but the price shall be calculated to cover only those costs related to printing, copying, and distribution and shall not include any element of profit.
9. The price of solicitation documents shall be determined as provided for in the Regulations.

Article 20: Clarification and Modification of Bidding and Prequalification Documents

1. A Procuring Entity shall at the earliest possible respond to any request raised by bidders/applicants for clarification of the bidding documents, or the prequalification documents, provided that such request is submitted to the Procuring Entity within the time specified in the bidding or prequalification documents.

2. Bidder's/applicant's requests for clarification, as well as any modification or any other clarifications of the bidding or prequalification documents shall be communicated to all bidders/applicants participating in the procurement proceedings without delay and shall be in writing, so as to allow bidders/applicants an opportunity to take such clarifications or modifications into account in preparing their submissions.
3. A Procuring Entity may, where necessary to allow clarifications and modifications to be taken into account, extend the deadline for submission of bids or applications to pre-qualify.

Article 21: Description of Goods, Works, and Services

1. To the extent possible, any specifications; plans; drawings; designs; and requirements or descriptions of goods, works, or services shall be based on:
 - a) Relevant objective technical and quality characteristics, and
 - b) Performance of the goods, works, or services to be procured; but there shall be no requirement for or reference to a particular brand, trademark, name, patent, design, type, specific origin, or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, works, or services to be procured and provided that words such as "or equivalent" are included.
2. Any descriptions of the technical or quality characteristics of the goods, works, or services to be procured, and requirements as to testing, packaging, marking, labeling, or conformity certification; or symbols and terminology that are irrelevant to the performance of the goods or create unjustified obstacles to participation by qualified bidders, and unnecessarily and without justification limit competition, shall not be included or used in the bidding and prequalification documents
3. The Procuring Entity shall, where applicable, prepare descriptions of procurement requirements in conformity with Article 8 and any applicable environmental protection legislation, as well as international conventions and standards.

Article 22: Deadline for submission of bids and other applications

The Procuring Entity shall set the deadline for submission of bids, application for prequalification and expressions of interest so as to allow sufficient time for their preparation and submission with a view to maximizing competition in accordance with the minimum periods set out in this Act and in the Regulations

Article 23: Cancellation of proceedings or rejection of bids

1. A Procuring Entity may:
 - a. Reject all bids at any time prior to the acceptance of a bid;
 - b. Cancel the procurement proceedings in any of the following instances.
 - i. The procurement need has ceased to exist or changed significantly.
 - ii. There is no sufficient funding available for the procurement.
 - iii. There is a significant change in the required technical details, bidding conditions, conditions of contract, or other details, such that the recommencement of proceedings is necessary.
 - iv. No responsive bid(s) are received.
 - v. There is evidence of corruption, fraud, coercion, or collusion among bidders.
 - vi. Cancellation is deemed to be in the interest of national security.
 - vii. It has been proven beyond reasonable doubts the procurement process was not initiated in accordance of the provisions of this Act and the Regulations.
2. Before rejecting all bids or canceling any procurement proceedings, the Procurement Unit shall prepare a written request for approval of the rejection or cancellation. The request shall be submitted to the Procurement Committee and shall clearly state:
 - a. Detailed reasons for recommending rejection or cancellation;
 - b. The status of the procurement proceedings, including in particular, whether bids have already been opened; and
 - c. Whether new procurement proceedings are recommended and, if so, the modifications recommended.
3. The reason for rejecting all bids, and for canceling the procurement proceedings, shall be noted in the record of the procurement proceedings, and promptly communicated to bidders.
4. A Procuring Entity shall not be liable to a bidder by reason of rejection of all bids or cancellation of procurement proceedings under Article 23.1
5. If a decision to cancel the procurement proceedings is taken before the deadline for submission of bids, any bid received shall be returned unopened to the bidder.

6. In the event of cancellation or the rejection of all bids in accordance with Article 23.1, the procurement shall not be re-bid to the same specifications and contract conditions unless the cancellation of the initial proceeding is for budgetary or other reasons unrelated to the specifications and contract conditions.
7. If the procurement is to be repeated, the reasons for the cancellation of the initial proceeding shall be examined and the technical specifications or contract conditions, or both may be suitably modified prior to suit re-bidding.

Article 24: Public notice of contract awards

The Procuring Entities shall publish, within two weeks of award decision, in any newspaper of nationwide circulation, and if possible in a procurement bulletin, website or gazette, notice of each contract award in which the price of the contract exceeds the threshold set out in the Regulations, indicating the contract price and the name and address of the successful bidder.

Article 25: Debriefing of unsuccessful bidders

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

Article 26: Form of communications

1. Except as otherwise provided in this Act, documents, notifications, decisions, and other communication referred to in this Act to be submitted by the Procuring Entity to a bidder or by a bidder to the Procuring Entity, shall be in writing
2. The Authority may authorize Procuring Entities to use other forms of communication, including electronic communication for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts, and payments, provided that any such other means of communication:
 - a. Can preserve a record of the content of the communication;
 - b. Provides an adequate level of security;
 - c. Does not unduly restrict bidders' access to the procurement proceeding; and
 - d. Meets other requirements in this Act and the Regulations, and any other applicable legislation.

Article 27: Procurement Planning

1. All Procuring Entities shall undertake annual Procurement Planning, with a view to achieving maximum value for public expenditure and the other objects of this Act. The Procurement Plan shall support the Procuring Entity's approved program and budget.
2. The Procurement Plan shall be published in respective website after approval. The Procurement Plan to be published publicly shall not include the cost packages so as not to jeopardize competition.
3. The Procurement Committee shall approve the Procurement Plan and periodically monitor its implementation.
 - a. Where the value of any individual procurement in a Procurement Plan exceeds the threshold prescribed in Regulation, the Procurement Plan shall be approved by the Authority.
 - b. In such case, the Minister may also specify in Regulation additional oversight requirements that would be applicable to individual procurement processes above this threshold.
 - c. Such requirements may include observation or review of elements of the tender documentation or process by the Contracts Committee.
4. The Procurement Plan shall be prepared annually based on Government's fiscal year and shall take into account the Government's annual budget. In the first instance, the Procurement Plan shall take into account and include all on-going contracts carried forward from the previous fiscal year. The Procurement Plan shall indicate:
 - a. Contract packages,
 - b. Estimated cost of each package.
 - c. Procurement method proposed for each package, and
 - d. Processing steps and time schedules.
5. A Procuring Entity shall not divide a procurement order into parts or lower the value of a Procurement order to avoid the application of the procurement methods prescribed in this Act.
6. The Procurement Entities shall, on a quarterly basis, review and update their Procurement Plans and notify any major modifications to the Procurement Committee, Authorizing Officer, Authority and Ministry.

Article 28: Advance procurement

In cases where funding is not provided in a particular fiscal year but is foreseen to be provided in a foreseeable future within the coming quarter

period, a Procuring Entity may proceed with advance procurement so as to ensure timely award and completion of contracts, but in any such case:

1. No contract will be signed until the Authorizing Officer confirms availability of funds to meet the obligations of the resulting contract; and
2. The bid or proposed documentation shall clearly stipulate that the procurement is contingent and subject to availability of funds.
3. The bidding document shall state a percentage which the Procurement Entity is allowed to increase or decrease their requirements.

Article 29: Price adjustment

1. Price adjustment is not permitted unless provided for in the procurement contract to take into account changes in economic circumstances for contracts exceeding eighteen months or as maybe specified in the Regulations made under this act.
2. If the procurement contract provides for price adjustment, it shall stipulate:
 - a. Conditions, such as increases or decreases in the cost of materials, labor, transportation, and energy, in which price adjustment would be permitted;
 - b. Formulas and indices to be referred to in order to determine whether economic conditions have altered to a significant enough degree to justify a price adjustment and to identify the amount of increase or decrease;
 - c. Frequency with which price adjustments may be implemented; and
 - d. Procedures to be followed.
3. The procurement contract may provide that, when the application of the price adjustment formula leads to a price modification exceeding a stipulated percentage of the initial price or a stipulated percentage of the balance of the contract, the Procuring Entity may terminate the contract.
4. Any price variation exceeding the percentage stipulated in the Regulations of the original contract price shall be subject to approval by the respective Procurement Committee.

Article 30: Approval and amendments to contracts.

1. Approval of proposed contract awards shall be in accordance with the thresholds set in the Regulations.
 - a. The Regulations may set thresholds for approval of contract award by the Head of the Procuring Entity, the Procurement Committee of the Procurement Entity, or any other entity designated by the Minister.
 - b. The Minister may establish a Contracts Committee, to be further defined in Regulation, for this purpose.
2. Contract Amendments which increase the original contract price must be approved by the Authority prior to signature in the following cases:
 - a. Where the Approving Authority required by the amended contract price according to the thresholds specified in Article 30.1 is different than the approving entity that approved the original contract award;
or,
 - b. Where the increase in contract price from the original contract price is greater than the percentage specified in Regulation.
3. The Ministry may specify in Regulation the circumstances under which a Contract Amendment which increases price beyond the percentage specified in Regulation may be approved.

Article 31: Records and reports of procurement

1. The Procuring Entity shall preserve all documentation relating to each procurement contract and its proceedings in accordance with applicable rules concerning archiving of Government documentation, but at minimum documents shall be kept for a period of six (6) years following the date of final completion of the procurement contract, or from the date of rejection of all bids or cancellation of the proceeding, as the case may be.
2. In furtherance of the requirements of Article 31 (1), the Procuring Entities shall prepare and maintain a summary report of the procurement proceedings, including the following documents:
 - a. Description of the object of the procurement.
 - b. Statement of grounds for choice of a procurement method other than open competitive bidding or request for proposals for services.
 - c. Copies of invitations to bid or submission of proposals.
 - d. Bidding, request for proposal, and prequalification documents that must contain bid or proposal evaluation criteria and bidder qualification requirements.

- e. A list of the participating bidders, their profile and qualifications, and the qualification criteria applied.
 - f. Bid or proposal prices.
 - g. Requests for clarifications and responses thereto.
 - h. Statement of grounds for reduction of bid preparation periods.
 - i. Summaries of the evaluation of bids, proposals, and prequalification.
 - j. Full reports of the evaluation of bids, proposals, and prequalification.
 - k. Summary of any review proceedings and decisions thereon.
3. Statement of grounds for cancellation of procurement proceedings and/or rejection of all bids or proposals.
 4. Contract administration and payment reports, including certifications for receipts; and
 5. Such other information as may be required by the Regulations made under this Act
 6. The portion of the record referred to in Sub-Article (2) (a), (c), (d), (e), (f), and (g) shall, on request, be made available to any person after a bid, proposal, offer, or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.
 7. The portion of the record referred to in Sub-Article (2) (b), (i) and (l) shall, on request, be made available to suppliers, contractors, and consultants that submitted bids, proposals, offers, or quotations; or applied for pre-qualification, after a bid, proposal, offer, or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.
 8. The Procuring Entity shall not disclose:
 - a. Information, if its disclosure will:
 - i. Be contrary to any law of the land.
 - ii. Impede law enforcement.
 - iii. Not be in the public interest;
 - iv. Prejudice legitimate commercial interests of the parties; or

- v. Prohibit competition under this Act.
 - b. Information relating to the examination, evaluation and comparison of bids, proposals, offers or quotations, other than the summary referred to in Article 31 (2) (i)
9. Records and documents maintained by procuring entities under this Act shall be made available for inspection by the Authority, Anti-Corruption Commission, and Auditor-General, the Parliamentarian Committee responsible for oversight of implementation of national laws, and any other Government office that is entrusted with such responsibility upon request, so that they may carry out an investigation to ensure fairness, impartiality and value for money in tendering.

Article 32: Conduct of public officials, bidders, suppliers and consultants

1. Public officials involved in public procurement and all bidders, suppliers and consultants shall conduct themselves in accordance with the rules of conduct set out in Schedule 2 of this Act.

Article 33: Debarment of suppliers, contractors and consultants

1. The detailed procedure of debarment shall be provided in the Regulations under this Act.
- a. Consultation with the affected Procuring Entity to consider all the facts of the case;
 - b. Reasonable notice timeframe to the bidder, a supplier, contractor, or consultant involved in the case of the proposed action; and
 - c. Reasonable opportunity for the bidder, a supplier, contractor, or consultant to respond to the proposed action.
2. A potential supplier, contractor, or consultant shall be debarred from participation in procurement on the following grounds:
- a. Provision of false information supplied in the process of submitting a bid or proposal;
 - b. Collusion between the bidders, or a bidder and a public officer concerning the formulation of any part of the bidding documents;
 - c. Connivance to interfere with the participation of competing bidders;

- d. Misconduct relating to the submission of bids, including corruption, fraud, collusion, coercion, obstruction, price fixing, a pattern of underpricing of bids, breach of confidentiality, and any other misconduct;
 - e. Non-performance of contractual obligations under a contract deemed serious enough to warrant debarment, provided that (i) the non-performance was not due to circumstances beyond the control of the supplier, contractor, or consultant and (ii) the concerned supplier, contractor or consultant was warned in accordance with the procedure set forth the Regulations;
 - f. Conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract;
 - g. Non-settlement of tax obligations after assessment by the Commissioner of Income Tax, or the evasion of tax by any means; or
 - h. Conviction of a crime related to business or professional activities;
3. Individuals who are owners of the debarred firms and any companies they form after debarment shall be considered debarred until the debarment is lifted.

Article 34: Margin of domestic preference and preference scheme

- 1) A Procuring Entity may subject to such other criteria and provisions as may be set out in the Regulations, grant a margin of domestic preference in the evaluation of bids under open competitive bidding to:
 - a. Bids offering goods that are manufactured, mined, extracted, or grown in Federal Republic of Somalia when compared to bids offering goods manufactured, mined, extracted or grown in a foreign country; and
 - b. Bids by domestic contractors when compared to bids offered by foreign contractors.
- 2) The conditions for consideration for domestic preference and the methods of calculating such preference margins shall be described in the Regulations.
- 3) The margin of domestic preference shall be 15 percent for goods and 10 percent for contractors and shall be stated in the bidding documents.
- 4) In cases where in the interest of the development of a target group of providers, a community, or a sub-sector of the economy, the Procuring Entity

may decide to limit participation by applying a preference scheme in its procurement proceedings. The conditions and procedures for the preference scheme shall be described in the Regulations.

PART III: INSTITUTIONS ESTABLISHED FOR MANAGING PUBLIC PROCUREMENT.

A. PUBLIC PROCUREMENT AUTHORITY

Article 35: Establishment of a Public Procurement Authority

1. There is hereby established by this Act a semi-autonomous public body to be known as the Public Procurement Authority, which shall be managed by a Board of Directors and a Secretariat of the Authority.
2. The Authority shall have a distinct corporate identity with perpetual succession and a common seal and may sue and be sued in its corporate name.
3. The Authority shall have the oversight responsibility for all public procurement in accordance with this Act.
4. The Authority may acquire, hold, manage, or dispose of any movable or immovable property in connection with the discharge of its functions and may enter into contracts and transactions that are directly or reasonably related to its functions.

Article 36: Objectives of the Authority

1. The objective of the Authority is to harmonize the processes of public procurement and to ensure that the purposes of the Act are achieved.
2. Except in dealing with its own procurement as a Procuring Entity and as provided in Article 36, the Authority shall not in any way be operationally involved in the work of Procuring Entities in conducting procurement proceedings, making contract award decisions, or resolving procurement disputes. Any dispute in a procurement process shall be handled according to dispute procedure set in the bidding documents.

Article 37: Functions of the Authority

1. The Authority shall in furtherance of the Act perform the following functions:
 - a. Disseminate information related to this Act
 - b. Monitor and enforce compliance with this Act
 - c. Formulate, promote, support, and implement capacity-building programs
 - d. Formulate policy and standards for procurement, disposal, and concession
 - e. Develop and issue procurement, disposal, and concession standard documents
 - f. Review and assess the operations of public procurement, disposal, and concession and make improvements as and when necessary
 - g. Prepare an annual report on the overall functioning of the public procurement, disposal, and concession system, including a profile of procurement activities, to be presented to the Minister to be tabled before Parliament
 - h. Conduct, at least annually, a public procurement forum bringing together public sector, private sector, members of public, and development partners to address issues related to public procurement
 - i. Publish a quarterly bulletin on public procurement, disposal, and concession, which shall include as applicable, procurement notices, notices on concessions, list of debarred firms, notices of invitation to bid, and information on contract awards; and a list of complaints and appeals received and their outcomes
 - j. Advise Government on issues related to this Act
 - k. Investigate and debar from participating in public procurement, disposal, and concession any bidders who have committed fraud and corruption pursuant to Article 15 or who have seriously neglected their obligations under a public procurement disposal and concession contract or done anything in contravention of this Act
 - l. Maintain a list of suppliers, contractors, consultants, and prospective bidders who have been debarred from public procurement disposal and concession and communicate the list to procurement entities on a regular basis

- m. Conduct in accordance with Articles 164 and 165 independent inspections and reviews of complaints and appeals related to the procurement process other than complaints related to its own procurement as under this Act and Regulations and make decisions thereon. Complaints arising from procurement undertaken by the Authority will be reviewed by a competent panel as stipulated in the Regulation.
- n. Provide interpretations of the Act and other instruments governing the procurement processes under this Act
- o. Provide administrative and secretarial services to the Independent Procurement Review Panel
- p. Perform such other functions as are incidental to the attainment of the objectives of this Act

Article 38: Membership and Appointment of the Board

1. The Board shall comprise nine (9) persons appointed by the President of the Federal Republic of Somalia, on the advice of the Council of Ministers. The Minister should submit a recommendation to the Council of Ministers following consultation with the Federal Member States and ensuring appropriate representation of women, pursuant to Articles 3(5) and 51(5)(a) of the Provisional Constitution. The members shall be known for their transparency and management expertise.
2. Board Members shall comprise:
 - a. A chairperson who shall be knowledgeable about public procurement and public administration and who shall not be in the public service and have no conflict of interest with the activities of the Authority
 - b. Four (4) persons nominated from the public sector as follows
 - i. A lawyer nominated on the advice of the Attorney General; and
 - ii. Three (3) persons each of whom shall have experience in public procurement and/or be familiar with governmental and multi-lateral agency procurement procedures
 - c. Four (4) persons nominated from the private sector who have experience in public procurement and/or and public administration.

3. In furtherance of Article 44 (2)(c) the Minister shall ensure that the nominations from the private sector include at least two (2) nominees representing the interest of professional associations, whose members frequently deal with procurement-related services. The Regulations will provide a list of the associations from whom the Minister may nominate members.
4. The Minister shall ensure that in making the nominations under Article 44 (2)(a), (2)(b)(ii), and (c) and/or in the filling of any vacancy, the experience and profession of the nominees shall as much as possible be evenly spread over the scope covered by this Act.

Article 39: Tenure of Office

1. The term of office of a Board member shall be four (4) years; a new Board shall be constituted every four years.
2. A member of the Board shall hold office for a term of four (4) years and shall be eligible for re-appointment for only one other term of four (4) years whether or not the second term is successive.
3. The Council of Ministers may remove a member of the Board on any of the following grounds:
 - a. Inability to perform the functions of office, by reason of infirmity of mind or body;
 - b. Proven misconduct;
 - c. Conviction of an offence under the penal code or an offence involving fraud and corruption; and
 - d. Absence in one year from five (5) consecutive meetings of the Board without any valid reason as determined by the Board.
4. A member of the Board shall cease to be a member upon giving written notice of resignation to the Chairperson of the Board with a copy to the Minister.
5. The Vice Chairperson may be replaced by the Board as per the procedure by which she or he was elected.

Article 40: Meetings of the Board and election of Vice Chairperson

1. At its first meeting, the Board shall elect one of its members, other than the Chairperson, as a Vice Chairperson.

2. The Board shall meet for the dispatch of business at such times and at a regular place fixed by the Board for its meetings and shall meet at least once every month.
3. In the event that the Board is unable to meet at its regular meeting place the Chairperson shall fix an alternative meeting place provided members receive the notice of the new venue at least three (3) days in advance of the meeting.
4. The Chairperson shall preside at all meetings of the Board and in the absence of the Chairperson, the Vice-Chairperson shall preside and in the absence of both, the members shall elect one of their numbers to preside.
5. The quorum for a meeting of the Board shall be five (5) and the Director, who shall serve as Secretary to the Board, shall not be counted for the purposes of determining a quorum.
6. Each member shall have one vote but in case of an equality of votes, the Chairperson whether substantive or in acting capacity shall have a casting vote.
7. The Board may co-opt any person to act as an advisor at its meetings, but such person shall not have the right to vote on any matter being considered by the Board.
8. The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.
9. Except as otherwise expressly provided, the Board shall determine the procedure for its meetings.

Article 41: Filling of vacancies

1. When the Chairperson or a member of the Board ceases to be a member, the following actions shall be taken:
 - a. In the case of the Chairperson, the members of the Board shall, within thirty (30) days of the occurrence of the vacancy, elect one of their members to act as Chairperson until another person is appointed by the President.
 - b. In the case of a Vice Chairperson, the members shall, within thirty (30) days of the occurrence of the vacancy, elect one of their members to fill the vacancy.

- c. In all other cases of vacancy, the Chairperson shall, within thirty (30) days of the occurrence of the vacancy, report to the Minister to initiate nomination of a new member to fill the vacancy.
- d. Upon request to fill a vacancy on becoming aware of a vacancy, the President shall appoint a replacement on advice by the Council.
- e. A person appointed to fill a vacancy shall hold office for the term provided in Article 44 (2) without taking into account the time of continuing the unfinished term of the member who has ceased to be a member of the Board.

Article 42: Administration of the Board

- 1. A Secretariat established under Article 47 of this Act shall provide administrative, secretarial, and other support services to the Board. The Secretariat shall be headed by a Director who shall be the Chief Executive Officer of the Authority appointed in accordance with Article 49 of this Act.
- 2. The functions of the Director shall include but not be limited to the day-to-day administration of the Authority, implementing the decisions of the Board, keeping accurate records of proceedings and decisions of the Board, and such other functions as the Board may direct.
- 3. The Board may engage staff and such consultants and advisers as it may require for the proper and efficient discharge of the functions of the Secretariat and its general function under this Act.
- 4. In the absence of the Director, the Board may designate a staff member of the Authority to act as the Director.
- 5. The Board shall constitute sub-committees for the efficient discharge of its functions.

Article 43: The Director

- 1. In accordance with this Article, the Board shall appoint a Director who shall be a non-member and Secretary to the Board.
- 2. The Director shall be selected on basis of a competitive selection process in accordance with the procedures established for selecting senior public officers.
- 3. The Director's appointment shall be for a term of five (5) years renewable only once for a further five (5) years, subject to the results of annual performance appraisals.

4. The Director may resign from office by notice to the Chairperson of the Board or may be removed from office by the Board due to poor performance or any of the reasons spelled out under Article 39 (3)(a,b,c) of this Act.
5. The Director may delegate functions of his or her office to any officer of the Secretariat but shall not be relieved of the ultimate responsibility for the discharge of the delegated function(s).
6. The Director shall hold office on such terms and conditions as may be spelled out in the letter of appointment to his office or may be prescribed by the Board.

Article 44: Secretariat and departments of the Authority

1. The Authority shall have a Secretariat and may establish departments and units as are necessary to perform its functions. The duties of the departments and units shall include at least the following functions:
 - a. Finance and Administration;
 - b. Compliance Monitoring;
 - c. Procurement Policy, Legal, and Research; and
 - d. Training and Capacity Building;
 - e. And any other function the Board may find necessary for its operations.
2. The Secretariat shall be responsible for providing administrative and secretarial services to the Independent Procurement Review Panel.
3. The Authority may, upon such terms and conditions of service as it may determine, employ such staff or hire the services of such consultants, experts, or independent investigators as may be necessary for the proper performance of its functions.

Article 45: Financing of the Authority

1. The activities of the Authority shall be financed by:
 - a. Money from within the Central Government budget;
 - b. grants received by the Authority;

- c. Revenue or fees or charges collected for services rendered by the Authority, including collections by the Independent Procurement Review Panel;
 - d. Proceeds from sales of any publications by the Authority;
 - e. Grants, gifts, and donations made to the Authority but which shall not include grants, gifts, and donations from the bidding community (contractors, suppliers, and consultants); and
 - f. Such other sources of income as may be approved by the Legislature.
2. In imposing the fees and charges under Article 45 (1) (c) and (d), the Authority shall ensure that:
 - a. Such fees and charges are minimal so not to deter persons from accessing the services of the Authority and from making complaints and appeals; and
 - b. Sale of publications shall only recover the cost of producing publications.

Article 46: Accounts and audit

1. The Authority shall prepare annual budgets and shall keep proper books of accounts and records in the form prescribed by the law governing management of public records for the time being in force.
2. The books and accounts of the Authority shall be audited annually by the Auditor-General or by an auditor appointed or authorized by the Auditor-General.

Article 47: Fiscal year

The fiscal year of the Authority shall be the same as the fiscal year of the Government.

Article 48: Annual reports

1. The Authority shall publish and submit to the Minister, not later than three (3) calendar months after the end of the fiscal year, a written report that shall include the following:
 - a. The Authority's activities and operations for the previous year;
 - b. Copy of audited accounts;

- c. A report on the activities of the Independent Procurement Review Panel for the year;
- d. Recommendations for improvement of specific areas of goods, works, services, disposals, and concessions and the planned program for the implementation of the recommendations;
- e. Report on the annual procurement forum held by virtue of Article 43 (i) in the previous year.
- f. General and specific recommendations.

B INDEPENDENT PROCUREMENT REVIEW PANEL

Article 49: Establishment of an Independent Procurement Review Panel

1. There is hereby established by this Act a body to be known as the *Independent Procurement Review Panel*, hereinafter referred to as the Review Panel.
2. The purpose of the Review Panel is to conduct independent administrative review of complaints and appeals made by bidders on bids and contract award decisions and make decisions thereon.
3. The Authority shall provide the Review Panel with administrative and secretarial services, including funding and logistical support, to meet its obligations.

Article 50: Composition of the Review Panel

1. The Review Panel shall be composed of five (5) members who shall be eminent nationals, but shall not be active public servants. The members shall be appointed by the Minister as follows:
 - a) Three (3) members shall be appointed from among nominees of professional, trade, or civil society organizations.
 - b) Two (2) members shall be appointed from the private sector. To be eligible for appointment a person shall have a background in any of the following fields: law, public procurement, commerce, financial management, engineering, and public administration.
2. The members shall elect among themselves a Chairperson.

Article 51: Tenure of service

The term of office of the members of the Review Panel shall be four (4) years, and members shall be eligible for reappointment for only one (1) further term of four (4) years, whether or not the second term is successive.

Article 52: Remuneration of the Members of the Review Panel

1. The members of the Review Panel shall be remunerated by the Authority in accordance with rules and procedures to be established by the Authority and approved by the Minister.
2. The funds for carrying out the activities of the Review Panel shall be part of the budget and accounts of the Authority.

Article 53: Complaints and appeals review process

The review process shall be in accordance with the provisions of Schedule 2 of this Act.

C. PROCURING ENTITIES

Article 54: Procuring Entities

1. Any public entity that is provided with an administrative structure and a budget and is given responsibility for planning and use of public funds is declared a Procuring Entity.
2. A Procuring Entity shall conduct procurement and disposal in accordance with the provisions of this Act and subject to such other conditions as may be laid down in the regulations and administrative instructions issued by the Minister.
3. The head of the Procuring Entity shall be the Authorizing Officer in accordance with this Act and shall be held responsible and accountable for compliance by the Procuring Entity with this Act.
4. The technical departments of the Procuring Entity shall be responsible for preparing schedules of requirements, including cost estimates, specifications, and terms of reference; participating in bid and proposal evaluations, and supervision of contracts; and certifying receipt of goods and completion of contract works and consulting services. The procedure for inspection and acceptance of receipt of goods will be defined in the Regulations.
5. The Procuring Entities shall be listed and published regularly in the Authority's bulletin and website.

Article 55: Responsibilities of the Authorizing Officer

1. An Authorizing Officer of a Federal Ministry shall perform the responsibilities under general direction of the Federal Minister of the Federal

Ministry, but the responsibilities of the Authorizing Officer shall not be taken over by the Federal Minister. If the Authorizing Officer and the Federal Minister are unable to agree on the interpretation of this Act, the Authorizing Officer shall seek guidance from the Ministry.

2. The Authorizing Officer shall have the overall responsibility for the execution of the procurement, disposal, and concession process in a Procuring Entity and, in particular, shall be responsible for but not limited to the following:
 - i. Establishing a Procurement Committee in accordance with this Act.
 - ii. Establishing a Procurement Unit staffed to an appropriate level.
 - iii. Awarding and communicating award decisions after the approval of the recommendation of the contract award by the the Approving Authority determined in accordance with Article 30.1.
 - iv. Certifying the availability of funds to support the procurement activities.
 - v. Signing contracts for the procurement activities on behalf of the Procuring Entity.
 - vi. Submitting a copy of complaints and reports of the findings to the Authority.
 - vii. Ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the contract; and
 - viii. Reviewing and investigating complaints and appeals by suppliers, contractors. or consultants and other stakeholders pursuant to Article 113 of the Act.
3. The Authorizing Officer may delegate his responsibilities under this Act in writing.

Article 56: Decisions of the Procuring Entity and responsibility

1. The decisions of a Procuring Entity in respect of its procurement functions under this Act shall be taken in a corporate manner.
2. The Authorizing Officer shall be responsible for ensuring compliance with the provisions of this Act and shall not be absolved from accountability or responsibility because of delegated functions.

Article 57: Declaration of a Procuring Entity

1. A newly created Public Entity shall become a Procuring Entity as soon as it is provided with a service structure, budget, and mandate, including procurement to carry out its activities.

2. No Procurement entity can undertake any procurement activities unless certified by the Authority that
 - a. a Procurement Committee and Procurement Unit have been established;
 - b. an Authorizing Officer has been duly appointed; and,
 - c. the Authority has assessed that the Procuring Entity possess the capacity required to undertake procurements in compliance with the Act.
3. Should the Authority determine, on the basis of repeated failures by a Procuring Entity to carry out procurements in a manner consistent with the Act ,
 - a. that a Procuring Entity does not possess the capacity required to undertake procurements in compliance with the Act, in which case the Authority may revoke the certification of that Procuring Entity.
 - b. In the event that a Procuring Entity is no longer certified, it may delegate its procurement authority in accordance with Article 64.

D. PROCUREMENT COMMITTEES

Article 58: Establishment of Procurement Committees

1. Every Procuring Entity shall establish a Procurement Committee, which shall consist of at least five (5) members constituted by the Authorizing Officer as follows:
 - a. One (1) senior official of the Procuring Entity as chairperson; and
 - b. Four (4) senior officers of the Procuring Entity, one of whom shall be the officer responsible for finance;
2. The Secretary to the Procurement Committee shall be the Head of the Procurement Unit.
3. The Procurement Committee may engage the services of such consultants and advisers, or co-opt representatives of the end-user and persons with specialized expertise as may be required for the proper and efficient discharge of its functions.

Article 59 : Functions of the Procurement Committee

The Procurement Committee shall:

1. Review Procurement Plans in order to ensure that they support the objectives and operations of the Procuring Entity and comply with the national budget process.
2. Monitor on a quarterly basis the implementation of the Procurement Plan and take appropriate action in cases of poor or inadequate performance.

3. Review the schedules and specifications for procurement and ensure that the procurement procedures to be followed are in strict conformity the provisions of the Act, its operating regulations, and guidelines.
4. Review bid and proposal evaluation reports and proposed contract awards and give approval or otherwise to enable the Procurement Unit to continue with the procurement process, where such approval is the responsibility of the Procurement Committee in accordance with Article 30;
5. Review all proposed contracts;
6. Review and approve annual procurement report prepared by the Procurement Unit; and
7. Approve applications for contract modifications in the following cases:
 - (a) Where the original contract award was subject to Procurement Committee approval; and
 - (b) Where the contract modification would cause the total contract value to be within the authority limits of the Procurement Committee. Set forth in the Regulations.

Article 60: Meetings of Procurement Committees

1. A Procurement Committee shall meet as often as required to perform functions per Article 59
2. A notice with respect of Committee meetings shall be given at least seven (7) days prior to the scheduled date of the meeting.
3. The quorum of a meeting shall be the chairperson and two (2) other members.

E. PROCUREMENT UNITS

Article 61: Procurement Units

1. Every Procuring Entity shall establish a Procurement Unit under this Act.
2. The Authorizing Officer shall determine the composition of the Procurement Unit, which shall be staffed with at least one (1) person trained and knowledgeable in procurement.
3. The Procurement Unit shall operate under the supervision of the Procurement Committee.
4. The functions of a Procurement Unit shall include:

- a. Procurement Planning;
- b. Keeping procurement records in accordance with Article 31 of this Act.
- c. Preparation, publication, and distribution of invitations to bid and of bidding documents.
- d. Receiving and safeguarding of bids.
- e. Conducting bid opening in accordance with the provisions of this Act
- f. Serves as Secretary to Evaluation Committee
- g. Evaluation of bids, including constituting technical evaluation committees and advisers to properly evaluate the bids and proposals and making recommendations for contract award.
- h. Providing secretarial services to the Procurement Committee, including organizing its meetings and providing bid and evaluation reports, and all other materials necessary for adjudication by the Procurement Committee.
- i. Supervision of implementation of contracts;
- j. Assessment of the quality of the procured goods works and services.
- k. Profiling of suppliers, contractors, and consultants, and the maintenance of a database for use under limited competitive bidding and restricted bidding procedures;
- l. Stores management and disposal process administration; and
- m. Such other functions as may be conferred on it by Part VI of this Act and the Authorizing Officer.

F. BID AND PROPOSAL EVALUATION COMMITTEE

Article 62: Evaluation Committee

1. The Authorizing Officer may form an Evaluation Committee when required, depending on the value and complexity of the procurement contract as detailed in the Regulations.
2. The members of the Evaluation Committee Procurement Unit shall be persons with the required expertise and may be external to the Procuring Entity.

3. All members of the Evaluation Committee shall sign a declaration that they do not have a conflict of interest in the procurement requirement.
4. The meetings of the Evaluation Committee, the conduct of the evaluation, and the evaluation methodologies shall be executed in accordance with the guidelines in the bidding documents.
5. The recommendation of the Evaluation Committee shall be sent to the Procurement Unit for processing in accordance with Article 61 (4) (g)

G. GENERAL RULES REGARDING CONDUCT OF PROCUREMENT INSTITUTIONS

Article 63: Independence of functions and powers

1. Subject to the provisions of this Act, the Authorizing Officer, the Procurement Committee, the Procurement Unit, and the Evaluation Committee shall act independently in relation to their respective functions and powers under this Act and shall be responsible for the administration of contracts into which the Procuring Entity enters, as well as the monitoring of the performance of such contracts.

Article 64: Delegation of powers by the Authorizing Officer

1. Whenever an Authorizing Officer delegates his authority under this Act, it must be in writing and be mindful of the following:
 - a. The Authorizing Officer shall remain accountable for the decisions of the officer to whom the function is delegated.
 - b. The delegation shall be for a stipulated duration or for a period not exceeding the period
Within which the Authorizing Officer serves in that position.
2. Where the Authorizing Officer determines that the Procuring Entity lacks the capacity to comply with the Act, or where the Authorizing Officer decides that it would be more economical or efficient to use a procurement agent or the services of another Procuring Entity, Authorizing Officer may engage the services of a procuring agent or another Procuring Entity, subject to the provisions in the Regulations.
3. The Authorizing Officer may at any time withdraw the authority so delegated.

Article 65: Disagreements between parties

1. Disagreement between any parties pertaining to a recommendation for the award of a contract or contract extension, application, or interpretation of any procurement method, process, or practice shall be resolved through mutual consultations. Upon failure to do so, the disagreement shall be resolved as follows:
 - a. Disagreement between the Procurement Committee and the Procurement Unit shall be referred to the Authorizing Officer. The Authorizing Officer shall constitute and chair three-members Resolution Committee with two other senior government officials knowledgeable in procurement matters and who shall not be staff of the Authority or the concerned Procuring Entity; and they shall resolve the disagreement.
 - b. Disagreement between a Procurement Committee and an Authorizing Officer shall be referred to the Authority for independent advice or guidance.
2. The decision of the Resolution Committee and the advice or guidance of the Authority provided under Article 36 (1) shall be binding on all parties.

Article 66: Confidentiality of documents

1. Every person having an official duty or being employed in the administration of this Act or engaged as a consultant to a Procuring Entity shall consider and deal with as confidential all documents and information relating to the functions of the Procuring Entity.
2. No person in possession of or in control over any document or information relating to any business or transaction of a Procuring Entity shall communicate or attempt to communicate any information contained in such document or pass on such documents to any person other than an Authorizing Officer, a member of a Procurement Committee, or Procurement Unit.

Article 67: Standards of equity

3. In the execution of their duties, an Authorizing Officer, Procurement Committee, Procurement Unit, and the Evaluation Committee shall adhere to the highest standards of equity, taking into account:
 - a. Equality of opportunity to all prospective suppliers, contractors, or consultants;

- b. Fairness of treatment to all parties; and
- c. The need to obtain the best value for money in terms of price, quality, and delivery having regard to the set specifications and criteria set for the process.

Article 68: Time of Entering an Agreement

With the exceptions of emergency or prior permission made by the Authority, the Procuring Entity cannot sign a contract until 14 days have elapsed from the date of the announcement of the declared winner of the contract competition as stated by article 84 (4).

PART IV – PROCUREMENT METHODS AND PROCEEDINGS

A. SELECTING PROCUREMENT METHOD

Article 69: Choice of procurement methods

1. Public procurement shall be undertaken by means of advertised open competitive bidding proceedings, with equal access to all eligible and qualified bidders without discrimination. Other procurement methods shall be used as exception as provided in this Act under Part IV-C.
2. Procurement contracts should not be divided with the intention of avoiding advertised open competitive bidding required for all contracts estimated to cost more than the monetary thresholds established in the Regulations.
3. If the Procuring Entity uses a method of procurement other than advertised open competitive bidding as provided for in this Act, it shall note in the record of the procurement proceedings the grounds for the choice of the procurement method.
4. Where the participation of a beneficiary community may result in enhancing the economy, quality, or sustainability of the service to be procured, the community may participate in procurement following procedures described in the Regulations.
5. The Procuring Entity shall choose the type of contract to use for a particular procurement from those types described in the Regulations.

Article 70: Open competitive bidding

1. Open competitive bidding proceedings may include a prequalification stage or apply a post-qualification procedure prior to the award of contract and may be carried out in a single stage or in two stages.
2. Open competitive bidding may be held in two stages in the following cases:
 - a. When it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; and
 - b. When the Procuring Entity wishes to consider various technical or contractual solutions, and to discuss with bidders about the relative merits of those variants before deciding on the final technical or contractual specifications depending on the complexity and nature of the contract.
3. Open competitive bidding shall be on basis of Standard Bidding Documents issued by the Authority and listed in the Regulations.

Article 71: National competitive bidding

1. The Procuring Entity shall employ national competitive bidding procedures when the estimated contract amount is within the value threshold specified in the Regulations.
2. The Procuring Entity may stipulate in the bidding documents that bidders must quote prices only in the local currency and payments should be made wholly in the local currency.

Article 72: International competitive bidding

1. The Procuring Entity shall employ international competitive bidding procedures when the estimated contract amount is higher than the value threshold specified in the Regulations.
2. International competitive bidding may be used whenever open competitive bidding is used and effective competition cannot be obtained unless foreign firms are invited to participate.
3. In addition to the procedures under this Act, the following shall also apply to international competitive bidding:
 - a. The invitation to bid and bidding documents must be in English under competitive international bidding.
 - b. The invitation to bid shall be placed in a newspaper with adequate circulation to attract foreign competition as provided in the Regulations.

- c. Technical specifications shall be compatible with national requirements and be based on international standards or standards widely used in international trade and in particular shall conform to the provisions of Article 45
- d. Bidders are permitted to express their bids, as well as any security documents to be presented by them, in their respective domestic currencies provided that their currency is easily convertible, or in a currency widely used in international trade and stated in the bidding documents.
- e. General and special conditions of contract shall be of a kind widely used in international trade.

Article 73: Period to be allowed for submission of bids

In order to allow sufficient time for the invitation to reach candidates and enable them to prepare and submit the bids or applications, the Procuring Entity shall allow at least:

1. Thirty (30) days under national competitive bidding; and
2. Forty-five (45) days under international competitive bidding for submission of bids and for applications to pre-qualify.

Article 74: Time for entering into contracts

- 1) Except in the case of an emergency and with the prior approval of the Procurement Committee, no Procuring Entity shall enter into a procurement contract unless a minimum of fourteen (14) calendar days have lapsed since the notification of award of a contract with a winning bidder pursuant to Article 81(4)

B. PROCUREMENT PROCEEDINGS FOR OPEN COMPETITIVE BIDDING

Article 75: Solicitation for participation in bidding proceedings

1. The invitation to bid, or an invitation to pre-qualify, shall be published in the widely circulated procurement bulletin, to be published as, or designated website; and in the case of international competed bidding in selected international media in accordance with the Authority's guidelines. The Minister may indicate, by Regulation, a locally published procurement bulletin in which bids can be advertised and provide further instructions on

the publication of a mandatory procurement information websites on top of Procurement Bulletins.

2. The invitation to bid or, as the case may be, the invitation to prequalify shall include information on:
 - a. Identity and address of the Procuring Entity;
 - b. Nature and timeframe of the procurement, including the place of delivery of goods or services, and the location of any works;
 - c. Manner of obtaining and the price of the bidding documents or, if applicable, the prequalification documents;
 - d. Place and deadline for and manner of submission of bids, or of applications to prequalify;
 - e. Such other matters as may be prescribed in the Regulations and standard bidding documents and forms or guidelines issued by the Authority.

Article 76: Bidding documents

1. The Procuring Entity shall provide, in an expeditious and non-discriminatory manner, the bidding documents to all potential bidders that respond to the invitation to bid or, in the case of prequalification proceedings, to all bidders that have been pre-qualified. The price that may be charged for the bidding documents shall reflect only the cost of printing and distributing the documents as provided in the Regulations.
2. The bidding documents shall inform bidders of:
 - a. Nature and timeframe of the procurement, including but not limited to the technical specifications/drawings, terms of reference, contractual terms of the procurement, and the manner of entry into force of the contract;
 - b. Bidder qualification requirements if a prequalification procedure was not followed;
 - c. Information as to site visits and pre-bid conferences;
 - d. Instructions for preparation and submission of bids, including the deadline for submission of bids, time, and place of bid opening;

- e. Components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
- f. The methodology for evaluation of bids and the selection of the successful bidder, shall all be quantified in monetary terms or expressed in the form of pass/fail requirements. With reference to evaluation criteria, the Procuring Entity may consider only the following:
 - (i) The bid price, subject to any margin of domestic preference applied pursuant to Article 34; and
 - (ii) The cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works, or services.
- g. Margin of domestic preference, if any, for domestic goods, contractors, and consultants as outlined in Article 34.
- h. Any grouping of goods works or services into lots and packages and the manner of evaluation of the lots and packages;
- i. Whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;
- j. If suppliers are permitted to submit bids for only a portion of the goods, works, or services to be procured, a description of the portion or portions for which bids may be submitted;
- k. The required validity period of bids;
- l. The amount and acceptable forms of any required bid, performance or any other security;
- m. The conditions of contract that will be entered into with the successful bidder;
- n. Notice of conflict-of-interest restrictions and anti-fraud and corruption rules;
- o. The manner in which bidders may obtain review of actions, omissions and decisions of the Procuring Entity; and
- p. Such other matters as may be required by the Regulations or manuals or standard bidding documents or forms prescribed by the Authority.

Article 77: Submission of bids

1. A bid shall be submitted in writing, duly signed, and submitted in a sealed envelope or envelopes if bids cannot fit into one envelop in accordance with instructions to bidders. Bids received after the deadline for submission of bids shall be returned unopened. Invitation for prequalification and bidding documents shall permit submission of applications to pre-qualify or bids by hand or mail or by courier at the option of the bidder.
2. The method of submission and opening of bids by electronic means may be permitted and described in the Regulations, provided that the confidentiality and security of bids is assured, including the prevention of the opening and reading of bids by anyone until the opening of bids at the time set in accordance with Article 79
3. Bids shall remain valid for the period of time indicated in the bidding documents. Modification or withdrawal of a bid during the bid validity period shall render the bidder subject to forfeiture of the bid security. The validity period of a bid may be extended only on the agreement of the bidder concerned. A bidder that agrees to an extension of the validity period of its bid must also obtain a corresponding extension of the bid security, if such a security was required.

Article 78: Bid security and Bid Securing Declaration

1. The bidding documents may require bidders to submit a bid security or a bid securing declaration. Any such requirement shall be applied to all bidders, and shall be set out in accordance with the Regulations. Forfeiture of a bid security or action in accordance with the bid securing declaration may be imposed only in the event of:
 - a. Modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
 - b. Refusal by a bidder to accept a correction of an arithmetical error or other slips appearing on the face of the bid;
 - c. Failure by the successful bidder to sign a contract in accordance with the terms set forth in the bidding documents; or
 - d. Failure by the successful bidder to provide a security for the performance of the contract if required to do so by the bidding documents.
 - e. Bidders may complete/sign declaration form accepting that if they withdraw or modify their bids during the period of validity or they are

awarded the contract and fail to sign the contract or to submit a performance security before deadline defined in the bidding documents, the bidder will be suspended for the period of time specified in the bidding documents from being eligible to bid for any contract with the entity that invited bids.

Article 79: Bid opening

1. Bids shall be opened at the time and place indicated in the bidding documents, which shall coincide with the deadline for submission of bids, or shall follow immediately thereafter, allowing a minimal time interval for logistical reasons.
2. Bidders or their representatives may attend the bid opening.
3. The name of the bidder, the total amount of each bid, any discounts or alternatives offered, and the presence or absence of any bid security, if required, and essential supporting documents shall be read out loud and recorded, and a copy of the record shall be made available to any bidder on request.
4. Two members of the bid opening committee must sign any submitted bid documents with financial implications.
5. No decision regarding the disqualification or rejection of any bid shall be taken or announced in the bid opening session.
6. Following opening of the bids, and until the preliminary decision on award has been notified to the successful bidder, no bidder shall make any unsolicited communication to the Procuring Entity or try in any way to influence the Procuring Entity's examination and evaluation of the bids.

Article 80: Examination, evaluation, and comparison of bids

1. Following the opening of bids, the Procuring Entity shall first examine the bids in order to determine whether the bids are complete and signed, whether required documents to establish legal validity and required bid security have been furnished, and whether bids are substantially responsive to the bidding documents.
2. Bids, which do not satisfy the requirements of Article 78(1), shall be rejected and excluded from further evaluation and comparison.
3. If a prequalification procedure was applied, a bid received from any person other than a pre-qualified bidder shall be rejected and excluded.

4. Bids not excluded from consideration under sub-articles (2) and (3) shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.
5. The Procuring Entity may seek clarification from any bidder to facilitate evaluation but shall neither ask nor permit any bidder to change the price or any other aspect of the bid. If a bidder amends its bid in any manner, such a bid shall be rejected and its bid security forfeited.
6. If there is an arithmetical error, such an error shall be rectified and the bidder notified. If the bidder refuses to accept such correction, its bid shall be rejected and the bid security forfeited. If there is a discrepancy between figures and words, the amount in words shall prevail unless the discrepancy is due to misplacement of decimal point, in which case the mistake shall be rectified and the bidder notified.
7. In carrying out the evaluation, if there are minor deviations in any bid that did not merit rejection of bid at an earlier stage, such minor variation shall be cost if possible. The evaluated cost of such a bid shall then be compared to those of other bids to determine the lowest evaluated bid.
8. If the process included a prequalification, the qualifications of the lowest evaluated bidder shall be verified again to take account of any change since the original prequalification.
9. If there was no prequalification, the qualifications of the lowest evaluated responsive bidder shall be checked against the criteria specified in the bidding documents. If it fails, the same check shall be applied to the next lowest evaluated responsible bidder, and so on in order of ranking.
10. The Procuring Entity shall prepare an evaluation report detailing the examination and evaluation of bids and identifying the recommendation for award of contract in accordance with the evaluation criteria specified in the bidding document.

Article 81: Non-disclosure of bid evaluation details

1. Except as provided in Article 31 (3) and (4) on the record of procurement proceedings, information relating to the examination, clarification, evaluation, and comparison of bids shall not be disclosed to suppliers, consultants, or contractors or to any other person not involved officially in the examination, evaluation, or comparison of bids or in the decision on which bid should be accepted,

Article 82: Prohibition of negotiations with suppliers or contractors

1. Pursuant to the exception in this Article, no negotiations shall take place between the Procuring Entity and a supplier or contractor with respect to a bid submitted by such supplier or contractor.
2. If the lowest evaluated responsive bid exceeds the budget for the contract by a substantial margin, the Procuring Entity shall investigate the causes for the excessive cost and may:
 - a. Consider requesting new bids on basis of revised bidding documents; or
 - b. Subject to approval by the Procurement Committee and following the procedure in the Regulations and any guidelines issued by the Authority, negotiate a contract with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope of contract, which can be reflected in a reduction of the contract price.

Article 83: Award of contract

1. The contract shall be awarded to the bidder that has submitted the lowest evaluated and substantially responsive bid that meets the evaluation criteria as specified in the bidding documents.
2. Prior to the expiry of the period of bid validity, the Procuring Entity shall notify the successful bidder of the proposed award. The notification of proposed award shall specify the time within which the contract must be signed, subject to any intervening complaints filed in accordance with Part VIII of this Act.
3. Simultaneously where the value of the contract exceeds the levels set in the Regulations, notice shall be given to the other bidders and the Authority, specifying the name and address of the proposed successful bidder and the price of the contract.
4. The contract shall not be signed until at least 14 calendar days have elapsed, following the giving of that notice to allow any aggrieved bidder to file a complaint or appeal. During the fourteen (14) day waiting period for entering into contracts of specified thresholds as required under Article 74 of the Act, the Authority may:
 - a. review the entire contract award process;
 - b. issue a notice for the extension of the waiting period for up to 14 additional days to enable their review, if required; and,

- c. issue a notice for the suspension of the award of contract if the Authority is of the view that a stated article of the Act has been breached.
5. If the bidder whose bid has been accepted fails to sign a written contract, if required to do so, or fails to provide any required performance security for the contract within the prescribed time limit, the Procuring Entity shall accept the next-ranked bidder from among the remaining bids that are in force.
6. In selecting the next-ranked bidder, the Procuring Entity shall comply with the notice requirements provided in Article 81 (3).
7. The bidding documents shall inform bidders of:
 - a. Nature and timeframe of the procurement, including but not limited to the technical specifications/drawings, terms of reference, contractual terms of the procurement, and the manner of entry into force of the contract;
 - b. Bidder qualification requirements if a prequalification procedure was not followed;
 - c. Information as to site visits and pre-bid conferences;
 - d. Instructions for preparation and submission of bids, including the deadline for submission of bids, time, and place of bid opening;
 - e. Components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
 - f. The methodology for evaluation of bids and the selection of the successful bidder, shall all be quantified in monetary terms or expressed in the form of pass/fail requirements. With reference to evaluation criteria, the Procuring Entity may consider only the following:
 - i. The bid price, subject to any margin of domestic preference applied pursuant to Article 33; and
 - ii. The cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works, or services.
 - g. Margin of domestic preference, if any, for domestic goods, contractors, and consultants as outlined in Article 33.
 - h. Any grouping of goods works or services into lots and packages and the manner of evaluation of the lots and packages;
 - i. Whether alternatives to the technical or contractual specifications would be considered and if so, how those alternatives would be evaluated;
 - j. If suppliers are permitted to submit bids for only a portion of the goods, works, or services to be procured, a description of the portion or portions for which bids may be submitted;
 - k. The required validity period of bids;

- l. The amount and acceptable forms of any required bid, performance or any other security;
- m. The conditions of contract that will be entered into with the successful bidder;
- n. Notice of conflict-of-interest restrictions and anti-fraud and corruption rules;
- o. The manner in which bidders may obtain review of actions, omissions and decisions of the Procuring Entity; and
- p. Such other matters as may be required by the Regulations or manuals or standard bidding documents or forms prescribed by the Authority.

Article 84: Acceptance of bid and entry into force and signature of contract

1. Where the bidding documents require the supplier or contractor whose bid has been accepted to sign a written procurement contract conforming to the bid, the Procuring Entity and the supplier or contractor shall sign the procurement contract within 30 days after the notice referred to in Article 82 (2) is dispatched to the supplier or contractor.
2. Where a written procurement contract is required to be signed:
 - a. The procurement contract must be initiated by the Procuring Entity and the supplier or contractor and be submitted to the Auditor General for registration.
 - b. The registration of the Auditor General represents:
 - i. an attestation that the contract was received by the Auditor General for registration;
 - ii. that the Auditor General confirms the contract value is consistent with the budget allocation to the Procuring Entity; and,
 - iii. that the signatory on behalf of the Procuring Entity is appropriate.
 - c. The Auditor General has no power to review or approve other aspects of the contract or the related procurement process.
 - d. The Auditor General may waive the requirement of registration as a condition to contract effectiveness, in writing, for contracts of below-specified thresholds..
3. The procurement contract shall come into effect only after:
 - a. its award in compliance with the provisions of the Act;
 - b. the registration of the contract with the Auditor General, unless this requirement was waived as per Article 84.2.d; and,
 - c. the signature of the contract by the parties.

Article 85: Two-stage bidding

1. The procedures for open competitive bidding set forth in Part IV (B) apply to two-stage bidding proceedings, except to the extent they are modified by this Article.
2. In the first stage:
 - a. The bidding documents shall call upon bidders to submit initial bids without a bid price. Such documents may solicit initial proposals relating to the technical, quality or other characteristics of the goods, works or services, as well as to contractual terms and conditions of the proposed contract, and, where relevant, the professional and technical competence and qualifications of the bidders.
 - b. The Procuring Entity may engage in discussions with any or all bidders whose proposals satisfy the conditions set forth in the bidding documents with a view to understanding the proposals or to indicate changes required to make them acceptable and to seek the bidder's willingness to make such changes.
 - c. All discussions entered into in this stage shall be reduced into writing and be part of the procurements records.
 - d. At the end of the first stage, the Procuring Entity may:
 - i. Reject those bids which do not and cannot be changed to meet the basic requirements, minimum performance, or required completion time or have any other weakness that makes the bid substantially non-responsive; or
 - i. Modify the technical specifications, evaluation criteria, and contract conditions, while seeking to maximize competition and articulate appropriate evaluation methodology.
3. In the second stage:
 - a. The Procuring Entity shall invite bidders whose bids have not been rejected to submit final bids with prices to the revised bidding documents.
 - b. A bidder not wishing to submit a final bid may withdraw from the bidding proceedings without forfeiting any bid security that the bidder may have been required to provide; and
 - c. The final bids shall be evaluated and compared in accordance with the criteria and methodology included in the revised bidding documents.

C. OTHER PROCUREMENT METHODS

Article 86: Limited or restricted competitive bidding

1. A Procuring Entity may use limited or restricted competitive bidding in lieu of open advertised competitive bidding subject to approval by the the Authority, where the value of the contract is expected to exceed the threshold value set out in Regulation, and the Procurement Committee in all other cases, when:
 - a. The goods, works, or services are only available from a limited number of known bidders; or
 - b. The Procuring Entity must provide justification in response to emergency procurement.
2. The procedures for open competitive bidding, as set forth in Articles 69 - 83 shall apply to limited competitive bidding.

Article 87: Use of government construction teams

1. Subject to the approval of the Procurement Committee, procurement of construction works by the use of Procuring Entity's own personnel and equipment using the force account procurement method may be employed where:
 - (a) Quantities of work involved cannot be defined in advance;
 - (b) Qualified bidders would be unlikely to bid at reasonable prices because of the nature, location, logistics, financing, or mobilization and demobilization costs;
 - (c) Confidentiality and security concerns would be compromised if it were carried out by a private contractor;
 - (d) Work is required to be carried out without disrupting ongoing operations;
 - (e) Risks of unavoidable work interruption are better borne by the Procuring Entity than by a private contractor;
 - (f) There are emergencies needing prompt attention;
 - (g) As a matter of routine and program, the Procuring Entity has built its internal capacity for specific tasks and is included in its Procurement Plan; and

- (h) It has been demonstrated that a force account is the only practical method for constructing and maintaining works under special circumstances or for development of a technology or work method or both which cannot yet be carried out by private sector entities.
2. Where any procurement of goods, or sub-contracted works or services is required to supplement the force account activity, that procurement shall be carried out in accordance with the relevant provisions of this Act.

Article 88: Request for quotations

(Note: In procurement terms, quotation is also called “shopping”. For this reason, “method for request for quotations” is translated as “habka dukaamaysiga”. However the Committee may to change to any appropriate term.)

1. Request for quotations procedure may be engaged in when the estimated contract amount for goods, works, or technical services is lower than the value threshold specified in of the Regulations.
2. When request for quotations procedure is employed on the grounds referred to in Article 87 (1) the Procuring Entity shall solicit quotations from a minimum number of three Qualified bidders selected in a non-discriminatory manner.
3. The invitation for quotations shall be on the basis of simplified documents that shall indicate the description and quantity of the goods or specifications and scope of the works, the desired delivery or completion time, place and time for submission of quotations, and the criteria for evaluation and award of contract. Bidders shall be given adequate time in accordance with the Regulations to prepare and submit their quotations.
4. Bidders may submit only one price quotation, which shall be submitted by letter, facsimile, or by electronic means. If possible quotations shall be delivered by a specified time and opened immediately thereafter. No public bid opening shall be required but the evaluation of quotations shall follow the same principles as those of open competitive bidding set forth in Part IV (B).
5. The procurement contract shall be awarded to the supplier, contractor, or service provider that gave the lowest priced quotation meeting the needs of the Procuring Entity.
6. Bidders shall not be permitted to change their quotations, and no negotiations shall take place between the bid evaluation committee and the bidder with respect to a quotation submitted by the bidder.

7. The bidder that provided the lowest priced quotation meeting the delivery and other requirements of the Procuring Entity shall be awarded the contract.

Article 89: Direct contracting

1. With prior approval of the Authority, where the value of the contract is expected to exceed the threshold value set out in Regulation, and the Procurement Committee in all other cases, a Procuring Entity may employ direct or sole source contracting procedure under the following circumstances:
 - a. The procurement is for the extension of an existing contract of similar nature for goods, works, or technical services, awarded in accordance with procedures set forth in this Act. The Procuring Committee shall be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable.
 - b. Additional purchases from the original supplier may be justified for reasons of standardization of equipment or spare parts so as to be compatible with existing equipment. The Procurement Committee shall be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the contract are reasonable.
 - c. The required equipment is proprietary and obtainable only from one source.
 - d. The Contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee.
 - e. In exceptional cases of extreme urgency due to an emergency, provided the circumstances which gave rise to the urgency were neither foreseeable by the Procuring Entity nor the result of dilatory conduct on its part.
2. When the Procuring Entity engages in direct procurement on the grounds referred to in Article 88 (1), it shall prepare a written description of its needs and any special requirements as to quality, quantity, terms, and time of delivery.
3. The Procuring Entity shall thereafter request submission of a bid and or proposal in writing and shall be free to negotiate with the sole bidder.
4. Where the estimated value of the contract exceeds the threshold set in the Regulations under the Act, the notice of the holding of direct procurement proceedings shall be published in a dedicated mandatory procurement

bulletin of wide circulation, and if feasible in the National Gazette, or procurement electronic website.

Article 90: Procurement through Framework Contract

1. Procuring Entities may procure through a framework contracting arrangement
 - a) common user items from a single or multiple suppliers; or
 - b) Recurrent non-consulting services from a single or multiple service providers.
2. The Authority shall define the composition and lists of items and services of recurrent procurements, produce, update and publish in its website the lists at least once annually and at the same time distribute the lists to all Procuring Entities.
3. Departments or units of each Procuring Entity shall compile individually their annual requirements of common user items and recurrent services and submit them to their respective Procurement Units which shall consolidate the individual submissions into an annual Procurement Plan.
4. The Procurement Committee shall review and approve the consolidated Procurement Plan of the recurrent procurements.
5. Procuring Entities shall forward a copy of their Procurement Plans for recurrent items and services to the Ministry and Authority.
6. The circumstances under which a Procuring Entity may enter into a framework contract with a single or multiple suppliers or service providers, the procedure to be followed, the criteria of evaluation, the form of contract and contract period shall be prescribed in the Regulations and further detailed in the standard bidding documents for framework contracts published by the Authority.
 7. A Procuring Entity may procure recurrent items and services from suppliers or service providers with which another Procuring Entities has entered into a framework contract on the same items and services under the fulfillment of the conditions:
 - a) That there is an urgent need to acquire the items or services in question;
 - b) That the new Procuring Entity has verified and established that the right procedure was followed in the selection and awarding the contract to the concerned supplier (s) or service provider (s);
 - c) That the Procurement Committee has reviewed the justification for procuring the required items or services under an existing framework contract between the supplier or service provider and another Procuring Entity; and
 - d) That a copy of the complete record of the selection documentation including the evaluation report and framework contract between the original

Procuring Entity and the suppliers or service providers is made available to the new Procuring Entity for its files.

PART V – PROCUREMENT OF CONSULTING SERVICES

A. GENERAL PROVISIONS

Article 91: Scope of consulting services

1. Consulting services shall apply to services of an intellectual and advisory nature, and shall not include other types of services in which the physical aspects of the activity predominate and lead to a measurable physical output.
2. Negotiations are a key feature of the procurement of consulting services. The procedures and guidelines for conducting such negotiations shall be described in the Regulations.
3. The Procuring Entity shall choose the type of contract to use for a particular assignment from those types described in the Regulations.

Article 92: Associations between consultants

1. Consultants may associate for the long term or for a specific assignment with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise to strengthen the technical responsiveness of their proposal and to make available bigger pools of experts, provide better approaches and methodologies, and in some cases, to offer lower prices.
2. Procuring Entities shall not require consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.
3. Association between short-listed firms is permitted only with the prior written approval of the Procuring Entity.

Article 93: Training or Transfer of Knowledge

Where a consultant's assignment includes a component for training or transfer of knowledge to the staff of the Procuring Entity or other consultants, the terms of reference shall indicate the objectives, nature, scope, and goals and outputs of the training program, including details on trainers and trainees, skills to be transferred, timeframe, and monitoring and

evaluation arrangements. The cost for the training program shall be included in the consultant's contract and in the budget for the assignment.

B. SELECTION BASED ON QUALITY AND COST

Article 94: Quality and cost-based selection

1. All procurement of consulting services shall follow quality and cost-based selection method that uses a competitive process among short-listed firms and takes into account the quality of a technical proposal and cost of the services in the selection of the successful firm. Other selection methods shall be used as exception as provided in Articles 99 to 106.
2. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.
3. Procuring Entity shall use the standard "Request for Proposals" which shall include a letter of invitation, information to consultants, the terms of reference, and the proposed contract.
 - a. If the value of the procurement contract exceeds the threshold specified in regulation, the requirements captured in article 72 for open competitive bidding shall apply to the Quality and Cost Based Selection process

Article 95: Short-listing of consultants

1. In all cases before being invited to submit proposals, consultants shall be short-listed by the Procuring Entity. Shortlists shall comprise consultants of the same category, and similar capacity, experience, eligible and business objectives. The shortlist shall not be open-ended but shall be limited to 6 (six) or to such other numbers as may be allowed by the Authority pursuant to the guidelines.
2. When the estimated value of the procurement exceeds the threshold set in the Regulations, the Procuring Entity, in order to establish the shortlist, shall seek expressions of interest by advertising openly for firms to apply for consideration to be on the shortlist.
3. Invitations for expressions of interest shall be published in accordance with the Regulations in at least one widely circulated procurement bulletin and, if feasible, in the National Gazette, or designated website for procurements. Where appropriate, the notice may also be published in a relevant trade publication or technical or professional journal. The Minister may by Regulation indicate the local newspapers in which invitation to pre-qualify

can be advertised and provide further instructions on the publication of mandatory procurement bulletins and websites.

4. The Procuring Entity shall allow enough time for the consultants to prepare their applications, but not less than 14 days from date of posting of the advertisement to the date set for submission of expressions of interest.
5. The shortlist shall be established from among those who have responded to the invitation for expressions of interest and who have the capacity or qualify to perform the required services, as demonstrated in their submissions.
6. The invitation for expression of interest shall include the name and address of the Procuring Entity, a brief description of the services, date and place for submission of expressions of interest, and information required to establish the qualification of the applicant. The information requested shall be the minimum required to make a judgment on the firm's suitability and not be so complex or so worded as to discourage consultants from expressing interest.
7. For assignments of a value lower than the threshold set in the Regulations, the shortlist may be established from market knowledge, or other sources of information, provided that in the case of assignments that have an estimated value lower than that threshold but are particularly complex, an advertisement for expression of interest shall also be utilized.

Article 96: Request for proposals

1. Short-listed firms shall be invited to submit proposals on basis a "Request for Proposals," which shall provide short-listed bidders with the information necessary to enable them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the Procuring Entity.
2. The Request for Proposals shall be the standard format issued by the Authority and listed in the Regulations and shall include in particular:
 - i. Name and address of the Procuring Entity;
 - ii. Nature, timeframe, and location of the services to be provided, terms of reference, required tasks, and outputs;
 - iii. The criteria to be used in evaluating and comparing proposals, and their relative weight as compared to price;
 - iv. The contractual terms of the procurement, and the manner of entry into force of the contract;

- v. Instructions for preparation and submission of proposals, and the place and deadline for submission of proposals;
- vi. Final selection procedures to be applied;
- vii. Notice of conflict-of-interest restrictions and anti-fraud and corruption rules, including the grounds for potential debarment from future participation in procurement of goods, services, or works that may result from the assignment under consideration;
- viii. And such other matters as may be prescribed in the Regulations and standard documents issued by the Authority.

Article 97: Evaluation of quality

1. The Procuring Entity shall evaluate each technical proposal using an evaluation committee of three (3) or more specialists, taking into account several criteria:
 - a. Consultant's relevant experience for the assignment,
 - b. Quality of the methodology proposed,
 - c. Qualifications of key staff proposed,
 - d. Proposed work plan,
 - e. Transfer of knowledge, if required in the terms of reference, and
 - f. The extent of participation by nationals among key staff in the performance of the assignment.
2. Each criterion shall be marked on a scale of 1 to 100. Then the marks shall be weighted to become scores. The actual percentage figures to be used shall fit the specific assignment and shall be within the ranges indicated below. The proposed weights shall be disclosed in the Request for Proposals. Criteria (a), (b) and (c) are mandatory and criteria (d) and (e) are optional depending on the terms of reference.

The Procuring Entity shall also determine the minimum qualifying mark for a technical proposal, which shall not be less than 70 points out of 100. The actual weights shall be indicated in the standard Request for Proposals, and shall be within then weight ranges to be specified in the Regulations.

3. The Procuring Entity shall normally divide these criteria into sub-criteria and keep to the essential. The Entity should avoid use of exceedingly detailed lists of sub-criteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. The weight given to experience can be relatively modest since this criterion has already been taken into account when short-listing the consultants. More weight shall be given to the methodology in the case of more complex assignments.
4. Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to these criteria if the proposed assignment is complex. The Procuring Entity shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consulting firm and the individual proposed. The individuals shall be rated in the following three (3) sub-criteria, as relevant to the task:
 - (a) *General qualifications*: general education and training, length and relevance of experience, positions held, etc.
 - (b) *Adequacy for the assignment*: education, training, and experience in the specific sector, relevant to the particular assignment; and
 - (c) *Experience in the region*: knowledge of the local language, culture, administrative system, government organization, etc.
5. Procuring Entity shall evaluate each proposal on the basis of its responsiveness to the terms of reference. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the terms of reference or it fails to achieve a minimum technical score specified in the Request for Proposals.
6. At the end of the process, the Procuring Entity shall prepare a technical evaluation report of the “quality” of the proposals. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

Article 98: Evaluation of cost

1. After the evaluation of quality is completed, the Procuring Entity shall inform the consultants, who have submitted proposals, of the technical points assigned to each consultant; and shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the Request for Proposals and terms of reference that their

financial proposals will be returned unopened after the signature of the contract.

2. The Procuring Entity shall simultaneously notify the consultants that have secured the minimum qualifying mark of the date, time, and place set for opening the financial proposals. The opening date shall allow adequate time for consultants to attend the opening of the financial proposals.

The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend. The name of the consultant, the technical points, and the proposed prices shall be read aloud and recorded. The Procuring Entity shall also prepare the minutes of the public opening and a copy of this record shall be posted in procurement files and may on request be available to consultants who submitted proposals.

3. The Procuring Entity shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the costs shall be converted to a single currency selected by the Procuring Entity (local currency or fully convertible foreign currency) as stated in the Request for Proposals.

The Procuring Entity shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as a Central Bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions. The Request for Proposals shall specify the source of the exchange rate to be used and the date of that exchange rate, provided that the date shall not be earlier than four (4) weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal.

4. For the purpose of evaluation, "cost" shall exclude local identifiable indirect taxes on the contract and income tax payable to the country of the Procuring Entity on the remuneration of services rendered in the country of the Procuring Entity by non-resident staff of the consultant. The cost shall include all consultants' remuneration and other expenses such as travel, translation, report printing, or secretarial expenses.
5. The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in the Request for Proposals.

Article 99: Combined quality and cost evaluation

1. The total score shall be obtained by weighting the quality and cost scores and adding them. The weight for the “cost” shall be chosen taking into account the complexity of the assignment and the relative importance of quality. The weight for cost shall normally be 20 points out of a total score of 100 for quality- and cost-based selection.
2. The formula for combining the technical scores shall be indicated in the standard Request for Proposal and shall be in accordance with the sample formula to be specified in the Regulations. The firm obtaining the highest total score shall be invited for negotiations.

C. OTHER SELECTION METHODS

Article 100: Quality-based selection

1. Subject to the approval of the Procurement Committee, the Procuring Entity may use quality-based selection if the assignment:
 - a. Is for a complex or highly specialized assignment for which it is difficult to define precise terms of reference and the required input of the consultants, and for which the consultants is expected to demonstrate innovation in their proposals;
 - b. Has a high downstream impact and in which the objective is to have the best experts; or
 - c. Can be carried out in substantially different ways, such that proposals will not be comparable.
2. In quality-based selection, the Procuring Entity shall invite shortlisted firms to submit technical and financial proposals in two separate envelopes. The Procuring Entity shall evaluate the technical proposals only; and the firm scoring the highest-ranked technical proposal shall be selected and asked to submit a detailed financial proposal for negotiation and award of contract. The financial proposals of other firms shall be returned after the negotiations with the selected are successfully concluded.
3. All other aspects of the selection process shall be identical to those of quality- and cost-based selection, except that only the price of the winning firm shall be published.

Article 101: Least-cost selection

1. This method is only appropriate for selecting consultants for assignments of a standard or routine nature, including audits and engineering design of noncomplex works where well-established practices and standards exist.
2. The selection procedures to be used for this method shall be the same as those used for quality- and cost-based selection, except that the firm offering the least cost will be selected.

Article 102: Selection under a fixed budget

1. Subject to the approval of the Procurement Committee, the Procuring Entity may use selection under a fixed budget procedure when the assignment is simple and can be precisely defined and when the budget is fixed.
2. The selection procedures under this method shall be the same as those for quality- and cost-based selection, except that bidding firms will be required to prepare their financial proposals within a fixed budget. The fixed budget shall be disclosed in the Request for Proposals.
3. Proposals that exceed the indicated budget shall be rejected.

Article 103: Selection of firms based on the consultants' qualifications

1. This method may be used for firms assignments that do not exceed the threshold set in the Regulations, and selection of consultants for which the need for preparing and evaluating competitive proposals is not justified.
2. Under this method, the Procuring Entity shall prepare the terms of reference, request expressions of interest and information on the consultants' experience and competence relevant to the assignment, establish a shortlist, and select the firm with the most appropriate qualifications and references.
3. The selected individual or firm shall be asked to submit a combined technical and financial proposal and then be invited to negotiate a contract.

Article 104: Selection of individual consultants

1. Individual consultants are employed on assignments for which teams of personnel are not required and no additional outside professional support is required. Individual consultants shall be selected on the basis of their qualifications for the assignment. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications, and those selected for employment by the Procuring Entity shall be the best qualified

and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background; experience; and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organization.

2. The Procuring Entity shall shortlist at least three (3) individuals and compare their qualifications and capability relevant to the assignment. The individual with best qualifications shall be selected for the assignment.
3. The selected individual shall be asked to submit a technical and financial proposal and then be invited to negotiate a contract.

Article 105: Single-source selection

1. Subject to the approval of the Procurement Committee, the Procuring Entity may use single-source selection of consultants only in exceptional cases if this method demonstrates a clear advantage over a competitive method:
 - a. For tasks that represent a natural continuation of ongoing or previous work carried out by the firm;
 - b. In emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency;
 - c. For very small assignments as defined in the Regulations; or
 - d. When only one firm is qualified or has unique experience for the assignment.
2. In each of the cases described in Article 104 (1), the Procuring Entity shall ask the selected consultant, on the basis of the terms of reference furnished by the Procuring Entity, to prepare a technical and financial proposal, which shall then be negotiated.

Article 106: Procurement agents

1. A Procuring Entity may use the services of a procurement agent to undertake any or all of those procurement functions, which would otherwise be carried out by that Procuring Entity provided that all such procurement functions are carried out in conformity with the Bill. Subject to the approval of the Procurement Committee, procurement agents shall be used where the Procuring Entity lacks capacity to carry out the procurement.

2. Where a procurement agents services are required, a Procuring Entity shall procure such services in accordance with Part IV (C) of this Act.
3. A Procuring Entity shall instruct any procurement agent that may be appointed to observe the relevant provisions of the Act and Regulations.
4. The procurement agent shall act strictly on behalf of the Procuring Entity and shall follow all the procurement procedures outlined in the Act and Regulations, including use of standard bidding documents and other documentation issued by the Authority.

Article 107 : Inspection agents

Where agents have been appointed by the Government to undertake pre-shipment inspection and certification of imports, the Procuring Entity may use such agents without going through another selection process for such agents.

PART VI.

PROCEDURES FOR PROCUREMENT OF CONCESSION AGREEMENTS

A. Definition and Objectives of Concession Agreements

Article 108: Definition

1. Concessions means the grant of an interest in a public asset by Government or its agency to private sector entity for a specified period during which the asset may be operated, managed, utilized or improved by the private sector entity who pays fees or royalties under the condition that the Government retains its overall interest in the asset and that the asset will revert to the Government agency at a determined time. Under this Act, the term concession shall comprise of all its variants including but not limited to the following:
 - a. “Build/Refurbish/Modernize-Operate-Transfer (BOT)” Where a private entity finances the development of infrastructure/facility/utility and operates it for a specified period after which the project is handed over to the government/public entity free of lien or at a cost to the public entity.
 - b. “Build/Refurbish/Modernize-Transfer-Operate (BTO)” Where the Government/public entity contracts a private entity to build or complete a facility the ownership of which is transferred to the Government/public entity on completion after which the facility is leased back to the private entity for a fixed or renewable term.
 - c. “Build/Refurbish/Modernize-Own-Operate-Transfer (BOOT)”: Where the private entity obtains a franchise for a fixed period, whether exclusive or not, to develop, operate, maintain, manage and collect user fees for a public facility over a fixed period at the end of which title to the facility reverts to the public entity/Government.
 - d. “Build/Refurbished/Modernize-Own-Operate (BOO)”: Where the Government/public entity either transfers ownership and responsibility for a public facility or contracts with a private entity to build, own and operate a new facility is subject to terms and conditions laid down by the Government/public entity for the operatiuon of the facility.
 - e. “Management Contract/Service Contract”: Where a private entity is engaged as an agent of the Government/public entity, to perform a public function on behalf of the Government/public entity for a fee in whatever form, with or

without performance incentives regardless of whether the public entity retains responsibility for the private agent or not.

- f. “Outsourcing”: Where the Government/public entity contracts a private entity for the continuous provision of an otherwise public services paid for by the public entity.
- g. “Partial Privatization”: The partial disposal of Government interest to a private entity other than through the stock Exchange.
- h. The Interministerial Concession Committee (IMCC) may identify other business arrangements that shall be defined as concessions.

Article 109: Objectives of Concessions

- 1. The Objectives of every concession shall be to promote one or more of the following:
 - a. Increased Government revenue from concessions.
 - b. Harnessing of private sector financial, human and technical resources for economic development
 - c. Competition in the provision of services, supplies, goods or infrastructure and reduce monopolies.
 - d. Accelerate the development of infrastructure, human capacity and the provision of services
 - e. The growth of the Somali private sector.
 - f. Partnerships between the public and private sectors

B. SCOPE, APPLICATION AND DISQUALIFIED PRIVATE SECTOR ENTITIES

Article 110: Scope and Application

- 1. The part shall apply to all activities relating to concessions and shall in particular apply to the following:
 - (a) The implementation of concessions including, but not limited to the:
 - i. Identification and certification for Concessions
 - ii. Planning of the process for concession agreements
 - iii. Preparation of concession bid documents
 - iv. Invitation and evaluation of bids , negotiations and signing of concession agreements
 - v. Implementation, supervision and monitoring of concession agreements

(b) The grant of concessions of whatever form in all sectors including but not limited to:

- i. Mineral exploration and mining
- ii. Fishing
- iii. Timber
- iv. Telecommunications
- v. Electricity, water and other utilities
- vi. Forestry
- vii. Agricultural concessions including plantations
- viii. Oil exploration and extraction
- ix. Development of public infrastructure including but not limited to airports, terminals, toll roads/bridges, shopping malls, etc.
- x. The grant of special licenses including licenses for imports, exports, services, works or for the performance of functions on behalf of the public sector.
- xi. Other sectors as determined by the Council of Ministers.

(c) All Concession Entities or Government institutions and agencies legally mandated to undertake concessions.

(d) All private sector entities that participate in concessions.

Article 111: Concession Entities

1. Any entity that is issued with a certificate for concessions in accordance with this Act shall be a Concession Entity for the purposes of this Act and shall be responsible for the concession process.
2. The head of the Concession Entity shall be held accountable and responsible for any action taken in pursuit of his or her responsibilities under the Part and shall be absolved from accountability because he or she delegated the function.

Article 112: The Role of the Procurement Unit in Processing Concession Agreements

1. The Procurement Unit set up in this Bill shall be responsible for the performance of the following concessions functions under the oversight of the Procurement Committee.
2. In respect of concessions the Procurement Unit Shall perform the following functions:
 - i. Prepare the Concession Procurement Plan

- ii. Plan and administer concession up to but excluding evaluation and award of concession contracts
- iii. Prepare concession bid documents in collaboration with technical experts
- iv. Receive and safeguard bids received
- v. Conduct bid opening procedures in accordance with this Bill
- vi. Perform secretarial services for the Concession Entity
- vii. Such other functions as may be conferred by the head of the entity in accordance with this Bill

Article 113: Engagement of Advisors

1. A Concession Entity and or the Inter-Ministerial Committee may where it is conducive to the national interest, engage private sector entities or experts to advise on any of the processes of concessions other than approvals and such experts shall work with the Procurement Unit for the purposes of the specific concession.
2. The selection of a private sector entity or individual for the purposes of this section shall be made in accordance with the procedure for the selection of consultants set out in this Bill.

Article 114: Preparation of Concession Procurement Plan

1. The Concession Procurement Plan shall include the following details:
 - (a) The allocation of responsibilities and deadlines for all pre-implementation activities and necessary for the concession procurement process including the engagement of consultants to advise at any stage of the concession process;
 - (b) Arrangements to ensure co-ordination with other institutions where necessary;
 - (c) The method to be employed in the procurement of the concession indicating whether it is a National Competitive Bidding or an International Competitive Bidding and the reasons for same;
 - (d) The proposed dates for the General Notice of Investment Opportunity, Expression of Interest , Invitation to Bid ,evaluation , negotiation and all processes leading to the concession agreement.
2. The Commission shall, where necessary to ensure compliance with this Bill, request for changes in the Concession Procurement Plan within a period to be specified in the Regulations of receipt of the Concessions Implementation plan.

Article 115: Concession Structures:

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

Article 116: Composition of Inter-Ministerial Concessions Committee

1. The Inter-Ministerial Concessions Committee shall consist of seven (7) persons constituted as required in accordance with sub-article of this Article.
2. The Inter-Ministerial Concessions Committee shall be responsible for the review of a concession and approval of the report of the Concessions Bid Evaluation Panel and the preparation of the annual concessions plan for submission and approval by Council of Ministers.
3. The Inter-Ministerial Concessions Committee shall comprise the Authorizing Officer(s) of following ministries and other public institutions:
 - (a) The Chairperson of the committee who will be the Authorizing Officer for Ministry in charge of Finance
 - (b) The Ministry responsible for justice
 - (c) The Ministry responsible for planning The Ministry in charge of Federal Affairs
 - (d) The Attorney General, and
 - (e) Two other Authorizing Officers appointed by the Council of Ministers representing the collective interest of various sectors the economy connected with the concession other than the Minister responsible for the sector.
4. The Head of the Concession Technical Unit established in Article 117 of this Act shall serve as the non-member secretary to the Inter-Ministerial Concessions Committee for the purposes of its work for the Concession Entity.
5. The Inter-Ministerial Concessions Committee may co-opt experts to its meetings for a particular concession under review for advisory purposes.

Article 117: Functions of the Inter-Ministerial Concessions Committee:

1. The Inter-Ministerial Concession Committee shall perform the following functions:
 - (a) Review and approve concession bid documents prior to the invitation of bids.
 - (b) Review the evaluation reports to ensure that procedures were in strict conformity with the criteria , the Act and relevant regulations , approve or otherwise, the evaluation reports to enable the Concession Entity to continue with the next step of the process.
 - (c) Approve the minimum benchmarks for the negotiations with the concessionaire as proposed by the Concession Entity.

- (d) If negotiations breakdown, and if acceptable, authorize the Concession Entity to negotiate with the next highest ranking bidder.
 - (e) Constitute the Concession Bid evaluation Panel and the Negotiations Team.
 - (f) Make recommendations to the Authorizing Officer of the Concession Entity and the Commission as and when necessary.
2. No entity other than the Inter-Ministerial Concessions Committee set up under this Bill shall perform the functions of the Inter-Ministerial Concessions Committee and the purported performance of the functions of the Inter-Ministerial Concessions Committee by any other person or entity shall be void.

Article 118: Meetings of the Inter-Ministerial Concessions Committee

1. The Inter-Ministerial Concessions Committee shall be convened at the instance of the Authorizing Officer of the Concession Entity through a written request submitted to the Chairperson of the IMCC.
2. Upon receipt of the request of The Authorizing Officer of the Concession Entity, the Chairperson of IMCC shall forward the request to the Technical Concession Unit for the review and request of advice. After confirmed receipt of the request to the Chairperson of the IMCC he shall convene a meeting of all members for a decision regarding the matter at hand.
3. No member of the Committee shall delegate his role as a member. Where absolutely necessary any of the persons mentioned in this Act, may send a Senior representative officer of the concerned entity as a proxy to represent the member at a meeting of the Committee. The member shall be responsible for any decisions made by the proxy.

Article 119: Disclosure of Interest

1. A member of the Inter-Ministerial Concessions Committee or a person appointed /co- opted but the committee who has any interest, direct or indirect , in any matter to be considered by or on behalf of the Commission shall disclose the nature of his or her interest to the Commission and such disclosure shall be recorded in the minutes of the committee.
2. A member of the Inter-Ministerial Concession Committee with any interest shall not take part in any deliberation or decision of the committee relating to that matter, and a member who contravenes this section shall be guilty of misconduct and liable to be removed from the committee and/or suffer any penalty that may be applicable under this Act.

Article 120: Quorum

1. The Inter-Ministerial Commission Committee shall not be properly constituted for its work without the presence of the Authorizing Officer(s) responsible for Finance, Planning, Justice, The Authorizing Officer of the Concession Entity or in the absence of any of them the duly authorized deputy.

Article 121: Establishment of the Concession Technical Unit

1. There is established, within the Ministry, a unit to be known as the Concession Technical Unit.
2. The Unit shall consist of :
 - a) A Director of the Unit; and
 - b) Such staff as the Authorizing Officer of the Ministry may, in consultation with IMCC, consider necessary for the performance of the functions of the Unit under this Act.
3. The Director referred to under this Part VI of this Act to mean the Director of the Technical Concession Unit and has relationship with the Director of the Public Procurement Authority established in Part III of the Act.
4. The Director and staff of the Unit shall be competitively recruited and on such terms and conditions as the Authorizing Officer of the Ministry shall, in consultation with IMCC and in accordance with the applicable law or regulations, determine.
5. A person shall be qualified for appointment as the Director of the Unit is such person
 - a) Holds a degree from a recognized university in any of the following fields:
 - i. Finance;
 - ii. Economy;
 - iii. Engineering; or
 - iv. Law; and
 - b) Has at least ten years of professional experience in the relevant field.
6. The appointment of the Director of the Unit shall be for a term of five years and shall be eligible for re-appointment for one further term.
7. The office of the Head and members of the Unit shall become vacant if the member –
 - a) Is adjudged bankrupt;
 - b) Is convicted of a criminal offence and sentenced to a term of imprisonment;
 - c) Resigns in writing addressed to the Authorizing Officer of the Ministry and copied to IMCC;
 - d) Is removed from office by the Authorizing Officer of the Ministry in consultation with IMCC for –
 - i. Being unable to perform the functions of his or her office by reason of mental or physical infirmity; or
 - ii. Failing to declare his interest in any matter being considered or to be considered by the Unit or IMCC; or
 - e) Fails to perform his or her duties in accordance with the terms and conditions of appointment; or
 - f) Dies.

8. Before the removal of a member of the Concession Technical Unit, the Authorizing Officer of the Ministry in consultation with IMCC shall request the Unit to –
 - a) Investigate the circumstances giving rise to the proposed removal; and
 - b) Make recommendations on whether or not the member should be removed from office.

Article 122: Functions of the Concession Technical Unit

1. The general functions of the Unit are :
 - a) Policy guidance and capacity building – defining concession policies under the guidelines of the Inter-ministerial Concession Committee (IMCC) and processes and building the capacity of agencies to those processes;
 - b) Concession promotion both within and beyond government – encouraging sector agencies to consider using concessions or promoting the opportunities;
 - c) Technical support in implementing concession projects including providing hand-holding support to responsible implementation teams in ministries or agencies or being directly responsible for some aspects of concession implementation; and
 - d) Reviewing and overseeing the management of concession projects for efficiency and affordability and approving concession projects or advising on the approval process.

2. The specific functions of the Unit are to:
 - a) Serve as the secretariat and technical arm of IMCC;
 - b) Provide technical, financial and legal expertise to IMCC and any Procurement and Concession Unit established under this Act;
 - c) Serve as a resource center on matters relating to concessions;
 - d) Conduct civic education to promote the awareness and understanding of the concessions process among stakeholders;
 - e) Make recommendations on the approval or rejection of projects prior to submission to IMCC for approval;
 - f) Assist IMCC in formulating guidelines and standard documentation required under this Act;
 - g) Liaise with and assist the Concession Entities in their roles in the various stages of a project cycle;
 - h) Ensure, in collaboration with the Public Procurement Authority, that the tendering process relating to a project conforms to the procurement provisions of this Act;
 - i) Carry out such other functions as may be conferred on it by IMCC and this Act.

3. The Unit shall prepare financial accounts and an inventory of the monies allocated to it, and any financial support received by it.

Article 123: Financing of the Concession Technical Unit

1. The activities of IMCC and Unit shall be financed by
 - a) Money from within the Ministry budget; and
 - b) Any funds approved by Parliament.

Article 124: Disqualified Private Sector Persons/Entities

1. The following private sector entities, whether local or foreign, are disqualified from participating in any concession process.
 - (a) Partnerships
 - (b) Sole Proprietorships
 - (c) Natural Persons
 - (d) Not-for-profit entities or Non-Governmental Organizations
 - (e) Unincorporated Associations

C: The Concession Procurement Process Planning

Article 125: Inclusion in Economic Development Plan

1. The Ministerial responsible for Finance shall develop an annual concessions plan for sectors of the economy in which concession may be promoted for approval Council of Ministers.
2. The Role assigned the Minister responsible for Finance under this section shall only be exercised in consultation with all Ministers and Authorizing Officers of Entities that may be affected by the annual concessions plan.
3. The Authorizing Officer of a Concession Entity shall, prior to commencing any activity for the purpose of implementing a concession, request the Minister responsible for Finance to issue a Certificate for Concession for the specific concession.

Article 126: No Concession without Certificate

1. Every concession implementation process shall commence with the issue of a Certificate for Concession and no concession shall be implemented unless the proposed project has been issued with a Certificate for Concession.
2. The Ministry responsible for Finance shall have the sole responsibility to issue the Certificate for Concession.

Article 127: Criteria for the Issue of the Certificate for Concession

1. Prior to issuing the Certificate for Concession in this Act, the Ministry responsible for Finance shall ensure that:
 - (a) The concession falls within the area of the economy in which concession arrangements may be carried out in furtherance of national economic objectives.
 - (b) The proposed concession has not already been allocated with public funds for the same purpose envisaged under the proposed project.
 - (c) The barriers or bottlenecks that need to be addressed prior or in the course of the concession procurements process have been clearly identified by the Concession Entity or by the Ministry responsible for Finance and brought to the knowledge of the Entity.
2. The functions of the Ministry responsible for Finance of this section shall be performed with prior consultation with the head of Concessions Entities affected by specific concession.

Article 128: Presentation of Concession Option to the Public

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

Article 129: Information at the Stakeholder Forum

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

Article 130: Records of the Concession Bidding Process

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

Article 131: Inspection of the Records

1. The records shall be made available for inspection by the IMCC and the Auditor-General or any person duly authorized by the IMCC or relevant Government authority.

Article 132: Specific Records to be in Writing

1. Without limiting the generality of this part or any subsection of this part the following shall at all times be in writing:
 - (a) General Notice of Investment Opportunity
 - (b) Request for Expression of Interest
 - (c) Instructions to Bidders
 - (d) The Request For Proposals
 - (e) The Evaluation Report together with attachments
 - (f) All documents related to the award of contracts
 - (g) Concession Information Memoranda

Article 133: Competitive Bidding

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

Article 134: National Competitive Bidding

1. An Entity shall use National Competitive Bidding where it is concluded that:
 - (a) There is the availability of adequate technology in Somalia for the project of the Concession.
 - (b) The expected capital outlay is capable of being raised by local businesses.
 - (c) The concession falls within the area of the economy which is by law restricted to Somalis
2. Where National Competitive Bidding is used, domestic bidders are targeted to participate, but does not restrict participation by the foreign bidders.

Article 135: International Competitive Bidding

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

- (a) The project requires international expertise
 - (b) Local suppliers cannot deliver the required services/goods/works.
 - (c) The project requires technology not available in Somalia
 - (d) The project requires capital outlay not ordinarily available in Somalia.
2. Bidders shall be allowed not less than six (6) weeks to prepare and submit bids.

Article 136: Domestic Firms to Participate in the International Competitive Bidding

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

Article 137: Criteria for the Application of Margin of Preference In Concessions

1. Where a concession is awarded on the basis of International Competitive Bidding, a Concession Entity may allow for Margin of Preference for Domestic Businesses as defined under this Act and the Authority shall establish the criteria for the Margin of Preference to be applicable to concessions in that respect.
2. Notwithstanding the generality of this section, the Authority in consultation with IMCC shall issue regulations on the criteria and ensure that the criteria for the Margin of Preference applicable to concessions shall , as much as possible, be consistent with the provisions of Article 33 of this Act.

Article 138: Restricted Competitive Bidding

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

Article 139: Sole-Source

1. Subject to the approval of the IMCC, a concessionaire may be sole sourced if one or more of the following conditions prevail:
- (a) The Concession requires specialized expertise that is available only to one specific bidder.
 - (b) The Concession involves an innovation the patent for which is held by one particular bidder.
 - (c) The Concession requires specialized research, or experiment that only one person is prepared to undertake.

- (d) The Concession is in respect of strategic national interest or national interest to have more than one bidder.

Article 140: Prior Approval of IMCC:

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

D: CONCESSION DOCUMENTS PREPARATION

Article 141: Performance of Preliminary/Feasibility Studies:

1. A Concession Entity shall undertake preliminary or prefeasibility studies to determine the feasibility of a proposed project and the prefeasibility studies may be carried out in consultation with the Minister responsible for Finance and other experts whether from the private or public sector as appropriate.
2. The selection of any private sector entity or individual as a consultant to assist the Concession Entity shall be in compliance with this section of this Act.

Article 142: Concession Bid Documents

1. Prior to issuing a Request For Expression of Interest or Invitation to Bid, the Procurement Unit shall prepare the full set of the concession bid documents and shall submit same to the Authorizing Officer of the Concession Entity for review and approval by the Inter-Ministerial Concessions Committee.
2. The Inter-Ministerial Concessions Committee shall establish the appropriate technical team to review the concession bid documents and based on their recommendations approves or otherwise the concession bid documents.

Article 143: Scope of Concession Documents

1. The concession bid documents shall, at a minimum include the following:
 - (a) Project information memoranda which shall cover, but not limited to the following:
 - i. The Background of the project
 - ii. Objectives of the proposed concession
 - iii. Expected improvements or deliverables
 - iv. Outline of expected project outcome and benchmarks for measuring the attainment of Project Objectives.
 - (b) The invitation to bid as applicable

(c) Instructions to bidders which shall include the following:

- i. An indication of whether or not there will be a pre-bid meeting and if so the date, time and venue.
- ii. Criteria for examination or evaluation of bids
- iii. Criteria forward of concessions
- iv. Form of Agreement
- v. Form of Bid
- vi. Form of Bid security and Performance Security
- vii. Time and Venue for submission and opening of bids
- viii. Form of Financial Proposal to be submitted separately
- ix. All relevant forms necessary for preparation of bids

(d) General and specific conditions of contract / agreement.

Article 144: Notification of General Notice of Investment Opportunity, Expression of Interest or Request for Proposals

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

Article 145: Mode of Publication

1. The IMCC may issue guidelines regarding publications of the General Notice of Investment Opportunity, Expression of Interest or Request For Proposal.

E: PRE-BID MEETING, BID SUBMISSION AND OPENING

Article 146: Pre-Bid Meeting

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

Article 147: Particulars of the Pre-Bid Meeting

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

Article 148: Submission and Opening of Bids

1. All responses to the Expression of Interest and/or Invitation to Bid whether submitted by a bidder earlier or on the same day slated for the Bid opening shall be at the same time and place and in the presence of the bidders, their representatives or agents in attendance.
2. The bid submission and opening shall observe the rules of bid submission and opening under the same Act
3. In the case of two-envelope bidding, the Concession document shall specify the procedure for opening of the technical and financial envelopes.

F: EVALUATION

Article 149: Evaluation Process

1. Evaluation of concession bids shall be undertaken by the Technical Concession Unit that shall be constituted by the Inter-Ministerial Concession Committee.
2. The Technical Concession Unit shall be a Unit within the Ministry

Article 150: Certainty of Evaluation Criteria

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

Article 151: Minimum Contents of the Evaluation Criteria

1. The evaluation shall:
 - (a) In respect of an Expression of Interest take into consideration the particular requirements of the Project and the nature of the expertise required for the proper implementation of the Project which must have been set out in the request for Expression of Interest.
 - (b) In respect of a Request for Proposals take into account the criteria set out in the Request for Proposals which shall in any event be designed to attain the objects of the concession and shall include at least the following:

- i. Technical feasibility of the proposal
- ii. Effectiveness of the methods and resources to be deployed
- iii. Planned improvement over the concession period
- iv. The effect of the proposal on the overall strategic objectives and national development plan spelt out by the Ministry responsible for Economic Affairs
- v. Technology transfer
- vi. Expected effect of the concession on national income, employment of Somalis, the environment, related industries and other sectors of the economy
- vii. Application of Margin of Preference, where application is applicable in accordance with this Act.

Article 152: Prohibited Criteria in Evaluation

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

G: POST EVALUATION

Article 153: Evaluation Report

1. The Technical Concession Unit shall conclude the evaluation within sixty (60) days of the opening of the bids and shall submit an evaluation report to the Inter-Ministerial Concessions Committee.
2. The Evaluation Report shall at least comprise the following:
 - (a) A report on the responsiveness of the bids on the basis of the requirements set out in the proposals
 - (b) Results of the technical evaluation
 - (c) Results of the financial evaluation
 - (d) Recommendations which shall include a statement that the bidder with the highest overall score be invited for negotiations and if negotiations fail with

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

3. Due diligence of all recommended bidders undertaken as provided in this Act.
4. The head of the Entity shall not have the power to alter the report of the Technical Concession Unit or to request for changes in the recommendations.

Article 154: Due Diligence:

1. Prior to the submission of the evaluation report to the Inter-Ministerial Concession Committee a Concession Entity shall undertake due diligence on all responsive bidders.
2. The extent of the due diligence shall be determined by the Entity but shall at a minimum include a verification of the following:
 - (a) The capacity of the private sector entity to enter into the concession agreement.
 - (b) The authenticity of the certificate of incorporation and other statutory documents. If the private sector partner is of a foreign origin company, the validity of the document must be verified from the country of origin.
 - (c) Authenticity of the persons purporting to represent the bidder for which purpose the public entity shall demand a board resolution of the prospective bidder authorizing the persons to negotiate or enter into an agreement on its behalf.
 - (d) The fulfillment by the private sector entity whether wholly foreign owned or in partnership with a local counterpart of the requirements of the laws regulating business operation in Somalia
 - (e) Where the bidder is a consortium, proof that:
 - i. None of the members is disqualified under this Act:
 - ii. Members of the consortium have bound themselves to assume joint and several liabilities for the private sector party's obligations under the concession agreement or in the alternative that a member (s) of the consortium has consented to bear the risk of the other (s) and that a copy of the document evidencing same has been deposited with the entity.
 - (f) Authenticity of the claims of technical and financial capability made by the bidder
3. The Concession Entity may, if appropriate engage independent experts to carry out the due diligence.
4. In all cases the due diligence must be concluded before the concession's contract comes into force.

Article 155: Form of Contract

1. The Form of contract for each Concession Agreement shall be developed by the Concession Entity in collaboration with the Attorney General and endorsed by the Inter-Ministerial Concessions Committee prior to Negotiations:

Article 156: Negotiations:

1. Within fourteen (14) days after the approval of the evaluation report by the Inter-Ministerial Concessions Committee, the Inter-Ministerial Concessions Committee shall constitute a Negotiations Team comprising of technocrats and relevant experts co-opted as necessary for the conduct of the negotiation with the highest ranked bidder.
2. Negotiations Team Shall comprise of a team of not less than three(3) but not more than seven persons appointed by the Inter-Ministerial Concessions Committee.
3. The Negotiations Team shall consist of technocrats and the head of concession Entity shall not be a member of the Negotiations Team.
4. The Negotiations Team shall be responsible for ensuring that the negotiations are concluded before the expiry of the original or extended date of the Bid Security submitted by the Bidder.
5. Negotiations shall be entered into with the highest ranked bidder indicated in the evaluation report and approved by the Inter-Ministerial Committee. In the event of the breakdown of the negotiations, the Negotiation Team Shall report to the Inter-Ministerial Concessions Committee. The Inter-Ministerial Concession Committee shall give approval if appropriate for the commencement of negotiations with the next highest bidder in that order of ranked bidders until negotiations are concluded and all applicable conditions are fulfilled.

Article 157: Issues to Be Considered At the Negotiations

1. The Negotiations Team Shall take the following into account, within the context of existing laws, in its negotiations with the prospective concessionaire:
 - (a) Responsibilities of parties under the concession
 - (b) Standards of performance including service, deadlines, safety, compliance and operating/maintenance requirements.
 - (c) Contingency arrangements for identified risks
 - (d) Tax obligations
 - (e) Mechanisms for monitoring performance , quality of service and other Project objectives
 - (f) Dispute resolution mechanisms
 - (g) Performance Bonds
 - (h) Monitoring/Reporting
 - (i) Reporting Requirements
 - (j) Social Responsibility Requirements

- (k) Use Of Local Labour
 - (l) Capacity Building
Technology Transfer
 - (m) The financial components including payment provisions, the time of payment and currency of payment
 - (n) Responsibilities for insurance , security , operation and maintenance where applicable
 - (o) Contract revision arising from material change in the conditions of the contract
 - (p) Environmental Issues
 - (q) Termination Provisions
 - (r) Project failure and remedies , if any
 - (s) Breach of contract /Events of default
 - (t) Provision for re-entry, buy-back transfer, reversion, assignment and related issues
 - (u) Tariffs, charges , rates , fees, etc. that may be charged to third parties, where applicable and responsibility for fixing same
 - (v) Non-circumvention, confidentiality and scope of these provisions
 - (w) Ownership of intellectual property, facilities or new technologies developed
 - (x) Provisions which may survive termination of the contract e.g. Arbitration , confidentiality
 - (y) Contract amendment process
2. The Inter-Ministerial Concessions Committee may expand on these issues for negotiations for any particular concession, but the issues must have been included in the concessions bid documents

Article 158: Confidentiality Agreement

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

Article 159: Post-Contract Management

1. The Negotiation Team shall conclude post-contract management arrangements during the negotiations and this shall at least include:
- (a) Mechanisms for monitoring performance of the terms and conditions of the agreements

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

Article 160: Regulations Pertaining to Mining and Petroleum Concession

1. Without limiting the application of this Part the IMCC shall not later than one hundred and eighty (180) days after the coming into force of the Act ensure that regulations are issued so as to bring the procedure for the issue of prospecting, reconnaissance and exploitation licenses for petroleum and mining concessions under any existing law in conformity with this Part of this Act.
2. In the performance of its functions under subsection of this section the Authority shall ensure that the issue of any license for prospecting, reconnaissance and exploitation shall be done in competitive manner and without the grant of a monopoly to any party.

PART VII – DISPOSAL OF SUPPLIES AND EQUIPMENT

Article 161: Authority to dispose

1. The Authorizing Officer shall at least once a year convene a Board of Survey comprising not less than five (5) senior staff of the Entity and persons with relevant expertise to examine, group, and price all unserviceable, obsolete, or surplus supplies and equipment and report its findings and recommend the best method of disposal in accordance with Article 111.
2. Upon approval of the recommendation of the Board of Survey by the Authorizing Officer, the items shall be disposed of following disposal procedures specified in Article 111(Article 156).
3. The Board of Survey shall establish for all items to be disposed the reserve sale price by obtaining independent market-based valuations or by using other reasonable means to establish the reserve price.
4. Where items become unserviceable for reasons other than fair wear and tear, such as through accident or expiry, a set procedure established by the Board for handling losses shall be followed before the items are boarded and disposed off.
5. A public entity shall not dispose of unserviceable, obsolete, or surplus supplies and equipment to an employee of the public entity or a member of a Board of Survey except as expressly provided in Article 110 (6).

6. The Procuring Entity shall report the disposed items to the Accountant General to allow their removal from the Register of Government Assets. In the case of other public entities, the Authorizing Officer shall ensure removal of such items from the Register of Assets of the Public Entity.

Article 162: Disposal procedures

1. Disposal of unserviceable, obsolete, or surplus supplies and equipment shall be by the following methods:
 - a. Transfer to government departments or other public entities with or without financial adjustment where an asset may be usefully utilized by another Procuring Entity; the disposal of the asset shall be by formal transfer.
 - b. Sale by public bidding to the highest bidder, subject to the following:
 - (i) Setting of a reserve price;
 - (ii) Public advertisement issued in the designated mandatory procurement bulletin of wide circulation inviting bidders to inspect the items and submit sealed bids;
 - (iii) The advertisement shall indicate the time and place for submission of bids;
 - (iv) Not less than 14 days shall be allowed before the deadline set for the opening of bids;
 - (v) Bids shall be opened and prices read out in public and all interested persons shall be allowed to attend the opening.
 - c. Sale by public auction, subject to:
 - (i) Setting of a reserve price;
 - (ii) Public advertisement issued in at least one national newspaper of wide circulation inviting bidders to inspect the items and attend the auction proceedings.
 - (iii) The advertisement shall indicate the time and place for auction, and
 - (iv) Not less than 14 days shall be allowed before the date of the auction.

- (d) Destruction, dumping, or burying, or such other forms of disposal as appropriate; but destruction, dumping, or burying of items shall only be used:
 - (j) Where the asset has no residual value and cannot be transferred to any other entity or converted into any other form which subsequently gives it value; or
 - (ii) On grounds of national security or public interest, or health and safety, or legal and human rights issues or environment considerations.
2. The method of disposal under Article 111 (d) (Article 155 (d)) shall only be done with the written approval of the agency responsible for environmental protection and/or any other agency that is responsible for the safety management as aforementioned in (Article 155 1(ii)).
 3. Detailed procedures for disposals shall be prescribed in the Regulations.

PART VIII – COMPLAINTS AND APPEALS REVIEW PROCEEDINGS

Article 163: Right to review

1. A potential or actual bidder that claims to have suffered, or that is likely to suffer, loss, or injury due to a breach of a duty imposed on the Procuring Entity by this Act, its implementing Regulations, and the bidding documents may seek review at any stage of the procurement proceedings in accordance with this Part VIII.
2. An application for review shall not be entertained unless it identifies the specific act of omission, agency, or Procuring Entity alleged to have violated the Act or its Regulations and the bidding documents.
3. Where an application for review concerns alleged improprieties in the solicitation of applications to prequalify, or to solicitation of bids, which are apparent prior to bid opening, such applications shall be entertained only if submitted prior to bid opening.

Article 164: Review by Authorizing Officer of the Procuring Entity

1. Prior to the entry into force of a contract, application for review shall be made in the first instance, in writing, to the Authorizing Officer.

2. The Authorizing Officer shall not entertain an application for review unless it is submitted within 14 calendar days after notification of proposed contract award, pursuant to Article 81(2) or when the bidder submitting it became aware of the circumstances giving rise to the complaint or of when that bidder should have become aware of those circumstances, whichever is earlier.
3. Upon receipt of a complaint in connection with any bid proceedings, the Authorizing Officer shall notify the Authority and all bidders of the complaint.
4. Unless the complaint is resolved by mutual agreement, the Authorizing Officer shall suspend the procurement proceedings and shall, within five (5) calendar days after submission of the complaint, issue a written decision to the complaint and shall state:
 - a. The reasons for the decision;
 - b. Whether the complaint is upheld in whole or in part; and
 - c. Indicate the corrective measures that are to be taken where applicable.
5. If the Authorizing Officer does not issue a decision within the time stated in Sub-Article (4), or if the complainant shall not be satisfied with the decision of the Authorizing Officer, the complainant is entitled to submit a complaint to the Independent Procurement Review Panel pursuant to Article 114.

Article 165: Review by Independent Procurement Review Panel

1. Subject to Article 113 (5) an application for review may be brought before the Independent Review Panel in the following circumstances:
 - a. In the form of an appeal by the complaining bidder against a decision by the Authorizing Officer, provided that the appeal is submitted within ten (10) calendar days of the date of the decision by the Authorizing Officer;
 - b. Where the Authorizing Officer fails to render a decision within the required timeframe, provided that the application for review is filed within ten (10) calendar days after the expiry of the time set for notification by the Authorizing Officer referred to in Article 113;
 - c. In the case where the contract has already been signed by the parties, any application for review submitted in the first instance to the Independent Procurement Review Panel shall not be entertained except where in the opinion of the Review Panel the contract was signed without following the correct procedures provided in this Act.

2. In order for an application for review to be considered by the Independent Procurement Review Panel, the application shall be accompanied by a fee as is specified in the Regulations.
3. The Independent Procurement Review Panel shall make a decision under this Article within thirty (30) calendar days after receiving the complaint.
4. A complaint may be dismissed if it:
 - a. Fails to comply with any of the requirements of this Part;
 - b. Sets forth only allegations that do not state a valid basis for a complaint, or that do not set forth a detailed legal and factual statement;
 - c. Is filed in an untimely manner at the initial level of Independent Procurement Review Panel;
 - d. Concerns contract implementation or administration rather than contract award; and
 - e. Challenging an affirmative determination of qualifications as regards a competing bidder.
5. Unless a complaint is dismissed, the remedies that may be ordered by the Independent Procurement Review Panel include:
 - a. Prohibiting the Procuring Entity from acting or deciding in an unauthorized manner or from following incorrect procedure;
 - b. Annuling in whole or in part any unauthorized act or decision of a Procuring Entity, other than any act or decision bringing the contract into force;
 - c. Reversing a decision by the Procuring Entity or substituting its own decision for such a decision, other than any decision bringing the contract into force;
6. The timely submission of a complaint in accordance with deadlines set in this Part suspends the procurement proceedings until a decision on the complaint is issued by the Independent Procurement Review Panel.
7. The suspension provided by Article 114 (6) (Article 161?) shall not apply if the Procuring Entity certifies to the Authority that urgent public interest considerations, such as natural disasters, medical emergencies, civil strife, and outbreak of war, require the procurement to proceed.
8. The certification, which shall state the grounds for the finding that urgent considerations exist, shall be made a part of the record of the procurement

proceedings and shall be conclusive with respect to all levels of review, except judicial review.

9. The decision of the Review Panel shall be final and may be appealed only in a Court of Law pursuant to Article 116 (Article 161?)_of this Act.

Article 166: Independent procurement review procedures

The Procedures to be followed by the Review Panel are prescribed in Schedule 2 of this Act.

Article 167: Judicial review

The Procurement Entity has jurisdiction over petitions for judicial review of decisions made by the Independent Procurement Review Panel or of the failure of this body to make decisions within the prescribed time limit.

PART IX – GENERAL PROVISIONS

Article 168: Protection from personal liability

No person shall be, in his/her personal capacity, liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his/her duties under this Act.

Article 169: Request for information by the Authority

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

Article 170: Statutory audits

1. The Auditor-General shall conduct annual audits of the procurement transactions as provided by the Audit Act and upon request shall furnish copies of reports on the audits to the Authority.
2. The statutory audit of procurement activities may be relied upon by the Authority to institute measures to improve the procurement, disposal, or concession process.

Article 171: Investigation by the Authority

1. The Authority may appoint a person to conduct an investigation into any matter related to the conduct of procurement proceedings by a Procuring Entity, or the conclusion or operation of a procurement contract if it considers that an investigation is necessary or desirable to prevent, or detect a contravention of this Act.
2. An investigator may, subject to Article 165 (3):
 - a. At any time during normal office hours, without previous notice, enter the premises of the Procuring Entity, bidder, supplier, contractor, or consultant concerned with the procurement proceedings under investigation;
 - b. Require an officer, employee or agent of the Procuring Entity or bidder, supplier, contractor, or consultant to produce any books, records, accounts, or documents;
 - c. Search premises for any books, records, accounts, or documents;
 - d. Examine and make extracts from and copies of books, records, accounts, or documents of the Procuring Entity, bidder, supplier, contractor, or consultant;
 - e. Remove books, records, accounts, or documents of the Procurement Entity, bidder, supplier, contractor, or consultant for as long as may be necessary to examine them or make extracts from or copies of them but the investigator shall give a detailed receipt for the books, records, accounts, or documents removed; and
 - f. Require an officer, employee or agent of the Procuring Entity or bidder, supplier, contractor, or consultant to:
 - (i) Explain an entry in the books, records, accounts, or documents; and
 - (ii) Provide the investigator with information concerning the management or activities of the Procuring Entity or bidders as may be reasonably required.
3. The powers of entry and search conferred by Article 165 (2) (a) and (c) shall not be exercised unless there are reasonable grounds to believe that it is necessary to exercise those powers for the prevention, investigation, or detection of an offence or to obtain evidence relating to an offence.
4. Any person who, without just cause, hinders or obstructs an investigator in the exercise of a function under this Article commits an offence.

Article 172: Procedures on completion of investigation

1. An investigator shall:
 - a. Forward a copy of the investigation report to the Authority; and
 - b. Send a summary of the findings and recommendations to the Procuring Entity and to any bidder, supplier, contractor, or consultant whose conduct was the subject of the investigation.
2. The Authority shall, if satisfied that there has been a contravention of this Act or any other law in relation to procurement proceedings or procurement contracts, take action to rectify the contravention, which action shall include:
 - a. Annulment of the procurement proceedings;
 - b. Cancellation of the procurement contract;
 - c. Ratification of anything done in relation to the proceedings; or
 - d. A declaration consistent with any relevant provisions of this Act.
3. The Authority shall afford a person adequate opportunity to make representations in a matter, before taking any action in terms of Article 121 (2) which may adversely affect the rights or property of that person.

Article 173: Offences relating to this Act

Any person who contravenes any provision of this Act commits an offence and a person convicted by a Court of Law under this Act shall, upon summary conviction, be liable to a fine not exceeding an equivalent of 1,000 US dollars or imprisonment not exceeding three (3) years, or both.

Article 174: Public Access

The Authority shall ensure that administrative rulings of the Independent Procurement Review Panel and directives of the Authority that are of general application under this Act are promptly made available to the public.

Article 175: Repeals and amendments

Upon enactment of this Act, this Act will succeed all provisions in any other laws relating to public procurement.

Article 176: Transitional provisions

1. Procuring Entities involved in an ongoing or unfinished procurement immediately before the coming into force of this Act shall continue with and complete such procurement, notwithstanding the coming into force of this Act.
2. Pursuant to Article 125 (1) where in the view of the Authority the continued validity of any contract or anything done or made by a body violates any law, the Authority may take the appropriate steps to rectify the inconsistency to the extent permissible and consistent with this Act.
 - a. Until such time as the the Authority and its Director have been appointed, which shall be 120 days from the date of signature of this Amendment by the President and its publication in the official gazette, the Ministry shall exercise the powers given to the Procurement Authority by this Act.
 - b. The Ministry shall determine an appropriate development plan for the staffing of the Secretariat of the Procurement Authority. Such staffing plan may include the use of existing staff of the Ministry of Finance to fulfill Secretariat roles until such time as staff with the requisite capacity are able to be retained independently by the Procurement Authority.
 - c. Notwithstanding Article 176.5, the Ministry is accountable for ensuring that appropriate resources are available to the Authority and the Review Panel to carry out their obligations under this Act.
3. This Act applies to the procurement and contract award activities of the Federal Government of Somalia. Federal Member States will apply their respective procurement laws.

Article 177 : Coming into force of this Act

This Act shall come into force not later than 12 months after its signature into law by the President or by gazette by the Minister upon completion of the following actions whichever is earlier:

- a. The Budget of Federal Government Ministries has been decentralized.
- b. The Members of the Board of Directors of the Public Procurement Authority and an Director have been appointed.
- c. Members of the Independent Procurement Review Panel have been appointed.

- d. At least 12 Procuring Entities starting with big spenders who constitute about 70 percent of the public budget have each established a Procurement Committee and a Procurement Unit.
- e. In each case Gazzetement is limited to not more than 12 months after President Signature.

Article 178: English Text to Prevail

- (1) As it is necessary to ensure consistent application and interpretation of this law which includes widely used specialized financial terminology, it is hereby confirmed, that the Somali and English language versions of this Law shall both be the official versions of this law.
- (2) In the event of any inconsistency or conflict between the Somali and the English language versions of this Law, the English language version shall prevail.

SCHEDULE 1:

CONDUCT OF PUBLIC OFFICIALS, BIDDERS, SUPPLIERS, CONTRACTORS, CONSULTANTS AND CONCESSIONAIRES

1. Conduct of public officials

1. Any public officer involved in requisitioning, planning, preparing, disposal, and conducting procurement proceedings and administering the implementation of contracts, shall:
 - (a) Discharge his or her duties impartially so as to assure fair competitive access to public procurement by bidders;
 - (b) Always act in the public interest, and in accordance with the objectives and procedures set out in this Act, in the Regulations and in accordance with the Civil Service codes of ethics, and where applicable the relevant statutes;
 - (c) At all times avoid conflicts of interest and the appearance of conflicts of interest, in his or her official and other duties and conduct, and immediately disclose any conflict of interest and excuse him or herself from any involvement in a matter where there is conflict of interest;
 - (d) Not commit or abet corrupt or fraudulent practices, coercion, or collusion, including the solicitation or acceptance of any inducements;
 - (e) Keep confidential the information that comes into his or her possession relating to procurement proceedings and to bids, including bidders' proprietary information; and
 - (f) For a period of three (3) years after departure from the Procuring Entity not take up a position of authority in any private concern with which he or she undertook procurement activities.
2. Officers of a Procuring Entity or their close relatives shall not participate as bidders in the procurement proceedings of the Procuring Entity.
3. A public officer shall excuse himself or herself from any participation in a procurement proceeding where a bid has been submitted by a bidder who is a close relative of the public officer, or by a bidder in which the public officer or the close relative is employed in a management capacity, or is an agent or member of the Board of Directors such a firm, or has a financial interest in such a firm.

4. Such recusal shall be effected immediately when the public officer becomes aware of the submission of such a bid, but not later than the opening of bids.
5. The requirement of recusal shall extend to the administration and management of any procurement contract awarded to such a bidder.
6. All public officials and other persons involved in public procurement shall, in accordance with this Bill and other applicable legislation shall provide full cooperation and disclosure to the Authority, Audit, and other authorities exercising monitoring and supervisory jurisdiction over public procurement pursuant to the laws of the Somalia, including if so provided declaration of their assets.
7. Public officials who violate the rules set forth in the Bill and the Regulations are liable to applicable administrative and civil sanctions as well as to prosecution pursuant to applicable criminal laws, including the Anti-Corruption Act

2. Conduct of bidders, suppliers, contractors, consultants and concessionaires

1. Bidders, suppliers, consultants, concessionaires and contractors shall at all times abide by their obligations under this Bill, the Regulations, any guidelines of the Authority, contracts, and other instruments applicable to their conduct and activities related to procurement.
2. A bidder, a supplier, a consultant, a concessionaire or a contractor shall not engage in or abet corrupt or collusion of suppliers. Fraudulent practices, including the offering or giving, directly or indirectly, of any inducements, the misrepresentation of contracts in order to influence a procurement process, or the execution of a contract, including by inducing the commission of inappropriate contracts or interference in the ability of competing bidders to participate in procurement proceedings.
3. Bidders shall not engage in any activity, prior to or after bid submission, designed to deprive hamper or inhibit the Procuring Entity from receiving the benefits of free and open competition that includes, but is not restricted to, collusion over bidding for opportunities and price fixing, and coercive, corrupt or fraudulent practices.
4. A Procuring Entity shall reject a bid if the bidder offers, gives, or agrees to give an inducement referred to in paragraph (3) and promptly notify the rejection to the bidder concerned, the Authority, and to the relevant law enforcement authorities.

5. The Procuring Entity shall not award a contrBill to a bidder who is responsible for preparing the specifications or bidding documents for the contrBill or supervising the execution of a contrBill, or to any affiliate company of such a bidder. This provision does not apply to the various firms (consultants, contrBillors,, concessionaires or suppliers), which together are performing the supplier's obligations under a turnkey or design and build contrBill.
6. Bidders, suppliers, consultants, concessionaires and contrBillors who engage in fraudulent, corrupt, coercive or obstructive prBillices in connection with public procurement are subject to prosecution pursuant to the applicable criminal laws, including the Anti-Corruption Bill.
7. The Authority may exclude a bidder, a supplier, contrBillor, concessionaires or consultant from participation in public procurement for a breach under this Schedule.

SCHEDULE 2:

PROCEDURES FOR THE INDEPENDENT PROCUREMENT REVIEW PANEL

1. Overriding objective

The overriding objective of these procedures is to ensure that the proceedings before the Review Panel are handled as fairly, quickly, and efficiently as possible and where appropriate, that members of the Review Panel have responsibility for ensuring this.

2. Arrangement of business

1. The Chairperson of the Review Panel is responsible for ensuring the orderly and expeditious discharge of the business of the Review Panel and shall in this regard give directions as to:
 - (a) The arrangement of the business of the Review Panel;
 - (b) The place at which the Review Panel may sit;
 - (c) The procedure of the Review Panel generally; and
 - (d) The procedure of the Review Panel at a particular place.
2. The times and places of the hearings of the Review Panel shall be determined by the Chairperson with a view to securing a reasonable opportunity for the parties to the proceedings to appear before the Review Panel with as little inconvenience and expense as possible.

3. Constitution of the Review Panel

1. The Review Panel shall be constituted for proceedings by not less than three (3) members.
2. If, before the matter to which the proceedings relates is determined, one of the members of the Review Panel ceases to be a member for the purpose of the proceedings, or ceases to be available for the purpose of the proceedings, either of the following is considered:
 - (a) If the parties to the proceedings agree, agreement shall be recorded and a ruling made thereon; or

(b) If the parties do not agree, the proceedings shall be adjourned and another member shall replace the member who ceased to be a member for the purpose of the proceedings and the proceedings shall then be re-heard.

3. The Review Panel may, for the purpose of the proceedings, have regard to the record of the proceedings before the Review Panel as previously constituted, including a record of any evidence taken in that proceedings.
4. A re-hearing shall be required in any case in which a majority of the Review Panel sitting and a hearing cease either to be members of the Review Panel or cease to be available for the purpose of the proceeding.

4. Disclosure of interest

- (1) Where a member of the Review Panel has any pecuniary or other interest that may conflict with the proper performance of the functions of the member, the member shall disclose the interest to the parties to the proceedings.
- (2) Where a member discloses an interest under Para (1), the member shall not take part in the proceedings or exercise any powers in relation to the review by the Review Panel of the decision to which the proceedings relate, except where the parties to the proceedings give their consent.

5. Secretary to the Review Panel

1. The Authority shall provide the Review Panel with a Secretary and avail secretarial services, including funding and logistical support to meet its obligations.
2. The Secretary shall be responsible for keeping records of the Review Panel and shall be conducting correspondences and performing such other functions as necessary for the purpose of assisting the Chairperson in his/her duties.

6. Review Panel to review decisions by the Procuring Entities

1. A bidder who:
 - a. Is aggrieved by a decision made by a Procuring Entity may make an application to the Review Panel for a review of the decision.
 - b. Alleges that the Procuring Entity has a conflict of interest in respect of a matter before the Procuring Entity and who believes that the matter cannot be handled impartially by the Procuring Entity, may apply to the Review Panel for a determination of the allegation and where necessary, of the matter that was before the Procuring Entity.

2. In addition to Sub-paragraph (1), the Review Panel has power to review a decision of the Procuring Entity where an application is properly made to the Review Panel by a Procuring Entity or by any person whose rights are adversely affected by a decision made by the Procuring Entity.
3. For the avoidance of doubt, the following matters shall *not* be subject to review by the Review Panel:
 - a. A decision by a Procuring Entity to reject any or all bids prior to award of a contract under Article 81 including a decision of a Procuring Entity to discontinue a procurement process, after receiving submissions from bidders following an expression of interest or a pre-qualification; and
 - b. A decision by a Procuring Entity to limit the participation of bidders under a preference scheme or a reservation scheme.
4. In reviewing a decision before it, the Review Panel may:
 - a. Suspend any contract by the concerned Procuring Entity, until the Review Panel makes a decision on the matter;
 - b. Direct the concerned Procuring Entity, with respect to anything to be done or redone in the procurement or disposal process;
 - c. Order that the procurement or disposal process be terminated;
5. For purposes of reviewing a decision of the Authority, the Review Panel shall make a decision in writing and give reasons for the decision, including its findings on material questions of fact and reference to the evidence or other material on which those findings were based and may:
 - a. Affirm the decision of the Procuring Entity;
 - b. Vary the decision of the Procuring Entity; or
 - c. Set aside the decision of the Procuring Entity by:
 - i. Making a decision in substitution for the decision so set aside, or
6. Remitting the matter to the Procuring Entity for reconsideration in accordance with any directions or recommendations of the Review Panel.
7. The Review Panel shall issue a decision within a period of not more than ten (10) calendar days after receiving an application for review.

7. Giving notice of appeal

An appeal to the Review Panel may only be instituted by giving notice of appeal against a relevant decision in accordance with these procedures, save that the Authorizing Officer may refer in writing breaches or anticipated breaches of the procurement laws to the Review Panel for appropriate Billion.

8. Form and contents of notice of appeal

1. The notice of appeal must be in the appropriate prescribed form and must:
 - a. State the name and address of the appellant;
 - b. State whether the appellant has authorized a representative to Bill for him in the appeal and, if so, give the representative's name and address;
 - c. Set out clearly and detail legal and fBillual grounds for the appeal, including details of the relevant legal provision, bidding documents, or other instrument which has been breached;
 - d. Give reasons in support of the grounds;
 - e. So far as reasonably prBilllicable, list any documents which the appellant intends to rely upon as evidence in support of the appeal;
 - f. State the form of relief requested; and
 - g. Be accompanied by an administrative fee in accordance with the Regulations.
2. The notice of decision, against which the appellant is appealing, or a copy of it or an affidavit stating the failure to issue a decision shall accompany the notice of appeal.
3. The notice of appeal must be signed by the appellant, or his representative, and dated.
4. If the appellant's representative signs a notice of appeal, the representative must certify in the notice of appeal that he has completed it in accordance with the appellant's instructions. The representative of the appellant must have a written power of attorney to authenticate authority to represent the appellant.
5. The above provisions of this rule shall not apply to the Authorizing Officer where he has made referrals directly to the Review Panel.

9. Rejection of invalid notice of appeal

1. Except where the notice of appeal relates to a failure by the Procuring Entity to issue a decision within the stipulated time, the Review Panel shall not accept the notice of appeal where:
 - (a) There is no relevant decision, or
 - (b) There is a failure to comply with a provision of this Schedule or the Bill.
2. Where the Review Panel does not accept a notice of appeal, it must:
 - (a) Notify the person giving the notice of appeal and the Procuring Entity; and
 - (b) Take no further Billion.

10. Late notice of appeal

If a notice of appeal is given outside the applicable time limit, it will not be accepted.

11. Service of notice of appeal on Authorizing Officer

1. When the Review Panel receives a notice of appeal, it shall serve a copy upon the Authorizing Officer within seven (7) calendar days.
2. Service of the notice of appeal upon the Authorizing Officer as per Paragraph (1) suspends the procurement process until the Review Panel issues a decision on the complaint.
3. The Review Panel may make an order lifting the suspension of the procurement process where it is satisfied upon an application made to it, that urgent public interest considerations, such as natural disasters, medical emergencies, civil strife, and outbreak of war, require the procurement to proceed.

12. Filing of documents by Authorizing Officer

1. When the Authorizing Officer is served with a copy of a notice of appeal, it must (unless it has already done so) file with the Review Panel within seven (7) calendar days a copy of:
 - (a) The notice of the decision to which the notice of appeal relates, and any other document served on the appellant giving reasons for that decision;
 - (b) In relation to the decision being appealed, any:

- (i) Reasons for failing to issue a decision within the required timeframe;
 - (ii) Records pertaining to the procurement process;
 - (iii) Information provided by staff of the Procuring Entity;
 - (iv) Information from other bidders; and
 - (v) Information in the investigation and decision of the head of the Procurement Unit, where applicable.
- (c) Any other unpublished document that is referred to in a document mentioned in sub-paragraph or relied upon by the Authorizing Officer.
2. Subject to paragraph (3), the Authorizing Officer must file the documents listed in Paragraph
- (a) In accordance with any directions given by the Review Panel; and
 - (b) If no such directions are given, as soon as reasonably practicable and in any event not later than one (1) business day before the earliest date appointed for any hearing of or in relation to the appeal.
3. The Authorizing Officer must, at the same time as filing them, serve on the appellant a copy of all the documents listed in sub-paragraph (1), except for documents which the Authorizing Officer has already sent to the appellant.

13. Variation of grounds of appeal

1. An appellant shall not vary his grounds of appeal except under exceptional circumstances with the permission of the Review Panel.

14. Method of determining appeal

1. Every appeal must be considered by the Review Panel at a hearing, except where the appeal is withdrawn in writing by the appellant; or
2. The Review Panel may determine an appeal without a hearing if:
- (a) All the parties to the appeal consent;
 - (b) A party has failed to comply with a provision of these procedures or a direction of the Review Panel, and the Review Panel is satisfied that in all the circumstances, including the extent of the failure and any reasons for it, it is appropriate to determine the appeal without a hearing; or

3. Where sub-paragraph (2) applies, the Review Panel must not determine the appeal without first giving the parties notice of its intention to conduct a hearing, and an opportunity to make written representations as to whether there should be a hearing.
4. A hearing may not be held unless due notice has been given to all parties involved.

15. Hearing appeal in absence of a party

1. The Review Panel shall proceed to hear an appeal in the absence of a party or his representative if satisfied that the party or his representative:
 - (a) Has been given notice of the date, time, and place of the hearing, and
 - (b) Has given no satisfactory explanation for his absence or the party has notified the Review Panel that he does not wish to attend the hearing.
2. The Review Panel may remove a person from a hearing for violent or disorderly behavior.

16. Withdrawal of appeal

1. An appellant may withdraw an appeal:
 - (a) Orally, at a hearing; or
 - (b) At any time, by filing written notice with the Review Panel.
2. An appeal shall be treated as withdrawn if the Authorizing Officer notifies the Review Panel that the decision (or, where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn.
3. If an appeal is withdrawn or treated as withdrawn, the Review Panel must serve on the parties a notice that the appeal has been recorded as having been withdrawn.

17. Abandonment of appeal

1. Any appellant must notify the Review Panel if they are no longer interested in proceeding with the appeal.
2. Where an appeal is abandoned pursuant to sub-paragraph (1), the Review Panel shall serve notice on the parties informing them that the appeal is abandoned; and shall take no further action in relation to the appeal.

18. Two or more appeals together

1. Where two or more appeals are pending at the same time, the Review Panel may direct them to be heard together if it appears that:
 - (a) Some common question of law or fBill arises in each of them;
 - (b) They relate to decisions or Billions taken in respect of the same Procuring Entity;
and
 - (c) For some other reason it is desirable for the appeals to be heard together.

19. Adjournment of appeals

1. No applications by a party for an adjournment of a hearing of an appeal will be accepted unless the adjournment is solely provided by the Review Panel.

20. Communicating the Review Panel's determination

1. Where the Review Panel determines an appeal, it must serve on every party a written determination containing its decision and the reasons for it.
2. The Review Panel must send its decision not later than ten (10) calendar days after it is determined.

21. Determining the application for permission to appeal

1. No application for permission to appeal shall be required or determined by an Authorizing Officer or a Review Panel.

22. Directions

1. .The Review Panel may give directions to the parties relating to the conduct of any appeal or application.
2. The power to give directions is to be exercised subject to any of these procedures.
3. Directions must be given orally or in writing to every party.
4. Directions of the Review Panel may, in particular:

- (a) Relate to any matter concerning the preparation for a hearing;
 - (b) Specify the length of time allowed for anything to be done;
 - (c) Provide for:
 - (d) A particular matter to be dealt with as a preliminary issue;
5. A case management review hearing to be held;
 6. A party to provide further details of his case, or any other information that appears to be necessary for the determination of the appeal;
 7. The witnesses, if any, to be heard; and
 8. The manner in which any evidence is to be given (for example, by directing that witness statements will stand as evidence in chief).
 9. Require any party to file and serve:
 10. Statements of the evidence that will be called at the hearing;
 11. A paginated and indexed bundle of all the documents that will be relied upon at the hearing;
 12. A skeleton argument that summarizes succinctly the submissions that will be made at the hearing and cites all the authorities that will be relied on, identifying any particular passages to be relied on;
 13. A time estimate for the hearing;
 14. A list of witnesses whom any party wishes to call to give evidence; and
 15. A chronology of events;
 - a. Limit:
 - I. The number or length of documents upon which a party may rely at a hearing;
 - II. The length of oral submissions;
 - III. The time allowed for the examination and cross-examination of witnesses; and
 - IV. The issues that are to be addressed at a hearing; and
 - V. Require the parties to take any steps to enable two or more appeals to be heard.
 - VI. Provide for a hearing to be conducted or evidence given or representations made video link or by other electronic means; and Make provision to secure anonymity of a party or a witness; and

- VII. The Review Panel must not direct an unrepresented party to do something unless it is satisfied that he/she is able to comply with the direction.

23. Notification of hearings

1. When the Review Panel fixes a hearing, it must serve notice of the date, time, and place of the hearing to every party.
2. The Review Panel may vary the date of a hearing but must serve notice of the new date, time, and place of him hearing to every party.

24. Representation

1. An appellant may Bill in person or through the head of an organization concerned or by any person not otherwise prohibited by any law from representing him.
2. An Authorizing Officer to an appeal may be represented by any person authorized to Bill on behalf of the organization or by counsel.
3. Until the Review Panel is notified that a representative has ceased to Bill for a party, any document served on that representative shall be deemed to be properly served on the party he was representing.

1. Summoning of witnesses

1. The Review Panel may, by issuing a summons (“a witness summons”), require any person in Somalia:
 - (a) To attend as a witness at the hearing of an appeal; and
 - (b) At the hearing, to answer any questions or produce any documents in his custody or under his control that relate to any matter in issue in the appeal.
2. A person is not required to attend a hearing in obedience to a witness summons unless:
 - (a) The summons is served on him; and
 - (b) The necessary expenses of his attendance are paid or refunded to him.
3. If a witness summons is issued at the request of a party, that party must pay or bill the expenses referred to in Paragraph (2) (b).
4. Where a person who is required to attend as a witness fails to comply, the Review Panel may request the court of law to issue a warrant of arrest addressed to the chief of police order the arrest of the person concerned in order that he may be brought before the Review Panel.

2. Evidence

1. The Review Panel may allow oral, documentary, or other evidence to be given of any fBill that appears to be relevant to an appeal, even if that evidence would be inadmissible in a court of law. Oral evidence shall be given under oath.
2. The Review Panel may not compel a party or witness to give any evidence or produce any document which he could not be compelled to give or produce at the trial of a civil claim in Somalia.
3. The Review Panel may require the oral evidence of a witness to be given on oath or affirmation.
4. Where the Review Panel has given directions setting time limits for the filing and serving of written evidence, it must not consider any written evidence that is not filed or served in accordance with those directions unless satisfied there are good reasons to do so.
5. Where a party seeks to rely upon a copy of a document as evidence, the Review Panel may require the original document to be produced.
6. The Review Panel must not take account of any evidence that has not been made available to all the parties.

3. Forged document; proceedings in private

1. The Review Panel must investigate the allegation in private, and may proceed in private so far as necessary to prevent disclosure of the matter referred to in sub-paragraph (b) where it is alleged:
 - (a) That a document relied upon by a party to an appeal is a forgery, and
 - (b) That disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.

4. Language of documents

1. Subject to sub-paragraph (2):
 - (a) Any notice of appeal or application notice filed with the Review Panel must be completed in English;

(b) Any other document filed with the Review Panel must be in Somali and English, or accompanied by a translation into English signed by the translator to certify that the translation is accurate.

2. The Review Panel shall be under no duty to consider a document that is not in English, or accompanied by a certified translation.

5. Burden of proof

1. If an appellant asserts that a relevant decision ought not to have been taken against him on the ground that the statutory provision under which that decision was taken does not apply to him or her, it is for that party to prove that the provision does not apply to him or her.

2. It is for the appellant to prove that the fBill asserted is true if:

(a) An appellant asserts any fBill; and

(c) By virtue of an Bill, statutory instrument, or other law, if he or she had made such an assertion to the Procuring Entity, it would have been for him to satisfy the Procuring Entity that the assertion was true.

6. Admission of public to hearings

1. Subject to the provisions of the Bill and these Regulations, every hearing before the Review Panel shall be held in the presence of the parties.

2. The Review Panel may exclude any or all parties from any hearing or part of a hearing if it is necessary:

(a) In the interest of good order or security; or

(b) To protect the private life of a party or the interest of a minor.

7. Filing and service of documents

1. Any document which is required or permitted by these Procedures or by a direction of the Review Panel to be filed with the Review Panel, or served on any person may be:

(a) Delivered or sent by post to an address;

(b) Sent by fax to a fax number; or

(c) Sent by e-mail to an e-mail address.

2. A document to be served on an individual may be served personally by leaving it with that individual.
3. Where a person has notified the Review Panel that he or she is Billing as the representative of an appellant and has given an address for service, if a document is served on the appellant, a copy must also at the same time be sent to the appellant's representative.
4. If any document is served on a person who has notified the Review Panel that he or she is Billing as the representative of a party, it shall be deemed to have been served on that party.
5. Subject to sub-paragraph (6), any document that is served on a person in accordance with this rule shall, unless the contrary is proved, be deemed to be served:
 - (a) Where the document is sent by post or delivered by hand to a place within Somalia, on the second day after it was sent.
 - (b) Where the document is sent by email or by fax, on the same day it is sent.
6. Any notice of appeal, which is served on a person personally, shall be treated as being served on the day on which that person receives it.

8. Address for service

1. Every party, and any person representing a party, must notify the Review Panel in writing of a business address at which documents may be served on him and of any changes to that address.
2. Until a party or representative notifies the Review Panel of a change of address, any document served on him or her at the most recent address which he or she has notified to the Review Panel shall be deemed to have been properly served on him.

9. Calculation of time

1. Where a period of time for doing any Bill is specified by these procedures or by a direction of the Review Panel, that period is to be calculated:
 - (a) Excluding the day on which the period begins; and
 - (b) Where the period is ten (10) days or less, excluding any day which is not a business day (unless the period is expressed as a period of calendar days).

2. Where the time specified by these procedures or by a direction of the Review Panel for doing any Bill ends on a day that is not a business day, that Bill is done in time if it is done on the next business day.

10. Signature of documents

1. Any requirement in these procedures for a document to be signed by a party or his representative shall be satisfied, in the case of a document which is filed or served electronically in accordance with these procedures, by the person who is required to sign the document typing his name or producing it by computer or other mechanical means.

11. Errors of procedure

1. Where, before the Review Panel has determined an appeal or application, there has been an error of procedure, the error does not invalidate but rather the Review Panel shall make any order, or take any other step, that it considers appropriate to remedy the error.

12. Correction of orders and determination

1. The Review Panel may at any time amend an order, notice of decision, or determination to correct a clerical error or other accidental slip or omission. Where an order, notice of decision or determination is amended under this procedure, the Review Panel must serve an amended version to the party or parties to whom it served the original.
2. The time within which a party may apply for permission to appeal against or for a review of an amended determination runs from the date on which the party is served with the amended determination.

13. Appeals to the court of law from decisions of the Review Panel.

1. A party to proceedings before the Review Panel who is aggrieved by the decisions of the Review Panel, may, within fourteen (14) days after being notified of the decision of the Review Panel or within such further time as the court of law may allow, apply for judicial review in the High Court.
2. The party who intends to appeal against a decision of the Review Panel shall serve a copy of the notice of appeal on the other party to the proceedings before the Review Panel.

14. Regulations under this Part

1. The Minister may on the recommendation of the Authority and the Review Panel, issue regulations for the better carrying out of the provisions of this Schedule.

SCHEDULE: 3

THRESHOLDS

- I. **Contract awards shall be published when the estimated value of the contract is above:**
 - a. In the case of contract for the procurement of goods, US\$25,000
 - b. In the case of contract for the procurement of services, US\$10,000
 - c. In the case of contract for the procurement of works, US\$50,000

- II. **Shopping Procedures shall be used when the estimated value of the procurement is below:**
 - a. In the case of contract for the procurement of goods, US\$40,000
 - b. In the case of contract for the procurement of services, US\$40,000
 - c. In the case of contract for the procurement of works, US\$50,000

- III. **National Competitive Bidding shall be used when the estimated value of the procurement is below:**
 - a. In the case of contract for the procurement of goods, US\$100,000
 - b. In the case of contract for the procurement of services, US\$40,000
 - c. In the case of contract for the procurement of works, US\$200,000

- IV. **International Competitive Bidding shall be held when the estimated value of the procurement exceeds:**
 - a. In the case of contract for the procurement of goods, US\$100,000
 - b. In the case of contract for the procurement of services, US\$40,000
 - c. In the case of contract for the procurement of works, US\$200,000

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

Type of Contact	Contract (Threshold)	Value	Authority Approving Proposed Contract Award
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Goods/ Consultancy services	Non-	Less than US\$10,000	Head of Procuring Entity
		Over US\$10,000	Procurement Committee
Works		Less than US\$40,000	Head of Procuring Entity
		Over US\$40,000	Procurement Committee
Consulting Services		Less than \$10,000	Head of Procuring Entity
		Over \$10,000	Procurement Committee

ANY LAW TO THE CONTRARY NOTWITHSTANDING