



FEDERAL REPUBLIC OF SOMALIA

DRAFT PUBLIC PROCUREMENT, CONCESSIONS AND DISPOSAL REGULATIONS

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PART I – PRELIMINARY

Introduction to the regulations

IN EXERCISE of the powers conferred by Article 15 (1) of the Public Procurement, Concessions and Disposal Act the Minister responsible for matters relating to Finance makes the following Regulations:

Regulations 1 - Citation and Commencement (Article 1 of the Act)

These Regulations may be cited as the Public Procurement, Concessions and Disposal Regulations and shall come into operation on February 25, 2020.

Regulations 2 – Object and purpose of these regulations (Article 2 and Article 54 (2) of the Act)

These Regulations operationalise the Public Procurement, Concessions and Disposal Act. The purpose of these Regulations shall be to provide detailed rules and procedures to fulfil the objectives and carry out the provisions of the Act.

Additionally, pursuant to Article 54 (2) of the Act, a Procuring Entity shall conduct procurement and disposal in accordance with the provisions of the Act and subject to such other conditions as may be laid down in the regulations and administrative instructions issued by the Minister. These Regulations set out such conditions and administrative instructions issued by the Minister as at Commencement.

Regulations 3 – Interpretation of terms (Article 3 of the Act)

Words used in this Regulation shall have the meaning ascribed to them under Article 3 of the Act. In addition, the following words used in these Regulations, unless the context otherwise requires:

- 1) "**Approving Authority**" means the party responsible for approving the award decision for a specific procurement, or the amendment of a contract, in accordance with Article 30(2) of the Act and further specified in Schedule 1, Article 3 of these Regulations.
- 2) "**Contracts Committee**" means the body, established in Regulations 18 in accordance with Article 30(1) of the Act, which approves contract award recommendations for high value contracts.
- 3) "**Domestic Business**" means a PSP incorporated under the laws of the Federal Republic of Somalia and operating in Somalia

- 4) **“Interest”** as used in Regulations 68(1) and Article 119 (1) and (2) of the Act shall be construed to mean interest that may result in a benefit to the member or **Close relative**.
- 5) **PSP** means a private sector entity, company or firm to which the Act applies, namely a **Bidder, Consultant, Contractor or Supplier**
- 6) **“Technical expert”** mean an expert, a team of experts or advisors with the skills and knowledge related to concessions who are engaged pursuant to the Act and may advise on the technical, legal, financial and/or any other aspect of the concession or a concession processes.
- 7) **“Value for money”** refers to an assessment of the maximum net benefit to the Federal Republic of Somalia in terms of the use of the government’s resources and assessment of risk or any combination of factors used in the assessment of net benefit.

Regulations 4 – Scope of Application (Article 4 (3) of the Act)

- 1) Save as otherwise provided in the Act, these Regulations shall apply to:
 - 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.
- 2) In addition, these Regulations shall also apply to any procurement that is being made with Federal Government funds.

Regulations 5 – Non - Application (Article 5 of the Act)

Pursuant to Article 5(2) (iii) of the Act, the following rules shall apply in the Procurement of military or national security equipment:

- 1) Where the Minister responsible for Defence, or the head of any national security agency with the prior approval of Council of Ministers or the entity charged with the oversight responsibility for defence or national security, determines that any procurement related to national defence 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 defence or security.

- 2) For the purpose of Article 5(2)(iii) of the Act, 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 defence or national security.

Regulations 6 – Conflict of Interest (Article 7 of the Act)

- 1) The purpose of Regulations under this Act is to fulfill the objectives of the Act, which include the Purposes of the Act set out in Regulations 2, whereby every Procuring Entity is required to promote transparency and competition by providing equal access to bidding opportunities and information and promote integrity and fairness. Consequently, the following matters apply to employees and agents of any Procuring Authority.
- 2) An employee or agent of the Procuring Entity or a member of the Procurement Committee of the Procuring Entity who has a conflict of interest with respect to a procurement:
 - (a) shall not take part in the procurement proceedings;
 - (b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and,
 - (c) shall not be an affiliate for the Consultant to whom was awarded contract, or a member of the group of Consultants to whom the contract was awarded, but the affiliate appointed shall meet all the requirements as per the Act.
- 3) If a Procuring Entity contravenes Article 7(2) of the Act and a contract is awarded to a consultant who has a business or family relationship with a staff member of the Procuring Entity who is directly or indirectly involved in the procurement, the contract shall be terminated and all costs incurred by the Procuring Entity shall be incurred by the awarding officer.

Regulations 7 – Participation of Women in Public Procurement (Article 8 of the Act)

Pursuant to Article 8 of the Act, women shall constitute at least 30% in the composition of the Board of the Public Procurement Authority and the Independent Procurement Review Panel.

Regulations 8 – Use of e-Procurement (Article 10 of the Act)

- 1) Pursuant to Article 10 of the Act, e-procurement means the process of procurement using electronic medium such as email, the internet or other information and communication technologies;
- 2) Subject to the prior written approval of the Authority in relation to any Procurement, Information and Communication Technologies (ICT) may be used in procurement and disposal proceedings as prescribed with respect to:
 - (a) Publication of notices;
 - (b) Submission and opening of bids;
 - (c) Bid evaluation;
 - (d) Bid clarifications;
 - (e) Requesting for information on the bid or disposal process;
 - (f) Transmitting documents;
 - (g) General communication during the procurement and negotiation processes; and
 - (h) Dissemination of laws, regulations and directives.

The Authority may make further more detailed Regulations relating to the use of e-Procurement, including without limitation, in respect of authorisations and approvals and security measures.

Regulations 9 – Joint Ventures (Article 11 of the Act)

- 1) Pursuant to Article 11 of the Act and subject to any requirements which may be decided upon generally or specifically in relation to any Procurement by the Authority, if a Bidder is a joint venture, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture.
- 2) The composition or the constitution of the joint venture shall not be altered without the prior written consent of the Procuring Entity.

PART II – GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS

Regulations 10– Qualification of Bidders (Article 17 of the Act)

To comply with Article 17 of the Act, the Procuring Entity shall ensure that;

- 1) The qualification criteria listed under Article 17 of the Act and these Regulations shall as the context requires be included in the final bidding documents issued to Bidders. These may include, but are not limited to:
 - (a) Professional and technical capacity;
 - (b) Financial capability and status;
 - (c) Legal capacity to enter into contract for the procurement;
 - (d) Signed declaration that the Bidder does not have a conflict of interest in relation to the procurement;
 - (e) Tax compliance with documentary evidence from the national competent authority;
 - (f) Bidder is not insolvent, in receivership, bankrupt, or in the process of being wound up; and not the subject of legal proceedings relating to the foregoing;
 - (g) Bidder is not subject to debarment pursuant to Article 6 or 9 of the Act;
 - (h) Any other criteria required in relation to any Procurement by the Authority.
- 2) Invitation and pre-qualification documents shall clearly state:
 - (a) whether qualification criteria apply to lead contractors, subcontractors or partners in a joint venture, consortium or association;
 - (b) whether criteria will be applied individually or collectively to each contractor, subcontractor or partner; and
 - (c) any alternative criteria which apply to subcontractors or partners in a joint venture, consortium or association
- 3) Evaluation of a Bidder's qualification is based solely on the criteria indicated in the Act, these Regulations and the Bidding documents.
- 4) Evaluation of a Bidder's qualification should ensure that the requirements do not discriminate against foreign Bidders, and permit the submission of equivalent documents from the relevant authorities in the Bidder's country of origin or the submission of statements independently certified by a notary public or equivalent lawyer qualified and registered in the relevant country of origin that equivalent documentation is not issued in the Bidder's country of origin.

- 5) Verification of Bidder's qualifications may be done through pre-qualification proceedings in accordance with Regulations or post-qualification proceedings set out by the Authority from time to time. Bidder's qualification for consultancy services shall be verified as part of short-listing process in accordance with Article 95 (1) based on the information provided in expression of interest
- 6) Where prequalification procedure is applied, no limit shall be set for the number of prequalified Bidders and all Bidders who meet the minimum qualification criteria and requirements shall be invited to submit bids.

Regulations 11– Prequalification of bids (Article 19 of the Act)

- 1) Pursuant to Article 19(4) of the Act, the period for prequalification shall not be less than 14 days.
- 2) Post-qualification proceedings shall be conducted in accordance with requirements laid down from time to time by the Authority.
- 3) Pursuant to Article 19(9) of the Act, solicitation documents shall be sold at a fee not exceeding USD 100.
- 4) Pre-qualification may also be used to pre-qualify bidders for a group of similar contracts or to register suppliers to facilitate the preparation of shortlists under restricted bidding or request for quotations procedures.

Regulations 12– Clarification and Modification of Bidding and Prequalification Documents (Article 20 of the Act)

- 1) A Bidder may request a clarification from a Procuring Entity provided such a request is made at least seven (7) days prior deadline for submission of tenders.
- 2) The Procuring Entity shall within three (3) working days of receipt of the request in sub-regulation 1 above respond to all Bidders with clarifications sought and without disclosing the source.
- 3) At any time prior to the set submission deadline for tenders, the Procuring Entity may, on its own initiative or emanating from a request for clarification by a Bidder issue an addendum. In pursuance to sub regulation (3) above the Procuring Entity shall ensure that:

- (a) The addendum has been made part of the bid documents

(b)if the bid documents are amended when the time remaining before the deadline for submitting bids is less than one third of the time allowed for the preparation of the bids, or the time remaining is less than the period indicated in the instruction to Bidders, the Procuring Entity shall extend the deadline as necessary to allow the amendment of the bid documents to be taken into account in the preparation or amendment of bids.

4) Communication of the addendum shall be made in writing promptly to all Bidders and shall not include those who were not prequalified to bid.

Regulations 13– Cancellation of proceedings or rejection of bids (Article 23 of the Act)

1) Pursuant to Article 23 of the Act, the Procuring Entity shall not cancel any procurement proceedings or reject all bids prior to the time stated for acceptance of bids unless the decision to reject all bids or cancel the procurement proceedings is made strictly in accordance with the provision of Article 23 of the Act.

2) In addition to the provisions of Article 23 of the Act, the cancellation or rejection of all bids shall also be subject to the following:

(a)Submission of written report to the Procurement Committee, with a copy to the Authority, that details how the requirements stated in Article 23 of the Act have been met;

(b)Approval of the rejection or cancellation by the Procurement Committee of the Procuring Entity; and

(c)Communication of the rejection or cancellation to all Bidders within seven (7) days after the decision has been made.

3) For the purposes of Article 23 of the Act, the Procuring Entity shall ensure that all bidding documents indicate that the Procuring Entity has the right in accordance with the Act to reject all bids or cancel the procurement proceedings at any time prior to the signing of the procurement contract.

Regulations 14– Public Notice of Contract Awards (Article 24 of the Act)

Pursuant to Article 24, the threshold above which contract awards must be published is listed in the Schedule 1, Article 1 of these Regulations.

Regulations 15– Debriefing of unsuccessful Bidders (Article 25 of the Act)

- 1) An unsuccessful Bidder may, by notice in writing to the Head of the Procuring Entity, request for a statement on the general reasons for which its bid was deemed unsuccessful.
- 2) The Procuring Entity shall inform the unsuccessful Bidder in writing of the reason(s) within ten (10) days following receipt of the request referred to in paragraph 1) above.
- 3) Information provided to unsuccessful Bidders shall be in writing and copies shall be kept as part of the record of procurement proceedings required under Article 31 of the Act.
- 4) Any response to a request for debriefing shall comply with Article 31(8) of the Act.

Regulations 16– Procurement Planning (Article 27 of the Act)

Each Procuring Entity shall follow the requirements of the Act and the following procedures in the preparation of Procurement Plans:

- 1) The Authorizing Officer of the Procuring Entity shall develop the Procurement Plan for each financial year and submit it to the Procurement Committee for approval in accordance with Article 27.
- 2) The Procuring Entity shall, as part of the budget preparation process for each fiscal year and taking into account the Government’s annual budget, prepare a proposed Procurement Plan.
- 3) As required by Article 27(3)(a) of the Act, the proposed Procurement Plan shall, if it contains an individual procurement in excess of the threshold specified in Schedule 1, Article 2 of these Regulations submit its Procurement Plan to the Authority for approval. Such submission shall occur prior to the Procuring Entity’s budget approval.
 - (a) Where the Authority approves the Procurement Plan it will do so by notice in writing to the Procuring Entity.
 - (b) Where the Authority does not approve the Procurement Plan, the Authority shall notify the Procuring Entity in writing of the reason for the non-approval and the Procurement Entity shall review or modify the Procurement Plan as required by the Authority and re-submit to the Authority for consideration and approval. Pursuant to Article 27(4) of the Act the Procuring Entity shall ensure the following when executing the approved Procurement Plan:
 - (i) Every procurement is identifiable in the approved Procurement Plan and adequate funds are available within

the remaining budget, prior to initiating the procurement proceedings.

- (ii) Notwithstanding the provision of regulation sub (a) above, a Procuring Entity may initiate a procurement proceeding, up to, but not including contract award, prior to formally committing the funds required,
 - (iii) Where the Procuring Entity seeks to initiate a multi-year contract, which will commit the Procuring Entity to make payments in subsequent years fiscal years, the Procuring Entity shall obtain written approval of the Authority and the Ministry of Finance, prior to initiating the procurement proceedings; and ensure that the funds for future fiscal years are included in the Procurement Plans and the budgets for subsequent fiscal years.
- 4) Pursuant to Article 27(3)(b) of the Act, individual procurements in excess of the threshold specified in Schedule 1, Article 3 must receive approval of the Contracts Committee of all tender documentation prior to the publication of any procurement notice.

Regulations 17– Price Adjustment (Article 29 of the Act)

- 1) Pursuant to Articles 29 and 30 of the Act, the Procuring Entity shall not adjust the price stated in the procurement contract unless:
 - (a) The provisions of this Regulation are complied with; and
 - (b) the procurement contract:
 - (i) permits the price adjustment;
 - (ii) states the circumstance for the adjustment; and
 - (iii) provides for the formula or method for the determination of the adjustment.
- 2) Where provision is made for price adjustment, an adequate contingency amount shall be provided in each contract to cater for the possible upward adjustment calculated in accordance with the formula or method for the determination of the adjustment set out in the procurement contract.
- 3) Pursuant to Article 29(2)(d) of the Act, the Procuring Entity shall amend contracts by the following procedures:
 - (a) The Procuring Entity shall prepare a written contract amendment;
 - (b) the Procuring Entity shall obtain the approval as required by Article 30.2 of the Act;

- (c) Contract amendment shall only be valid when signed by the authorised representatives of both the Procuring Entity and the supplier and submitted to the Auditor General as required by Article 84.2.
- 4) Pursuant to Article 29(3) of the Act, the procurement contract may also stipulate the maximum percentage of not more than 30% of the initial price or the remaining price for which an upward adjustment may be permitted.
- (a) In any procurement contract where a maximum upward adjustment of 30% is stipulated there shall be a statement that, should a price adjustment lead to an increase exceeding the stipulated percentage, the Procuring Entity may terminate the contract. The additional requirement shall be treated as a new procurement requirement.
- (b) Where the additional requirement meets the conditions for the use of Direct Contracting as specified in Article 89 of the Act, the Procuring Entity may request approval for Direct Contracting from the Authority.
- 5) Notwithstanding any price adjustment specified in a contract, and pursuant to Article 30 (3) of the Act, price adjustments will also require the approval of the relevant Approving Authority, as determined based on the thresholds in Schedule 1, Article 3, if the adjustment would result in an increase in price of more than 10% from the original award price.

Regulations 18– Approval and Amendments to Contracts (Article 30 of the Act)

- 1) Pursuant to Article 30(1) of the Act, the Minister establishes a Contracts Committee for the purposes of approval of proposed contract awards with contract prices above the level specified in Sub-Regulation 4. The Contracts Committee is to be comprised of five members:
- (a) the Director General of the Ministry of Finance,
- (b) the Ministry of Finance Budget Director,
- (c) the Ministry of Finance Procurement Director,
- (d) a representative from the Prime Minister’s Office, and
- (e) the Ministry of Public Works, Reconstruction and Housing.

A minimum of three of the five named members must be present in order for the Contracts Committee to have quorum. If a contract to be approved is being procured by the Ministry of Finance, then at least one of the members present must be from outside of the Ministry of Finance.

- 2) When, following completion of a selection process, the Contracts Committee reviews a proposed contract award, the Contracts Committee shall perform the following functions:
 - (a) Review the tender process and all relevant documentation including tender documents, evaluation reports, bids received, communication between the Procuring Entity and bidders, and any minutes of negotiation with a winning bidder, etc. to confirm that the process was conducted in accordance with the Act and these Regulations.
 - (b) Review the proposed contract to ensure that it is consistent with
 - (i) the tender documentation;
 - (ii) any templates whose use is required by the Authority;
 - (iii) applicable budget constraints; and,
 - (iv) any other legal or best practice contracting requirements.
- 3) Where the Contracts Committee is required to review a procurement, it shall endeavor to undertake a review within twenty-one (21) days of the submission of all relevant documentation by the Procuring Entity. A representative of the Procuring Entity shall be invited to attend an initial meeting where the procurement is being discussed; however, the Contracts Committee is not obliged to invite a representative of the Procuring Entity to any subsequent discussion of the procurement. In the event that the Contracts Committee does not approve an award decision, the Contracts Committee shall provide a rationale for its decision and indicate whether any errors in the procurement process can be rectified in order to enable the award of a contract.
- 4) Schedule 1, Article 3 of these Regulations provides the thresholds which determine the appropriate Approving Authority for the award or amendment of a procurement or contract. The Contracts Committee shall be the Approving Authority for any contract award or any contract amendment where the value of the contract is:
 - (a) in the case of contracts for the procurement of goods at or above US\$1,000,000;
 - (b) in the case of contracts for the procurement of services at or above of US\$1,000,000; or
 - (c) in the case of contracts for the procurement of works at or above US\$2,000,000.

- 5) Pursuant to Article 30(2), where the Authority is required to approve a contract amendment, it will delegate its approval to the relevant Approving Authority specified in Schedule 1, Article 3.

Regulations 19 – Debarment of suppliers, contractors and consultants (Article 33 of the Act)

- 1) For purposes of Article 33(1) of the Act, debarment procedures shall be as follows:-

- (a) Debarment requests may be managed by a debarment committee to be established by the Authority pursuant to subsequent Regulations, but until such committee is established, debarment requests shall be managed by the Review Panel which shall hear debarment requests in relation to a potential PSP that have been submitted to the Authority. The Review Panel will (i) consult with the affected Procuring Entity to consider all the facts of the case; (ii) consider whether the PSP should be debarred from participation in a procurement on one of the grounds set out in Article 33 (2), Article 16 (fraud and corruption); and (iii) make a written recommendation to the Director of the Authority;
- (b) A debarment request shall be initiated by the Authorizing Officer of a Procuring Entity, with knowledge of facts that may support one or more grounds for debarment;
- (c) A request for debarment of a PSP may also be initiated on the recommendation of a law enforcement agency with an investigative mandate;
- (d) The Authority may issue instructions as to any format of debarment forms to Procuring Entities;
- (e) The Director of the Authority shall, within thirty (30) days of receipt of the Review Panel's recommendation review, determine whether the debarment request shall be granted or not;
- (f) If the Director determines the debarment request shall be granted in accordance with the provisions of this Regulation, he shall issue a written notice of intended debarment to the PSP who is the subject of the debarment proceedings who shall become the respondent and send a copy to the relevant Procuring Entity's Authorizing Officer and/or, if the request for debarment originated from any law enforcement agency with an investigative mandate, to such agency;
- (g) The notice of intended debarment issued under sub-regulation (f) above, shall contain the grounds of debarment, a brief statement of the facts in support of debarment and the consequences that will arise from the debarment;

- (h) The respondent shall within fourteen (14) days of receipt of a notice of intended debarment, file a written response with the Review Panel;
- (i) Where the facts of the intended debarment are contested, the Review Panel shall within twenty-one days of receipt of the response in sub-regulation (h) above, hold a debarment hearing to determine the disputed facts;
- (j) A notice of 7 days shall be given to the affected Procuring Entity and the PSP to appear before the Review Panel;
- (k) The Review Panel shall prepare a report of its findings with a recommendation on the debarment and present it to the Director of the Authority;
- (l) The Director of the Authority may either reject or approve a recommendation for debarment within thirty days;
- (m) Where the Director of the Authority approves a recommendation for debarment, such debarment shall be for a period of not less than three years.
- (n) The decision to debar a PSP shall promptly be communicated to the parties involved in the debarment proceedings, together with any person firm or company referred to in paragraph (r) below;
- (o) After the expiry of twenty-one days from the date of the debarment decision, the Review Panel shall publish the details of the PSP debarred and the corresponding period of debarment;
- (p) The Review Panel shall forward the details of the debarred PSP to the Minister for gazettelement;
- (q) A decision to debar a PSP shall not relieve the debarred PSP of the obligations under any contract entered into with any Procuring Entity before the debarment, and;
- (r) Debarment of a PSP shall also apply to the individuals who are the owners of the debarred PSP and any companies they form after debarment (and during the term of the debarment).

Regulations 20 – Margin of domestic preference and preference scheme (Article 34 of the Act)

- 1) Pursuant to Article 34 of the Act, the Procuring Entity may grant a margin of domestic preference (“Margin of Preference”) to Domestic Businesses under International Competitive Bidding provided the Procuring Entity has indicated in the bidding documents that a Margin of Preference shall be applicable.
- 2) The Margin of Preference at the percentages set out in Article 34(1)(3) shall be stated in the bidding documents which shall set out all the relevant criteria.

PART III – INSTITUTIONS ESTABLISHED FOR MANAGING PUBLIC PROCUREMENT

A. PUBLIC PROCUREMENT AUTHORITY

Regulations 21 – Membership and Appointment of the Board (Article 38 of the Act)

- 1) Pursuant to Article 38(3), the Minister may nominate members from the following professional associations or their respective internationally recognized equivalent associations:
 - (a) Chartered or Certified Public Accountants;
 - (b) Institute for Supplies Management; or
 - (c) Institute of Engineers.

Regulations 22 – Financing of the Authority (Article 45 of the Act)

- 1) Pursuant to Article 45 of the Act, all funds accruing to the Authority shall be deemed to be Public Funds and the use of such funds shall be subject to the general or specific guidelines issued by the Ministry responsible for Finance matters regarding the use of Public Funds.
- 2) In accordance with Article 45(2) of the Act, the fees paid by appellants who file appeals to the Authority shall be limited to minimal sums that are enough to cover the cost of reproduction and photocopying of the Authority's application forms and such amounts shall be determined from time to time by the Authority and made known to the public by means of general notice on fees applicable to the lodging of complaints.

Regulations 23 – Accounts and Audit (Article 46 of the Act)

- 1) Pursuant to Article 46 of the Act, the Authority shall:
 - (a) Manage and operate the Authority's accounting system in such a manner as to ensure accountability and transparency in the use of all funds of the Authority.
 - (b) Ensure that the Authority's accounting system has been approved by the Accountant General or any other appropriate government authority.
 - (c) Secure the efficient and effective use of appropriations made available to the Authority within the ambit of government policy and in compliance with any enactment or instructions issued under the authority of the applicable enactment.
 - (d) Prepare, sign and submit within the time specified under the applicable law, the annual report of the Authority in the form prescribed by the Accountant General or the appropriate government authority pursuant to Article 48.

- (e) Answer questions raised by the Auditor General or the legislature in respect of the financial transactions and accounts of the Authority.

B. PROCURING ENTITIES

Regulations 24 – Procuring Entities (Article 54 (4) of the Act)

- 1) Pursuant to Article 54 (4) of the Act, the following procedures shall be followed in the inspection and acceptance of receipt of goods:
 - (a) The technical departments of the Procuring Entity shall immediately after the delivery of the goods:
 - (i) ensure that the correct quantity of the goods is received;
 - (ii) inspect and where necessary, test the goods received;
 - (iii) inspect and review the goods in order to ensure compliance with the terms, technical standards and specifications defined in the contract;
 - (iv) ensure that the goods have been delivered or completed on time, or that any delay has been noted;
 - (v) ensure that all required manuals or documentation has been received;
 - (vi) accept or reject, on behalf of the Procuring Entity, the delivered goods; and
 - (vii) issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

C. PROCUREMENT COMMITTEES

Regulations 25 – Functions of the Procurement Committee (Article 59 of the Act)

- 1) In reviewing the activities leading to the selection of the lowest responsive evaluated bid (where the same is required by the Procurement Plan and the relevant bidding documents) by the Procuring Entity, the Procurement Committee shall ensure that the lowest responsive evaluated bid meets the following requirements:
 - (a) All responsiveness requirements stipulated in the bid documents;
 - (b) All minimum technical, commercial, financial and any other requirements stipulated in the bid documents;
 - (c) The bid price has been evaluated to be more favourable than those submitted by other responsive and qualified Bidders on the evaluation terms set out in the bid documents; and
 - (d) All requirements of law and regulation of the Federal Republic of Somalia have been complied with

- 2) The Procurement Committee shall carry out its functions for all procurement activities within the Procuring Entity irrespective of whether the source of funding is from the Federal Republic of Somalia, donor fund or any other source.

D. PROCUREMENT UNITS

Regulations 26 – Procurement Units (Article 61 of the Act)

- 1) Pursuant to Article 61(2) of the Act, the location, structure, size and level of staffing of the Procurement Unit, shall be determined by the procurement workload of the Procuring Entity, taking into account the volume, value, complexity and type of procurement conducted, each as set out in the Procurement Plan. The Procurement Unit shall include staff with appropriate technical skills, particularly where a Procuring Entity has a significant volume of specialised procurement or procurement activity requires significant technical input. Staff of the Procurement Unit shall be appointed in accordance with the normal procedures applicable to the Procuring Entity, taking into account the certification and Guidelines issued by the Authority
- 2) The Secretary to the Procurement Committee shall be the Head of the Procurement Unit and its chairperson
- 3) The Procurement Unit shall report to the Authorizing Officer, who is also the Chairperson of the Procurement Committee.
- 4) The Procurement Unit shall carry out the functions of ascribed to it in Article 61 (4) and operate under the supervision of the Procurement Committee which shall be responsible for the Procurement Plan as set out in Article 27 and Regulations 16.
- 5) The Procurement Committee may request clarification and/or information from the Procurement Unit at any time.
- 6) In conducting its functions, the Procurement Unit shall at all times liaise with:
 - (a) the originating officer or end-user who initiated the procurement, to ensure that the procurement meets the requirement;
 - (b) the Procurement Committee, to ensure that all required approvals are obtained promptly; and
 - (c) the Authority and other oversight bodies, to share appropriate information and facilitate the conduct of monitoring and other functions of the Authority.

E. BID AND PROPOSAL EVALUATION COMMITTEE

Regulations 27 – Evaluation Committee (Article 62 of the Act)

- 1) In the establishment of an Evaluation Committee by the Authorizing Officer under Article 62 (1) of the Act, the Procurement Committee shall ensure that:
 - (a) Persons who are qualified and required to serve on the Committee for the evaluation of bids are invited formally by a letter of invitation to serve on the Evaluation Committee for the specific purpose.
 - (b) A person who accepts to serve on the Evaluation Committee shall give a written undertaking indicating that no conflict of interest exists in the performance of his/her responsibilities as a member of the Evaluation Committee and if any conflict of interest subsequently arises for any reason to declare it.
- 2) If the Authorizing Officer detects or is of the view that there is or there would be conflict of interest, such a person shall be removed from the Evaluation Committee.
- 3) The Authorizing Officer shall ensure that in the selection of qualified persons or experts for the composition of the Evaluation Committee due regard is given to the subject matter of the bid or the expertise required for the evaluation of the bid.
- 4) Performance of the Evaluation
 - (a) In the evaluation of the bids, the Evaluation Committee shall ensure that they stay within the confines of the predetermined and published evaluation criteria outlined to the Bidders in the bid documents.
 - (b) Where the Authorizing Officer does not specify the Chairperson of the Evaluation Committee, the members of the Evaluation Committee shall elect one of their numbers to serve as chairperson of the Evaluation Committee.
 - (c) The decision of the Evaluation Committee shall be unanimous provided that where the committee cannot decide unanimously on an issue, their decisions may be taken by vote of the majority of Evaluation Committee members.
 - (d) Where there is a tie in votes regarding the decision of the Evaluation Committee, the chairperson shall have a casting vote to determine the matter.
 - (e) Unless otherwise determined by the Authorizing Officer, the Evaluation Committee shall be deemed dissolved immediately after the submission of the evaluation report to the Procurement Unit.

F. GENERAL RULES REGARDING CONDUCT OF PROCUREMENT INSTITUTIONS

Regulations 28 – Delegation of powers by the Authorizing Officer (Article 64 of the Act)

1) Pursuant to Article 64(2) of the Act, an Authorizing Officer may engage the services of a procuring agent or another Procuring Entity, subject to the following provisions: -

(a) An Authorizing Officer may engage the services of a procuring agent where there is lack of technical capacity in the Procuring Entity to carry out a procurement or disposal function;

(b) An Authorizing Officer may engage the services of a another Procuring Entity where: -

(i) that other Procuring Entity has specialised knowledge, expertise or experience in the subject matter of the procurement or disposal;

(ii) the procurement or disposal is common to both Procuring Entities;

(iii) where a project is implemented by both Procuring Entities jointly;

(iv) where it would be more economical or efficient to contract out a procurement or disposal function; or

(v) for any other justifiable reason.

2) Where an Authorizing Officer delegates authority to a procuring agent, the Authorizing Officer shall select the procuring agent from the providers pre-qualified by the Authority.

Regulations 29– Time of Entering an Agreement (Article 68 of the Act)

1) Subject to receiving all required approvals, the Procurement Entity may enter into a procurement contract after the expiration of the fourteen (14) day waiting period if no notice is received from the Authority.

PART IV – PROCUREMENT METHODS AND PROCEEDINGS

A. SELECTING PROCUREMENT METHOD

Regulations 30 – National Competitive Bidding (Article 71 of the Act)

- 1) Where the Procuring Entity employs National Competitive Bidding pursuant to Article 71 of the Act, the Procuring Entity shall ensure that:
 - (a) The contract amount is within the threshold specified under Schedule 1, Article 4 of these Regulations
 - (b) The procedure for the bidding complies with the Act and these Regulations.
 - (c) The bidding is restricted to only Domestic Businesses.

Regulations 31 – International Competitive Bidding (Article 72 of the Act)

- 1) Where the Procuring Entity employs International Competitive Bidding pursuant to Article 72 of the Act, the Procuring Entity shall ensure that:
 - (a) The contract amount falls within the threshold value specified under Schedule 1, Article 5 of these Regulations and that all the processes set out in Article 72 of the Act are complied with.
 - (b) Submission of bids shall be open to:
 - (i) Domestic Businesses; and
 - (ii) Foreign Firms / Entities.
 - (c) The bidding documents and conditions of contract are of internationally accepted standard.
- 2) The Procuring Entity may grant a Margin of Preference to Domestic Businesses under International Competitive Bidding as provided in these Regulations.

B. PROCUREMENT PROCEEDINGS FOR OPEN COMPETITIVE BIDDING

Regulations 32 – Solicitation for participation in bidding proceedings (Article 75 of the Act)

- 1) Where a Procuring Entity issues an invitation to bid in accordance with Article 75 of the Act, the following procedures shall, where the context requires, apply in addition to Article 75:
 - (a) Invitation to bid shall not be issued or published unless bidding documents are ready for issuance to interested Bidders.
 - (b) A minimum of two publications for National Competitive Bidding in at least two newspapers of wide circulation in Federal Republic of Somalia and on the Authority's Website. For International Competitive Bidding it

shall, in addition to the two publications in the national media, be made in at least one newspapers of wide international circulation on one occasion and on the Authority's Website.

(c) In addition to the provision of Sub-Regulation (b) of this Regulation, invitations to bid in respect of International Competitive Bidding procurement may also be made through circulation to foreign Embassies with missions in Federal Republic of Somalia.

(d) Invitation to bid may be issued before budget approval has been given, as a means of minimizing delays in completing the procurement process but no contract shall be entered into prior to the approval of the budget.

Regulations 33 – Bidding documents (Article 76 of the Act)

No bidding document other than the bidding documents approved by the Authority shall be issued by a Procuring Entity.

Regulations 34 – Bid Security and Bid Securing Declaration (Article 78 of the Act)

- 1) The amount of bid security shall be expressed in absolute terms, and not as a percentage of the bid price.
- 2) Notwithstanding the requirement to fix bid security in absolute terms, the amount stipulated by the Procuring Entity as bid security shall not in any event exceed five percent (5%) of the estimated value of the proposed contract rounded up to the nearest 10, or 100, or 1000, or 10,000 etc, as the case may be.
- 3) When the Procuring Entity adopts two-stage bidding, it shall observe the provision of Sub-Regulation 2 these Regulations in respect of bid security.
- 4) Bid Security and Bid Securing Declaration shall be in the format provided in the Bidding Documents.

Regulations 35 – Bid opening (Article 79 of the Act)

- 1) Pursuant to Article 79 of the Act, bids shall be opened by the Procuring Entity within one hour after the deadline for submission of bids and the provision of Article 79(2) of the Act shall be complied with at all times.
- 2) If any circumstance shall prevent the bids from being opened within the period stipulated in Sub-Regulation (1) of this Regulation, then the Procuring Entity shall take steps to ensure the bids are opened as soon as practical in the presence of Bidders' representatives.

Regulations 36 – Examination, evaluation, and comparison of bids (Article 80 of the Act)

- 1) The Procuring Entity shall examine the bids submitted to ensure that the bids satisfy the requirements of Sub-Articles (1) and (2) of Article 80 of the Act.
- 2) Where the bids satisfy the requirements of Sub-Articles (1) and (2) of Article 80 of the Act, the bids shall be evaluated in accordance with the procedure stated in the Act and Regulations 37.
- 3) In addition to the procedure stated under Article 80 of the Act, the following shall apply to the Evaluation Committee:
 - (a) The examination, evaluation and comparison of bids shall be carried out by an evaluation committee constituted by the Procurement Committee in accordance with Article 62 of the Act and Regulations 27.
 - (b) Membership of the evaluation panel shall not be disclosed directly or indirectly to Bidders.
 - (c) During the evaluation, if it is necessary to communicate with any Bidder, it shall be done in writing, which may be in an electronic format, and shall be signed by the Authorizing Officer or signed on his behalf by the head of the Procurement Unit.
 - (d) The evaluation shall be in accordance with the process and procedure set out in the bidding documents (subject to any overriding provision of the Act or Regulation);
 - (e) After all responsive bids have been subjected to detailed evaluation the “lowest evaluated bid” shall therefore be deemed to be the “lowest evaluated responsive bid” subject to any weighting awarded to the technical evaluation set out in the bidding documents.

Regulations 37 – Assessment of Responsiveness of Bids

In order to establish the “lowest evaluated responsive bid” the following procedures shall apply:

- 1) Bids which are not complete, not signed, not accompanied by a bid security in the prescribed form, if one is required, or not accompanied by essential supporting documents, as required by the Act, any Regulations or the bidding documents, such as business registration certificates, business licences and tax certificates, or are non-responsive to the technical specifications or contract conditions or other critical requirements in the bidding documents, shall be rejected and excluded from further evaluation and comparison. Material deviations, reservations or omissions may typically include:
 - (a) unacceptable time schedules, where it is stated in the bidding document that time is of the essence;

- (b) unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; or
- (c) unacceptable counterproposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.

2) Correction of Non-conformities, Errors and Omissions

The Procuring Entity may waive non-conformities, errors or omissions, which do not constitute material deviation as follows:

- (a) The non-conformity, error or omission shall be quantified in monetary terms to the extent possible and taken into account in the financial evaluation and comparison of bids.

The Procuring Entity may correct purely arithmetical errors in bids in accordance with the procedure stated in Sub-Article 6 of Article 80 of the Act.

3) Technical Evaluation

The Evaluation Committee shall conduct a technical evaluation by comparing each bid to the technical requirements of the description of goods, works or services in the bidding documents, to determine whether the bids are substantially responsive.

The technical evaluation shall determine substantially bids by taking into account the following:

- (a) conformity to specifications, standards, samples, drawings or terms of reference, without material deviation or reservation;
- (b) satisfactory understanding of an assignment, as demonstrated by any methodology or design; or
- (c) suitable staffing or arrangements for supervision or management of an assignment.
- (d) The evaluation shall not take into account any requirements which were not specified in the Bidding Document.
- (e) When a point system is used for evaluation of technical proposals, all bids scoring less than the threshold set for qualification shall not proceed to the next stage - evaluation of financial proposals. The financial envelopes of such bids shall be returned to the Bidders unopened.

4) Alternative Bids

Alternative bids shall not be permitted, except where specifically indicated in the bidding document and where the prior written consent of the Authority has been obtained. The Procuring Entity may permit alternative bids, where:

- (a) it is anticipated that Bidders may be able to offer goods, works or services which do not conform precisely to the description of requirements, but which meet the objectives of the procurement in the same manner.

- (b) the procurement is in respect of areas of rapidly changing technology or where a need could be satisfied in a number of different ways and the Procuring Entity wishes to encourage cost efficient and technically innovative approaches by Bidders.
- (c) Where alternative bids are permitted, the bidding documents shall state that the alternative bid does not need to conform precisely to the description of requirements, but must:
 - (i) meet the objectives or performance requirements prescribed in the description of requirements;
 - (ii) be substantially within any delivery or completion schedule, budget and other performance parameters stated in the bidding documents; and
 - (iii) clearly state the benefits of the alternative bid over any solution which conforms precisely to the description of requirements, in terms of technical performance, price, operating costs or any other benefit.
- (d) Alternative bids shall be evaluated in the same way as other bids, except that the technical evaluation shall take into account only the objectives or performance requirements prescribed in the description of requirements in the bidding document.

5) Financial Evaluation and Comparison

The evaluation shall comprise a financial evaluation and comparison to determine the evaluated price of each bid and determine the lowest evaluated bid, subject to any weighting awarded to the technical evaluation set out in the bidding documents.

The evaluated price for each bid shall be determined by:

- (a) taking the bid price, as read out at the bid opening;
- (b) correcting any arithmetic errors, in accordance with the methodology stated in the Act and/or the bidding documents;
- (c) applying any non-conditional discounts offered in the bid;
- (d) converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding documents; and
- (e) applying any Margin of Preference required in the bidding documents which is in compliance with the Act and Regulations.
- (f) Bids shall be compared by ranking them according to their evaluated price and determining the bid with the lowest evaluated price.
- (g) Where the bidding document included more than one lot and permitted Bidders to offer discounts, which were conditional on the award of one or more lots, the Evaluation Committee shall conduct a further financial evaluation, to determine the lowest evaluated combination of bids.

6) Application of Discounts

- (a) Bidders shall be permitted to offer discounts to their bids, but these must be included within their bids and read out at the bid opening.
- (b) Any discount offered after the deadline for submission of bids and not included in the Bidder's bid shall not be taken into account.
- (c) Any non-conditional discounts shall be taken into account in the financial evaluation and comparison of bids.
- (d) Bidders may also be permitted to offer discounts, which are conditional on the award of one or more lots. Conditional discounts shall be taken into account in a further financial evaluation.
- (e) Any prompt payment discount included in a bid shall become a term of the contract, if that bid is accepted, and shall be utilized by the Procuring Entity, if payment is made in accordance with the terms of the discount. However, prompt payment discounts shall not be considered in the evaluation and comparison of bids.

7) Post Qualification

- (a) The Procuring Entity shall conduct a post-qualification of the Bidder who submitted the lowest evaluated responsive bid, to determine whether the Bidder remains qualified in accordance with the bidding document requirements.
- (b) Where any such Bidder is determined not to be so qualified, the bid shall be rejected and the same post-qualification conducted on the Bidder who submitted the next lowest evaluated responsive bid provided that the Procuring Entity is not bound to accept any such next lowest Bidder's bid, even though qualified, especially if to do so would adversely affect affordability or Value for Money.

8) Evaluation Report and Recommendation

The evaluators shall prepare an evaluation report for submission to the Procurement Committee and/or any other required authority for the award of contract.

The evaluation report shall include:

- (a) a summary of the bids received and opened;
- (b) the results of the preliminary examination
- (c) the results of the technical evaluation;
- (d) reasons why any bids were declared non-responsive;
- (e) details of any non-material deviations, which were accepted and the way in which they were quantified and taken into account in the technical or financial evaluation;

- (f) the evaluated price of each bid, showing any corrections or adjustments to the bid price and any conversion to a common currency;
- (g) the ranking of the bids, according to their total evaluated price;
- (h) a statement of the lowest evaluated substantially responsive bid, for each lot where applicable;
- (i) a summary of the application of any conditional discounts and the lowest evaluated combination of bids, where applicable;
- (j) the results of any post-qualification; and
- (k) a recommendation to award the contract or contracts to the lowest evaluated responsive bid or combination of bids or the cancellation of the procurement process.

Regulations 38 - Prohibition of Negotiations (Article 82 of the Act)

Where the bid price of the lowest evaluated responsive bid exceeds the approved budget for the specific procurement by a substantial margin, the Procuring Entity shall investigate the causes for the excessive cost and may consider requesting new bids on the basis of revised bidding documents or, subject to approval by the Procurement Committee and following the procedure set out in this Regulation below, any guidelines issued by the Authority and any approvals required by the Act or Regulation, may negotiate a contract with the lowest evaluated Bidder to try to obtain a satisfactory contract through a reduction in scope of the contract which can be reflected in a reduction of the contract price.

During such price negotiations, the total contract price may be revised downward to be commensurate with the revised scope of works of the bid but the rates or prices of the Bidder shall not be a subject of negotiations.

The provision under Article 80(6) of the Act for the correction of arithmetical errors shall not be employed to change in the rates in the bid or negotiate the price of the contract.

Regulations 39 - Award of Contract (Article 83 of the Act)

- 1) Pursuant to Article 83(3) of the Act, all contracts valued above the threshold requiring the use of International Competitive Bidding, set out in Schedule 1, Article 5 of these Regulations, shall be subject to notification of award to all responsive Bidders and the Authority.
- 2) The Procuring Entity may execute and complete the contract in accordance with the provisions of Article 83 (4) only after receiving the written approval to do so from the appropriate Approving Authority as required by Article 30 (1) and further specified in Schedule 1, Article 3 of these Regulations.

**Regulations 40 - Acceptance of bid and entry into force and signature of Contract
(Article 84 of the Act)**

- 1) Pursuant to Article 30 (1) of the Act, no contract may come into force unless and until it is approved by the relevant Approving Authority specified by Schedule 1, Article 3 of these Regulations.
- 2) In order to initiate the registration of a contract by the Auditor General as required in Article 84(2)(a), the Procuring Entity shall submit the procurement contract intialied by the Procuring Entity and the supplier or contractor.

Regulations 41 - Two Stage bidding (Article 85 of the Act)

- 1) Pursuant to Article 85 of the Act, two stage bidding may be used for the procurement of goods, works and services.
- 2) Where two stage bidding procedures are adopted in accordance with Article 85 of the Act, only PSPs that respond to the first stage may be invited to participate in the second stage.
- 3) Bids submitted at the second stage shall be evaluated and compared in accordance with criteria and methodology included in the bidding documents and these Regulations.
- 4) There shall be no requirement for the submission of bid security in the first stage but bid securities may be required at the second stage.

C. OTHER PROCUREMENT METHODS

Regulations 42 - Limited or restricted competitive bidding (Article 86 of the Act)

- 1) In the event a Procuring Entity seeks to use limited or restricted competitive bidding pursuant to Article 86, it must obtain the prior written approval of the Authority where the estimated contract value exceeds the thresholds specified in Schedule 1, Article 6 of these Regulations, depending on the contract value. In requesting such approval, the Procuring Entity must demonstrate in writing that one or more of the conditons set out in Article 86 prevail and obtain approval of the procurement process proposed to be used. For the avoidance of doubt and as set out in Article 86 (2), the procurement process to be utilised for any limited or restricted competitive bidding shall be the same as set forth in Articles 69-83. The Authority may, in its absolute discretion, give or refuse its approval to limited or restrictive competitive bidding.

Regulations 43 - Request for quotations (Article 88 of the Act)

- 1) Where the requirements of Article 88 of the Act have been met the Procuring Entity shall strictly comply with the procedures under Part IV (B) of the Act, in addition to these Regulations.
- 2) The Procuring Entity shall use Requests for Quotations in accordance with the provisions of Schedule 1, Article 7 of these Regulations.
- 3) The Procuring Entities shall use the standard bidding document for “Request for Quotations” issued by the Authority.
- 4) Bidders shall be given at least 7 days to prepare and submit their quotation.
- 5) Quotations shall be sealed and deposited in a tender box as in other methods of competitive bidding.
- 6) Quotations shall be opened in public in the presence of Bidders’ representatives who choose to attend.
- 7) The bids shall be evaluated by the Evaluation Committee constituted in conformity with Article 62 of the Act.
- 8) The Procuring Entity shall refer the recommendation for award to the appropriate Approving Authority in accordance with the corresponding threshold set out in Schedule 1, Article 3 of these Regulations.

Regulations 44 - Direct Contracting (Article 89 of the Act)

- 1) In the event a Procuring Entity seeks to use Direct Contracting pursuant to Article 89, it must obtain the prior written approval of the Authority if the contract value exceeds the threshold specified in Schedule 1, Article 8 of these Regulations. In requesting such approval, the Procuring Entity must demonstrate in writing that one or more of the conditions set out in Article 89 prevail and obtain approval of the procurement process proposed to be used. The Authority may, in its absolute discretion, give or refuse its approval to Direct Contracting.
- 2) When a Procuring Entity must seek approval to use Direct Contracting in accordance with sub-article 1), it must also publish notice of holding direct procurement proceedings as required by Article 89 (4).

Regulations 45 - Procurement through Framework Contract (Article 90 of the Act)

- 1) Contract of Procurement through Framework Contract shall follow the principles set forth under Regulations 54.

PART V – PROCUREMENT OF CONSULTING SERVICES

A. GENERAL PROVISIONS

Regulations 46 - Scope of consulting services (Article 91 of the Act)

1) Pursuant to Article 91(2) of the Act, the following procedures and guidelines shall be followed in conducting consultancy services negotiations: -

(a) For the purpose of Article 91(2) of the Act, a Procuring Entity may, before award of contract conduct negotiations with a consultant to whom an award of contract is recommended.

(b) The negotiations for all selection methods, except the quality based selection method and the direct selection method or the consultants qualifications method, relate only to: -

- (i) minor alterations to the terms of reference or the method proposed by the consultant, to take into account the comments of the consultant on the terms of reference;
- (ii) the scope of the assignment and the inputs to be used;
- (iii) minor amendments to any special conditions of the contract;
- (iv) the arrangements for payment under the contract;
- (v) the work plan and completion schedule to accommodate any changes in the terms of reference or a request made by the Procuring Entity;
- (vi) the inputs required from the Procuring Entity; or
- (vii) clarification of any details that are not apparent or which could not be finalised at the time of submission of expression of interest.

(c) Where direct selection method, qualitybased selection method or the consultants qualifications method is used, the negotiations shall relate only to: -

- (i) alterations to the terms of reference or the method proposed by the consultant;
- (ii) a reduction of inputs for budgetary reasons;
- (iii) amendments to any special conditions of the contract;
- (iv) the payment terms and arrangements;
- (v) proposal unit rates;
- (vi) the work plan and completion schedule;
- (vii) inputs required from the procuring and disposing entity; or

(viii) clarification of any details that are not apparent or which could not be finalised at the time of submission of expression of interest.

(d) The negotiations held under this regulation shall not: -

(i) substantially change the technical quality or details of the procurement requirement, including the tasks or responsibilities of the consultant; and

(ii) materially alter the terms and conditions of the contract stated in the request for proposal.

2) Pursuant to Article 91(3) of the Act, a Procuring Entity shall choose any of the types of contracts specified in Schedule 3 of these Regulations to use for a particular assignment.

B. SELECTION BASED ON QUALITY AND COST

Regulations 47 - Quality and Cost-Based Selection (Article 94 of the Act)

- 1) For the purposes of Article 94 of the Act, “quality cost based selection (QCBS) method” means the method of selecting consultants which takes into account the quality of the of the proposal and the cost of the services in the selection of the consultant.
- 2) The Procuring Entity shall use QCBS where emphasis is on both technical competence or quality and cost.
- 3) Where the QCBS method is used, the entity shall:
 - (a) Request Bidders to submit both technical and financial proposals
 - (b) Specify minimum technical score required as a condition for consideration of financial proposal
 - (c) Specify the percentage of total score to be allocated to technical considerations and financial considerations
 - (d) Indicate formula for combining technical and financial score to arrive at total score.
 - (e) Award contract to the Bidder who meets the minimum technical score, and ultimately obtains the highest combined technical and financial score.
- 4) For the purposes of Article 94(3)(a) of the Act, the threshold contract value that will require the application of Article 72 of the Act is captured in the Schedule 1, Article 5 of these Regulations.

Regulations 48 - Short-listing of Consultants (Article 95 of the Act)

- 1) The evaluation of expressions of interest shall determine:
 - (a) the capacity of a consultant to perform the assignment successfully; and
 - (b) the eligibility of a consultant.
- 2) For the purposes of Article 95(2) of the Act, the threshold contract value requiring the open advertisement for expressions of interest is captured in Schedule 1, Article 5 of these Regulations.
- 3) A procuring entity may short list consultants without publication of a notice for expression of interest where:
 - (a) the consultancy service can only be provided by a limited number of consultants, in this case not more than six consultants;
 - (b) the value of the procurement is lower than the value prescribed for publication of notice inviting expression of interest; or
 - (c) there is an emergency situation.
- 4) Where consultants are shortlisted without publication of a notice of expression of interest on the grounds that the service can only be provided by a limited number of consultants, the Procuring Entity shall prior to issuing the request for proposals, seek approval from the Authority.
- 5) When there is no requirement to advertise for expressions of interest, a shortlist may be established from any of the following sources:
 - (a) Invitation of Expression of Interest in accordance with the Act;
 - (b) The Procuring Entity's own records of similar assignments successfully completed by consultants;
 - (c) Records of other Procuring Entities in Somalia;
 - (d) Records of donors and development partners; or
 - (e) Other credible information from the internet.

Regulations 49 - Evaluation of Quality (Article 97 of the Act)

- 1) Article 80 of the Act and Regulations 36 on examination, evaluation and comparison of bids, with the necessary modifications, shall apply in the evaluation of proposals under these Regulations.
- 2) The evaluation committee shall carry out a preliminary examination of the technical proposal to determine whether the proposal conforms to the instructions, requirements and the terms and conditions of the request for proposals.
- 3) The preliminary examination shall be conducted on a pass or fail basis and a proposal that is not compliant and responsive to the request for proposals, shall be rejected at the preliminary examination stage of evaluation.
- 4) The detailed evaluation of proposals shall use a merit point evaluation system as specified in the request for proposals.

- 5) Pursuant to Article 97(2) the weight range for the minimum qualifying mark for a technical proposal shall be between 70 and 80.

Regulations 50 - Evaluation of Cost (Article 98 of the Act)

- 1) The financial proposals shall be evaluated within seven working days from the date of the opening of the financial proposals.
- 2) A financial proposal shall be evaluated using the selection method specified in the request for proposals.
- 3) The procedure for opening open competitive bidding set forth in Part IV(B) of the Act apply to the evaluation of cost, except to the extent it is modified by Article 98 of the Act and this Regulation.

Regulations 51 - Combined quality and cost evaluation (Article 99 of the Act)

Pursuant to Article 99(2) the formula for combining technical and financials scores shall be captured in the standard bidding documents approved by the Authority.

C. OTHER SELECTION METHODS

Regulations 52 - Quality-based selection (Article 100 of the Act)

- 1) A Procuring Entity shall employ a quality based selection method of procurement in accordance with Article 100 of the Act only where the method is approved both by the Procurement Committee of the Entity and the Authority.
- 2) When the quality -based selection method is used, the entity shall:
 - (a) Request Bidders to submit only technical proposals.
 - (b) Specify minimum technical score that must be attained before a financial proposal is requested.
 - (c) Invite the firm with highest technical score to negotiate a contract provided that technical score is above the minimum required technical score specified by the entity in the bidding document.

Regulations 53 - Least-cost selection (Article 101 of the Act)

- 1) A Procuring Entity shall use least-cost selection where the Procuring Entity intends to award the contract to the most technically competent Bidder or the Bidder with the best quality goods at the least cost.
- 2) When least-cost selection method is used, the Procuring Entity shall:
 - (a) Request firms to submit both technical and financial proposals.
 - (b) Specify minimum technical score required as a condition for consideration of financial proposals.

- (c) Award contract to the firm meeting the minimum technical score, and submitting the least cost proposal.

Regulations 54 - Selection under a fixed budget (Article 102 of the Act)

- 1) A Procuring Entity shall employ Fixed Budget Selection where the Procuring Entity has a fixed budget for the procurement of the goods, works or services and the Procuring Entity does not intend to procure outside the predetermined fixed budget.
- 2) When the FBS method is used, the entity shall:
 - (a) Request firms to submit both technical and financial proposals;
 - (b) Specify minimum technical score required as a condition for consideration of financial proposal;
 - (c) Award the contract to the Bidder who:
 - (i) Has submitted a financial proposal within the predetermined specified budget.
 - (ii) Attains the highest technical score provided that that technical score is above the specified minimum technical score.

Regulations 55 - Selection of firms based on the consultants' qualifications (Article 103 of the Act)

- 1) For the purposes of Article 103 of the Act, "consultants qualifications selection method" means the method of selecting where a procuring entity:
 - (a) prepares the terms of reference to request expressions of interest and information on the consultant's experience in order to develop a short list;
 - (b) selects a consultant with the most appropriate qualifications;
 - (c) requests the consultant with the most appropriate qualifications to submit a combined technical and financial proposal;
 - (d) evaluates the combined technical and financial proposal; and
 - (e) invites the consultant for negotiations;
- 2) Pursuant to Article 103(1), the threshold limiting the value of assignments that can be procured according to this procurement method is \$100,000.

Regulations 56 - Single-source selection (Article 105 of the Act)

- 1) The Procuring Entity shall employ the single source method of procurement only where conditions under Article 105 of the Act have been met and the written approval of the Authority has been given.
- 2) Pursuant to Article 105(1)(c) small assignments are defined as being valued at less than the threshold specified in Schedule 1, Article 8.

- 3) The Procuring Entity shall indicate the use of sole source method of procurement in the Procurement Plan of the Entity.
- 4) Approval of the Procurement Plan of the Procuring Entity by the Authority shall be deemed to cover any sole source procurement contained therein.
- 5) In the case of emergency procurement not indicated in the Procurement Plan, the Authority shall respond in writing within 3 days of receipt of the request for sole source procurement.
- 6) The Bidder shall be given at least 7 days to prepare and submit its quotation.

Regulations 57 - Procurement agents (Article 106 of the Act)

- 1) For the purposes of Article 106 of the Act and these regulations **“procuring agent”** means an organization which has been registered by the Authority, and competitively engaged by a Procuring Entity on its behalf, or an organization established under this Act, to carry out procurement or asset disposal activities.

PART VI – PROCEDURES FOR PROCUREMENT OF CONCESSION AGREEMENTS

A. DEFINITION AND OBJECTIVES OF CONCESSION AGREEMENTS

Regulations 58 - Definition (Articles 3 and 108 of the Act)

Pursuant to Article 108(1)(h) the IMCC may identify other business arrangements that shall be defined as Concessions. Pursuant to Article 122 the IMCC may define Concession policies and formulate guidelines (with the assistance of the Concessions Technical Unit as appropriate).

Accordingly, this Regulation confirms and clarifies the definition of “Concession” as regards payments made by a non-public entity or a Contracting Authority in any concession, pursuant to the definitions set out in Article 3.10 and Article 108. These two Articles, when taken together, permit a Contracting Authority to grant an interest in a public asset to a non-public entity on the terms therein set out and permit the Contracting Authority either (a) to pay the non-public entity a fee or royalties or other consideration (Article 3.10); or (b) to require the private sector entity to pay fees or royalties (Article 108).

Furthermore, as pursuant to Article 108.1.h, the IMCC may identify other business arrangements which it may also define as Concessions, this Regulation confirms IMCC policy and guidelines that Concessions may include arrangements whereby the non-public entity provides new or replacement assets and/or services on terms approved by the IMCC and set out in the relevant concession agreements.

Regulations 59- Objectives of Concession (Article 109 of the Act)

Pursuant to the objectives of Concessions set out in Article 109, and the IMCC’s and CTU’s power to define Concession policies and formulate guidelines pursuant to Article 122, the objectives of every Concession shall be set out in the Concession Procurement Plan together with the other requirements of the Act and these Regulations. Such Concession objectives shall be determined in consultation and co-ordination with such institutions, stakeholders and other entities nominated and/or approved by the IMCC, which may include but are not limited to relevant ministries/ departments/ FGS Agencies/ Federal Member States and such determination shall be guided by:

- (a) the overall national development framework of the Federal Republic of Somalia;
- (b) the capacity of the Concession to create wealth and to reduce poverty;
- (c) the public financial management legislation and regulation of the Federal Republic of Somalia;
- (d) any Strategic Plan of the Concession Entity; and
- (e) other relevant policy objectives of the Federal Republic of Somalia as determined by the Minister.

- 1) Pursuant to Article 122, the Concession Procurement Plan shall be approved or rejected by the CTU and/or the IMCC. If the Concession Procurement Plan is so approved, the concession bid documents (setting out all the relevant terms and conditions to achieve the objectives), evaluation criteria and any minimum benchmarks for negotiations, shall be approved by the IMCC pursuant to Article 117.

B. SCOPE APPLICATIONS AND DISQUALIFIED PRIVATE SECTOR ENTITIES

Regulations 60 - Scope and Application (Article 110 of the Act)

- 1) Pursuant to Article 110 of the Act, the Council of Ministers shall have the oversight responsibility to ensure that any Regulation that may be made specifically for Concessions in specific sectors of the economy are made in conformity with the Act and these Regulations and do not derogate from the principles of transparency, accountability and value for money in the grant of the Concessions in that sector.

Regulations 61 - Concession Entities (Article 111 of the Act)

For the purposes of Article 111 of the Act and for all purposes of Part VI of the Act, the Head of Entity shall at all times be the Authorizing Officer of the Concession Entity.

Regulations 62- The Role of the Procurement Unit in Processing Concession Agreements (Article 112 and 121 of the Act)

- 1) In addition to its functions under Article 112 of the Act, and in accordance with any Concession policies, guidelines, recommendations and collaboration with the IMCC and/or the CTU pursuant to of the Act or these Regulations, the Procurement Unit shall also perform the following functions:
 - (a) Effect any changes to the Concession Procurement Plan required by the IMCC and/or the CTU;

- (b) Prepare any preliminary, pre-feasibility or feasibility studies, risk matrices and/or option or other studies required by the CTU and/or the IMCC;
 - (c) Effect any changes required to the concession bid documents, including draft contracts, required by the IMCC and/or the CTU;
 - (d) Subject to the approved Concession Procurement Plan, prepare and publish and/or issue the following as the context requires;
 - (i) General Notice of Investment Opportunity
 - (ii) Request for Expressions of Interest
 - (iii) Request for Qualifications
 - (iv) Request for Proposals
 - (e) Collaborate with the CTU and IMCC in ensuring the procurement and tendering processes and concession bid documents conform with the provisions of this Act and the Regulations;
 - (f) Follow any recommendations made by the CTU and/or the IMCC in relation to the Projects the subject of any Concession Procurement Plan or Concession and the Concession Procurement Plan and any bid documents or process relating thereto; and
 - (g) Act as the secretariat of the Concession Entity for the purposes of any Concession relating to a particular Concession Entity.
- 2) In order to facilitate the performance of the functions of the Procurement Unit in respect of a Concession, the Concession Entity may, engage advisor(s)/ expert(s) or persons trained and knowledgeable in concessions and to assist the Procurement Unit in the performance of the functions relating to the procurement of concessions or their processes (other than approvals) and their implementation and management.

Regulations 63 - Engagement of Advisors (Article 113 of the Act)

Pursuant to Article 113 of the Act:

- 1) Advisor(s) may advise the evaluation committee or the negotiating team but an advisor shall not be a member of the evaluation committee.
- 2) Advisors may be engaged to advise on various aspects of the concession including but not limited to providing guidance on:
 - (a) the preparation of any preliminary, pre-feasibility or feasibility studies, risk matrices and/or option or other studies necessary or desirable to determine the nature of the proposed Concession and evaluate how to structure the concession to ensure affordability and value for money in accordance with Federal Government of Somalia policies, guidelines and regulations;

- (b) the preparation of and all concession bid documents, including, without limitation information memoranda, tender documentation and contractual documentation and any other documentation relating to any stage of the Concession procurement process;
 - (c) the design of procurement strategy, including the formulation of the evaluation criteria for various stages of the Concession procurement process
 - (d) the administration of the procurement process, including managing communications with bidders;
 - (e) the evaluation of bids received and any negotiation necessary to conclude a concession contract;
 - (f) any steps or processes necessary to implement a concession contract once agreed and approved;
 - (g) any relevant technical issues related to the work of the CTU, the IMCC and/or the concession process; and,
 - (h) the conduct of institutional and stakeholder consultations.
- 3) Subject to the scope of services assigned, Advisors shall work closely with the Procuring Entity and its officers, units and committees, the CTU and/or the IMCC as the context requires.

Regulations 64 - Preparation of Concession Procurement Plan (Article 114 of the Act)

- 1) Once a Procuring Entity has been issued a Certificate for Concession by the Ministry responsible for Finance, pursuant to the provisions of the Act and Regulations, the Concession Procurement Plan required under Article 114 of the Act shall be prepared and submitted to the CTU.
- 2) The Concession Procurement Plan shall be prepared in accordance with any concession policies, guidelines, manual and/or template that may be issued by the CTU.
- 3) After the submission of the Concession Procurement Plan to the CTU, a Concession Entity may only proceed with the concession procurement once it has received written approval of the same from the CTU and/or the IMCC, each of whom may first request changes to the Concession Procurement Plan.
- 4) Where the CTU and/or the IMCC requests changes to the Concession Procurement Plan, in accordance with Article 114(2), the Concession Entity shall effect the necessary changes as requested and re-submit the plan to the CTU for approval or rejection within 14 days.

**Regulations 65 – Composition of Inter-Ministerial Concession Committee (IMCC)
(Article 116 of the Act)**

1) Pursuant to Article 116(2) of the Act:

(a) The IMCC shall, following its review of the Concession Bid Evaluation Report and the Due Diligence Report prepared pursuant to Article 149 of the Act and Regulations 88, do the following, as appropriate:

- (i) approve the report;
- (ii) reject the report;
- (iii) request for clarification on how the Bid Evaluation Panel arrived at specific decisions if such clarification is necessary;
- (iv) request for minor amendments where there are obvious errors such as typographical or arithmetical, if the context requires.

(b) If the IMCC rejects the report, then the IMCC shall give reasons for its rejection in writing.

(c) The IMCC shall not:

- (i) alter the report of the Bid Evaluation Panel, including, in particular, recommendations for award; or
- (ii) reject the report of the Bid Evaluation Panel without assigning any reasons.

2) Pursuant to Article 116(3) of the Act, in the absence of an appointment of two additional members by the Council of Ministers, the IMCC may continue to carry out its functions with its 5 permanent members until such time as an appointment is made, as long as Quorum is achieved according to Article 120 of the Act and **Error! Reference source not found..**

Regulations 66 - Functions of the Inter-Ministerial Concessions Committee (Article 117 of the Act)

1) Pursuant to the provisions of Article 122, providing for the IMCC to define concession policies, guidelines and standard documents, and consistent with the IMCC's role in setting benchmarks for negotiations after having approved the concession bid documents prior to the invitation of bids, the IMCC shall review all concession bid documents, including any concession agreement, and any amendmend to any of the same prior to their execution and/or coming into force, in order to:

- (a) confirm the approved negotiation benchmarks have been complied with;
- (b) approves (or reject) the concession bid documents in their entirety; and

- (c) any ensure any support which may have been agreed to be provided by the Federal Government of Somalia, the Concession entity or any third party has been appropriately approved.

Regulations 67 - Meetings of the Inter-Ministerial Concession Committee (Article 118 of the Act)

Pursuant to Article 122, inter alia, the IMCC is required to formulate guidelines for concession policies and, in addition to the functions of the IMCC set out in Article 117, the provisions of Article 116 provide that the IMCC shall be responsible for the annual concessions plan for submission and approval by Council of Ministers. Consequently, as part of such processes, the Chairperson of the IMCC may convene meetings of the IMCC to facilitate and approve the same and generally to manage its administration.

Regulations 68 - Disclosure of Interest (Article 119 of the Act)

- 1) The reference to “interest” of a person or member of the IMCC under Article 119 (1) and (2) of the Act shall be construed to mean interest as defined under Regulation 3(4) of these Regulations.
- 2) The disclosure required under Article 119 (1) under the Act shall be made prior to the consideration of the relevant matter
- 3) Where the member or person becomes aware of an interest during the sitting of the IMCC or after the commencement of the consideration of the relevant matter, the member or person shall immediately disclose the interest and shall not take part in further proceedings of the IMCC on that matter.
- 4) The failure of any person to comply with the requirement for disclosure under Article 119 of the Act and or to disclose any conflict of interest shall constitute an improper conduct in accordance with Article 119 (2) of the Act.
- 5) The requirement to disclose shall apply to members of any Procurement Unit that may be constituted for the purposes of the concession.
- 6) To the extent that a member of the IMCC is connected in any way with the Concession Entity, that member of the IMCC shall be considered to have an ‘interest’ in a matter to be considered before the IMCC and must act in accordance with Article 119 of the Act and this Regulation. For avoidance of doubt this means that such member must not take part in any deliberation or decision of the committee relating to that matter, however such member may otherwise participate as a representative of the Concession entity if such is the case.

Regulations 69 - Establishment of the Concession Technical Unit (Article 121 of the Act)

The Ministry shall determine an appropriate development plan for the staffing of the CTU. Such staffing plan may include the use of existing staff of the Ministry of Finance

to fulfill CTU roles until such time as staff with the requisite capacity are able to be retained.

Regulations 70 - Functions of the CTU (Article 122 of the Act)

In reviewing and overseeing the management of concession projects pursuant to Article 122.1(d) of the Act, the CTU shall support the Concession Entity in the process of the negotiation or amendment of any Concession previously approved by the IMCC and shall determine, in its sole discretion, whether the proposed amendment is material and therefore requires IMCC approval before signature and/or coming into force.

C. THE CONCESSION PROCUREMENT PROCESS PLANNING

Regulations 71 - Inclusion in Economic Development Plan (Article 125 of the Act)

Pursuant to Article 125 of the Act, the annual Concessions plan shall be derived from the Federal Republic of Somalia's overall national development framework and may indicate the expected impact of proposed concessions on the overall national development framework.

Regulations 72 – No Concession without Certificate (Article 126 of the Act)

- 1) To enable the Minister responsible for Finance to determine whether or not to issue a Certificate of Concession, the Authorizing Officer of the Concession Entity shall submit a request together with such reports and information as the Ministry responsible for Finance requires pursuant to Article 127.
- 2) The Certificate of Concession shall constitute the written approval of the Minister responsible for Finance for the commencement of activity necessary to further evaluate and develop a procurement process for a Concession which shall be set out in the Concession Procurement Plan.

Regulations 73 - Criteria for the issue of the Certificate of Concession (Article 127 of the Act)

- 1) In assessing a request by an entity for a Certificate of Concession, the Minister responsible for Finance shall, in addition to taking the steps in Article 127 (1) of the Act, consult relevant stakeholders and consider such other factors as may be necessary to enhance the smooth implementation of the concession.
- 2) The Minister responsible for Finance may consult the CTU for advice related to the proposed project for implementation under a concession arrangement.

Regulations 74- Inspection of the Records (Article 131 of the Act)

- 1) Pursuant to Article 131 of the Act, the Authorizing Officer of the Concession Entity shall be responsible for making the records available for inspection to the requesting authority when requested.
- 2) Failure of the Concession Entity to submit the records when requested shall constitute an offence pursuant to Article 173 of the Act.
- 3) The requesting authority may inspect the records and may make available a written copy of its observations to the Concession Entity.
- 4) An advisor or expert engaged for the purposes of any of the concession processes may be authorised to inspect any part of the records for the purposes of carrying out the task of the consultancy assignment.

Regulations 75 - National Competitive Bidding (Article 134 of the Act)

- 1) In addition to the grounds stated in Article 134 of the Act, Concession Entities shall ensure that whenever National Competitive Bidding is used, the provisions in the National Investment incentive code that reserves specified areas of the economy to Somalians and Domestic Businesses are complied with.

Regulations 76 - International Competitive Bidding (Article 135 of the Act)

The time provided to bidders to prepare their bids will be specific for each project and must reflect a time frame that is appropriate for the preparation of potentially complex bids, which may be considerably longer than the minimum specified in Article 135(2) of the Act. The proposed minimum period must be clearly set out in the Concession Procurement Plan and bid documents. Such period may only subsequently be altered with the written consent of the CTU.

Regulations 77 - Criteria for the Application of Margin of Preference (Article 137 of the Act)

- 1) Where a Concession Entity intends to apply Margin of Preference in an International Competitive Bidding, it shall be ensured that:
 - (a) The concession bidding documents shall state that a Margin of Preference shall be applicable to the concession and the specific requirements for the application of the Margin of Preference shall be indicated.
 - (b) The application of the Margin of Preference shall conform to the provisions under Article 137 of the Act and to these Regulations.
 - (c) The applicable Margin of Preference for bidders shall be determined for each concession and shall be stated in the Concession Procurement Plan approved by the CTU. Subject to any policy guideline subsequently approved by the IMCC, it shall not exceed seven (7) percent of the amount of the financial offer to be allocated to bidders.

2) Eligibility for Margin of Preference shall be determined as follows:

(a) a bidder shall qualify if the following criteria are met:

(i) for a project involving a construction phase, if at least 30% of the raw materials used are from Somalia and 50% of the employees are Somali; or, for a project that does not involve a construction phase, the request for proposals shall describe the thresholds that will determine if a bid can benefit from a Margin of Preference; and,

(ii) with respect to the domestic business that will undertake the project:

1. At least half of the issued share capital is, directly or indirectly beneficially owned by Somali nationals, on signing of the concession agreement, on financial close and upon commissioning of the main project assets;
2. Somali nationals control, directly or indirectly, the board of directors of the project company and its management; and
3. At least fifty per cent of the key staff of the company are Somali nationals.

(iii) Bidding consortia with foreign bidders may benefit from a preference margin if the conditions provided in Sub-Articles (i) and (ii) are met.

Regulations 78 - Restricted Competitive Bidding (Article 138 of the Act)

1) In the event a Concession Entity seeks to use the Restricted Competitive Bidding Process, it must obtain the prior written approval of the IMCC pursuant to Article 138. In requesting such approval, the Concession Entity must:

(a) demonstrate in writing to the IMCC that one or more of the conditions set out in Article 139 prevail, save that only a restricted number of bidders are relevant and it must demonstrate the restriction; and,

(b) obtain the IMCC's approval to the concession procurement process and method proposed to be used and set the same out in its Concession Procurement Plan, save that, for the avoidance of doubt, the procurement process to be utilised for any Restricted Competitive Bidding shall be the same as for National Competitive Bidding and International Competitive Bidding, but for the requirement to advertise.

The IMCC may, in its absolute discretion, give or refuse its approval to Restrictive Competitive Bidding.

- 2) The Concession Entity shall submit its request to both the CTU and IMCC but may only do so only after receipt of the Certificate of Concession.
- 3) In the event of a Restricted Competitive Bidding procurement, the provisions of the Act and these Regulations shall apply in relation to the issue of a Certificate for Concession, the approval of a Concession Procurement Plan, concession bid documents, evaluation criteria and reports and minimum benchmarks for negotiations as for National Competitive bidding and International Competitive Bidding

Regulations 79 - Sole Source (Article 139 of the Act)

- 1) In the event a Concession Entity seeks to use sole source method of procurement, it must obtain the prior written approval of the IMCC pursuant to Article 139. In requesting such approval, the Concession Entity must:
 - (a) demonstrate in writing to the IMCC that one or more of the conditions set out in Article 139 prevail; and
 - (b) obtain the IMCC's approval to the concession process and method proposed to be used and set the same out in its Concession Procurement Plan.

The IMCC may, in its absolute discretion, give or refuse its approval to any proposal to sole source a concessionaire.

- 2) The Concession Entity shall submit its request to both the CTU and IMCC but may only do so only after receipt of the Certificate of Concession.
- 3) For avoidance of doubt, a Concession may not be sole sourced in respect of strategic national interest solely in order to shorten the time period used to award a concession contract, unless there is an exceptional case of extreme urgency due to an emergency which circumstances are acknowledged and approved by the Minister, provided the circumstances which gave rise to the urgency were neither foreseeable by the Concessions Entity nor the result of dilatory conduct on its part.
- 4) The concession proposed to be awarded by means of sole source method must meet all the requirements necessary for undertaking a concession as provided in Part VI of the Act and in these Regulations.
- 5) In the event of a sole source procurement, the provisions of the Act and these Regulations shall apply in relation to the issue of a Certificate for Concession, the approval of a Concession Procurement Plan, concession bid documents, evaluation criteria and reports and minimum benchmarks for negotiations as for National Competitive bidding and International Competitive Bidding.

Regulations 80- Unsolicited Proposals

- 1) If a Concession Entity receives an unsolicited proposal for a Concession it shall only be considered for further discussion if all the following conditions exist:
 - (a) There are no previous unsolicited proposals for the same or a similar Concession submitted to the Concession Entity or to another agency of the Federal Republic of Somalia directly or indirectly connected with the Concession.
 - (b) The product, service or works to be procured pursuant to the unsolicited proposal is unique or innovative concept and not generally available from other known sources.
 - (c) The proposed outcome will be exceptionally beneficial to or have exceptional cost advantages for the Federal Government of Somalia.
 - (d) There are no substantial financial contributions or other Country support to be made by Federal Government of Somalia.
 - (e) The proposal is deemed by the Minister to fall under one of the areas prescribed by the Federal Government of Somalia as a priority sector included in the overall development framework of the Federal Government of Somalia.
 - (f) The specific proposal has not already been earmarked under the Annual Concession Plan and no Concession Procurement Plan is in place for that particular proposal.
- 2) If the conditions are satisfied, then the Concession Entity shall submit a written request with justification to proceed to consider an unsolicited proposal to the IMCC, copying such request to the CTU, as well as a simultaneous request to the Minister responsible for Finance in accordance with Article 125(3) of the Act and these Regulations..
- 3) The decision of the IMCC shall be final and the Concession Entity shall comply with the decision forthwith.
- 4) The IMCC shall consult the Minister responsible for Finance on the importance or otherwise of the particular concession in respect of which the unsolicited proposal has been received.
- 5) If the Minister responsible for Finance is of the view that the proposal is beneficial to the economy of Somalia in accordance with the provisions of paragraph 1 of this regulation then he may issue a Certificate for Concession in accordance with Articles 125, 126 and 127.
- 6) Following the issuance of a Certificate for Concession, the Concession Entity shall invite the proponent to submit as much information on the proposed project as is feasible to allow the Concession Entity to make a proper evaluation of the proponent's qualifications and the technical and economic feasibility of the project

and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the Concession Entity.

- 7) In considering an Unsolicited Proposal, the Concession Entity shall respect the intellectual property, trade secrets or other exclusive rights contained in, arising from or referred to in the proposal.

Regulations 81- Procedure for Unsolicited Proposal

- 1) Following the completion of the steps and processes set out in Regulations 80, the Concession Entity shall decide whether to recommend to accept or reject the potential project derived from the Unsolicited Proposal, and shall make such recommendation to the IMCC for approval.
- 2) If the acceptance of the Unsolicited Proposal is approved by the IMCC, the Concession Entity shall make arrangements to prepare documentation for the Concession, including feasibility studies as may be required and concession bid documents. Feasibility studies prepared by the proponent may be used for this purpose as long as they are reviewed and approved by the IMCC.
- 3) An Unsolicited Proposal shall be awarded pursuant to the same processes and procedures as required by the Act and these Regulations for either a National Competitive Bid or an International Competitive Bid and may only be awarded on a sole source basis if the process set out in Article 139 of the Act and Regulations 79 is followed. The proponent shall be invited to participate in any competitive selection procedure initiated in response to its unsolicited proposal and the IMCC may decide to award the proponent a bonus on its technical and/or financial score during the competitive selection procedure or award the proponent financial compensation for studies undertaken by the proponent should the proponent not be awarded the project. The bonus point scheme principle or the amount of the financial compensation shall be agreed upon acceptance of the proposal in accordance with Sub-Regulation 1. The identity of the proponent, the detailed allocation of bonus points or the amount of the potential compensation to the proponent shall be indicated in the competitive selection procedure documents.

D. CONCESSION DOCUMENTS PREPARATION

Regulations 82 - Concession Bid Documents (Article 142 of the Act)

- 1) For the avoidance of doubt the expression “full set of bidding documents” shall include all the matters set out in Article 143 as regards the scope of the concession documents, invitation to bid and instructions to bidders together with any other document or matter specified or required by either the Concession Entity, the CTU and/or the IMCC. Unless and until all the same have been approved by the IMCC pursuant to Article 117, such concession bidding documents shall be considered as “draft bidding documents”.
- 2) The Concession Entity may work with an advisor/expert and/or the CTU to prepare such documents.
- 3) The draft concession bidding documents shall be submitted to the IMCC by the Authorizing Officer and copied to the CTU.
- 4) The CTU and the IMCC shall upon receipt of the draft concession bidding documents review the same in accordance with the provisions of the Act and these Regulations.
- 5) If the IMCC approves the use of draft bidding documents pursuant to the provisions of the Act and these Regulations, the Concession Entity shall issue out the documents as the Concession Bid Documents in accordance with the process specified by the CTU and/or the IMCC
- 6) Upon approval, the draft concession bidding documents shall be considered as the “concession bidding documents” for the purposes of inviting bids, or proposals for the Concession.
- 7) If the draft concession bidding documents are rejected, the Concession Entity may revise the documents taking into consideration the comments of the CTU/IMCC and may re-submit the documents for reconsideration.
- 8) In undertaking its review of the draft bidding documents, the IMCC shall constitute a technical team for the purpose. The technical team shall include representation from the CTU, other relevant government representatives and the Concession Entity.
- 9) In addition to assessing whether the concession bid documents meet the requirements of Article 143 of the Act, the technical team and the IMCC shall consider the following:
 - (a) whether the technical requirements of the project are well understood and clearly captured;
 - (b) whether the legal requirements to be met by the parties to the project are well understood and clearly captured;
 - (c) the social, economic and environmental impact of the project;

- (d) the value for money of the project compared to other procurement methods in accordance with any policy guidelines issued by the IMCC or the Minister;
- (e) the affordability of the project by the Concession Entity and/or end-users in accordance with any policy guidelines issued by the IMCC of the Minister;
- (f) the sustainability of the project;
- (g) any proposed funding or support from the Federal Government of Somalia;
- (h) potential risks assumed by the Federal Government of Somalia; and,
- (i) the institutional capacity of the Concession Entity to prepare, tender, implement and monitor the project and comply with its obligations in the concession contract and any related documents.

Regulations 83 - Scope of Concession Documents (Article 143 of the Act)

Pursuant to Article 143.1(d), the form of contract included in the concession bid documents shall include specifications of the final product, level of services, or works (each as appropriate), performance indicators and such other requirements as the IMCC and relevant regulatory bodies shall consider necessary including the safety, security and environment preservation requirements to be applicable to a Concession. The IMCC may require any other specific or general conditions or provisions to be included in the concession documents.

Regulations 84– Notification of General Notice of Investment Opportunity, Expression of Interest or Request for Proposals (Article 144 of the Act)

For the avoidance of doubt, the requirement for an “Expression of Interest” may be satisfied either as such or by a Request for Qualification instead or in addition. The IMCC may specify other appropriate documentation in addition as it thinks fit.

Regulations 85 – Mode of Publication (Article 145 of the Act)

The following shall be observed in respect of publication:

1) In Respect of National Competitive Bidding

- (a) A General Notice for Investment Opportunity shall be published for all concessions to be procured by National Competitive Bidding and the following shall apply:

- (i) The Concession Entity shall publish the General Notice for Investment Opportunity after it has received a Certificate for Concession in relation to a proposal and the IMCC has approved the concession bid documents, each pursuant to the provisions of the Act and these Regulations.
- (ii) The publication shall be in a print media with national circulation, the Newsletter of the IMCC and the website of the IMCC
- (iii) A minimum of two (2) notices shall be placed in the print media within a period of fourteen (14) days.

(b) For the purposes of a Request for Expression of Interest.

- (i) The publication shall be in a print media with national circulation, the Newsletter of the IMCC and/or the website of the IMCC.
- (ii) A minimum of two (2) notices shall be placed in the print media within a period of fourteen (14) days.

2) In Respect of International Competitive Bidding

(a) A General Notice of Investment Opportunity may be published for a concession to be procured by International Competitive Bidding and the following shall apply:

- (i) The Concession Entity shall publish the General Notice for Investment Opportunity after it has received a Certificate for Concession in relation to a proposal and the IMCC has approved the concession bid documents, each pursuant to the provisions of the Act and these Regulations.
- (ii) The publication shall be in a print media with national circulation, international publications of repute such as; The Economist, DB Market, Development Business of the UN, the Newsletter of the IMCC and the website of the IMCC.
- (iii) A minimum of two notices shall be placed in the print media within a period of fourteen (14) days.

(b) In respect of a Request for Expression of Interest for all concessions to be procured by International Competitive Bidding the following shall apply.

- (i) The publication shall be in a print media with national circulation, international publications of repute such as; The Economist, DB Market, Development Business of the UN, the Newsletter of the IMCC and the website of the IMCC.

- (ii) A minimum of two notices shall be placed in the print media within a period of fourteen (14) days.

3) Request for Proposals

- (a) In respect of a Request for Proposals/Invitation to Bid, the invitation/request shall be issued to all entities pre-qualified to participate in the bidding process.
- (b) Except in cases where the invitation to bid/request for proposals has been made to bidders already qualified, notification of all Request for Proposals/Invitation to Bid to be procured under a National Competitive Bid or International Competitive Bid shall be published and the following shall apply:
 - (i) The publication shall be in a print media with national circulation, the Newsletter of the IMCC and the website of the IMCC.
 - (ii) A minimum of two notices shall be placed in the print media within a period of fourteen (14) days.

- 4) For the avoidance of doubt no publication in the media prescribed shall be used in respect of sole source procurement and where an Expression of Interest or Request for Qualification has been used as a basis for arriving at a pre-qualified list of bidders.

E. PRE-BID MEETING, BID SUBMISSION AND OPENING

Regulations 86 – Pre-Bid Meeting (Article 146 of the Act)

Pursuant to Article 146 of the Act, the Concessions Entity:

- 1) may hold one-on-one or group meetings with prequalified bidders to provide information on the project, respond to their enquiries and receive comments from the bidders, provided each of the prequalified bidders are treated equally and fairly and all information received and given is provided to all prequalified bidders;
- 2) shall communicate in writing to all bidders any information provided to a bidder;
- 3) may invite prequalified bidders to provide comments on the concession bid documents, including on the terms of the concession contract if the Request for Proposals so permits;
- 4) shall respond to request for clarification from prequalified bidders in the manner set out in the Request for Proposals;
- 5) may, whether on its own initiative or as a result of a comment or request for clarification of a bidder, review and, as appropriate, revise any element of the concession bid documents, including the concession contract subject to CTU/IMCC approval in accordance with the Act and these Regulations.

- 6) shall communicate in writing any revision made subject to Sub-Article 5 of this Regulation to all bidders in advance of the deadline for submission of proposals.
- 7) Where the Concession Entity wishes to revise the concession bid documents pursuant to Sub-Regulation 5, the Concession Entity should ensure that such documents are submitted to the IMCC for approval prior to their reissuance to bidders

Regulations 87 – Time for Submission and Opening of Bids In Respect of Concessions (Article 148 of the Act)

- 1) Bidders and/or their representatives shall have the right to attend the bid opening if they so desire and the numbers and process relating thereto shall be set out in the Request for Proposals subject to any policy guidelines issued by the CTU and/or the IMCC
- 2) Members of the IMCC and CTU may also attend to observe the proceedings of the bid opening but members of the IMCC shall not participate in the proceedings.

F. EVALUATION

Regulations 88- Evaluation Process (Article 149 of the Act)

- 1) The CTU shall constitute the concession bid evaluation panel for the evaluation of the concession within fourteen (14) days of the opening of the bids.
- 2) The concession bid evaluation panel shall include members with skills, knowledge and experience relevant to the subject matter of the concession.
- 3) No member of the IMCC shall be a member of any concession bid evaluation panel.
- 4) The concession bid evaluation panel shall complete its report before the expiry of the sixty (60) day time limit set out in Article 153 (1) of the Act. To the extent that additional time is required to fully evaluate the proposals, in particular if specialized expertise is required for the evaluation, the report shall request such additional time as may be necessary.
- 5) The IMCC shall review and endeavour to give its approval or otherwise of the evaluation report as follows:
 - (a) In the case of Expression of Interest or Request for Qualifications within seven (7) days of receipt of the report.
 - (b) In the case of an Invitation to Bid or Request for Proposals within fourteen (14) days of the receipt of the report.

Regulations 89 - Evaluation Criteria and Evaluation

- 1) Pursuant to Article 151 of the Act, the evaluation criteria shall, in addition to the provisions of Article 151 of the Act include the following:
 - (a) In Respect of an Expression of Interest or a Request for Qualification as may be appropriate:

- (i) Experience in the specific area of the concession
- (ii) List of projects of similar nature and complexity undertaken by the bidder or its personnel
- (iii) Firm/Consortium's financial capacity and/or its ability to access credit to undertake the concession
- (iv) Firm/Consortium's technical capacity to undertake the concession

(b) In Respect of a Request for Proposals/Invitation to Bid

- (i) Information on corporate structure
- (ii) Operational and managerial capacity to undertake the concession
- (iii) Effectiveness of methods and procedures proposed to undertake the concession
- (iv) Financial proposal
- (v) Soundness of financial plan
- (vi) Overall business concept as per the bidder business plan
- (vii) Commitment to undertake the project according to the draft concession agreement included in the concession bid documents, unless otherwise specified in the Request for Proposals

And, in each case, any other matter or information the CTU and/or the IMCC considers appropriate in relation to the Project

2) The following shall also be observed in respect of the evaluation criteria in bidding documents.

- (a) The evaluation shall be in strict accordance with the criteria set out in the concession bidding documents and any policy or guideline established by the CTU and/or the IMCC.
- (b) The Request for Proposal/Invitation to Bid documents shall state the criteria in terms of the minimum technical and financial requirements of bidders for the concession and the weight to be placed on the specified requirements during the evaluation.

3) Sample Criteria and Supporting Documents

- (a) The IMCC may publish examples of the criteria for evaluation to guide Concession Entities and the concession bid evaluation panel.
- (b) The concession bid evaluation panel shall ensure that, as the context requires, all mandatory information submitted by bidders are supported with documentary evidence.

G. POST EVALUATION

Regulations 90 - Evaluation Report and Decision of the IMCC (Article 153 of the Act)

- 1) Pursuant to Article 153 of the Act the evaluation report shall indicate following in addition to the requirements of the Article:
 - (a) Whether the CTU obtained all information required to make a recommendation to the IMCC.
 - (b) A clear recommendation indicating the result of the technical and financial components of the evaluation.
 - (c) Details of any clarification of the proposals/bids sought by the CTU and the responses received in response to the clarifications.
- 2) Having first reviewed the evaluation report to ensure that the procedures were in strict conformity with the criteria, the Act and relevant Regulations, the IMCC shall approve (or otherwise) the evaluation report within fourteen (14) days of receipt of the report.
- 3) If the IMCC requires further information on the evaluation in order to arrive at its decision, the IMCC may extend the time for its decision
- 4) If the IMCC rejects the report, then the IMCC shall give written reasons for its rejection.
- 5) The IMCC shall inform the CTU, Concession Entity, the Office of the President and the Ministry in writing of its decision on the approval or otherwise of the evaluation report.

Regulations 91 - Form of Contract (Article 155 of the Act)

- 1) For the purposes of compliance with Article 155 of the Act, the Concession Entity shall ensure that the draft concession agreement designed for the concession and included in the concession bidding document shall include specific provisions pertinent to the specific concession and obtain IMCC approval pursuant to the provisions of Article 117(1)(a) and these Regulations. Once such IMCC approval has been obtained, the IMCC shall notify the Attorney General for his records on behalf of the Concession Entity.

Regulations 92 - Negotiations and Entry into Contract (Article 156 of the Act)

- 1) The process provided in Regulations 86 of meetings and receiving comments from the bidders on the Concession Bid Documents shall enable the Concessioning Entity to reduce and if possible avoid the need for negotiations of the concession contract and shall, in any event, conform to the minimum benchmarks approved by the IMCC pursuant to Article 117.

- 2) In the event an advisor has been engaged to assist the Negotiation Team, the advisor shall assist in the preparation of issues for negotiations to be submitted to the IMCC prior to the commencement of the negotiations but the advisor shall not be part of the Negotiating Team unless co-opted as permitted pursuant to Article 156(1).
- 3) The IMCC shall inform the CTU, Concession Entity, the Office of the President and the Minister of the final outcome of the negotiations with the recommended bidder or bidders as the context require under Article 156 (5) of the Act. An addendum to the evaluation report shall be drafted by the Concession Entity and approved by the IMCC to capture the outcomes of the negotiations.
- 4) A notice of award shall be published publicly simultaneously with the formal notice of award communicated to the winning bidder and unsuccessful bidders.
- 5) Signing of Contract
 - (a) The contract shall not be signed until at least 14 calendar days have elapsed, following the giving of notice to bidders and the public of the award of the contract.
 - (b) The Concessions Entity shall ensure that the requirements of Article 84(2) of the Act are met prior to signing the contract.
 - (c) After the signing of the concession agreement the Concession Entity shall forward copies of the Agreement to specific government ministries/ departments/ Agencies.

Regulations 93 - Issues to be Considered at Negotiations (Article 157 of the Act)

- 1) Pursuant to Article 117(1)(c), the IMCC shall approve the minimum benchmarks for negotiations with the concessionaire and the Negotiations Team shall abide by the same unless the IMCC agrees to modify the benchmarks and, where applicable, obtains relevant consents and approvals to do so from any other department of the Federal Government of Somalia and the Minister. The Negotiations Team shall be responsible for ensuring the concession bid documents conform to such minimum benchmarks or modifications so approved by the IMCC.

Regulations 94 - Post-Contract Management (Article 159 of the Act)

- 1) Pursuant to Article 159 of the Act and for the purposes of efficient management of the concession and protection of public interest after the award, the Concession Entity shall:
 - (a) work with other Government agencies to ensure contract compliance, monitor performance standards and the attainment of output timelines.
 - (b) be responsible for submitting reports on periodic basis as required by statutory agencies and to the IMCC.

- (c) conduct periodic assessment of the project performance to ensure that project objectives are met.
- (d) set up a system for communication with the public and stakeholders to get feedback on the project.

2) The CTU, in performing its functions with respect to Article 122 (1)(d), may recommend to the IMCC that the Concession Entity be required to submit reports to the IMCC related to:

- (a) the achievement of key milestones under the concession agreement;
- (b) any indication of a failure by the concessionaire to perform;
- (c) any possibility of dispute; or,
- (d) any other regular reporting as may be deemed necessary by the CTU and/or the IMCC to ensure appropriate oversight of the concession agreement.

PART VII – DISPOSAL OF SUPPLIES AND EQUIPMENT

Regulations 95 – Authority to Dispose (Article 161 of the Act)

- 1) No department, agency, ministry of Government or local authority shall dispose of obsolete stores or unserviceable equipment and plant without an express approval from the Minister of Finance.
- 2) Subject to approval of the head of entity, the disposal shall be carried out in accordance with the recommendation of the Board of Survey.

Regulations 96 – Disposal Procedures (Article 162 of the Act)

- 1) For the purposes of Article 162(1) of the Act, the definitions of unserviceable, obsolete or surplus supplies and equipment shall be:

(a) **Unserviceable:** any item of stores, plant and equipment which cannot be used for the intended purpose in its present condition due to major defects or damage, and is beyond economic repair. Classification as beyond economic repair for this purpose shall be determined on the basis that repair costs are certified to cost more than fifty percent (50%) of the current market price of a new replacement item.

(b) **Obsolete:** any item of stores plant and equipment which is rendered incapable of further effective use by developments in technology, incompatibility with associated items, or where the annual maintenance and breakdown costs can be certified to exceed thirty percent (30%) of the estimated cost of a new replacement item.

(c) **Surplus:** any stores item which has not moved for a period in excess of two years, or any item of plant or equipment which has remained unused for a period in excess of one year, and where no potential use for the item can be envisaged within the Entity.

- 2) Pursuant to Article 162(1)(a) of the Act, transfer to Government departments or other public entities is applicable where:

(a) an item can be usefully deployed by another Procurement Entity; or

(b) agreement is reached with the recipient Entity on price (if any), formal transfer of ownership, and removal from the premises.

- 3) Furtherance to the provisions under Article 162(1)(b), sale by public bidding is applicable where:

(a) the estimated value of the item, or group of items packaged together, is of sufficient value to justify the costs of conducting a public bidding;

- (b) a number of separate lots of lower estimated value items may be included in a single public bidding;
 - (c) the sale has end-user or export restrictions;
 - (d) post-bid negotiations may be required; or
 - (e) for reasons of transparency a formal public bidding is required to dispose of items provided directly by a donor purchased with donor funds.
- 4) Furtherance to the provisions under Article 162(1)(c), disposal by public auction is applicable where:
- (a) items or lots have an individual estimated sale value of less than USD 10,000;
 - (b) sufficient items or lots can be assembled for disposal to justify the costs of conducting the auction process;
 - (c) more than one item are to be disposed of and the items are at one location;
 - (d) there is a large number of potential Bidders for the item; or
 - (e) an on site auction is arranged to avoid transport costs.
- 5) Pursuant to Article 162(1)(d), destruction, dumping or burying shall only be used where approval has been obtained from agency responsible for environmental protection and/or any other agency that is responsible for the safety management.
- 6) The contract provided under PART IV of the Act shall, with the necessary modifications, apply to the contracts of disposal entered into between a procuring entity and a Bidder.

PART VIII – COMPLAINTS AND APPEALS REVIEW PROCEEDINGS

Regulations 97 – Right to Review (Article 163 of the Act)

- 1) All complaints received by the Authority pursuant to Article 163 of the Act shall be submitted under the cover letter of the Director directly to the Chairperson of the Independent Procurement Review Panel. For the avoidance of doubt, the Authority shall not reject any complaint from a complainant unless such rejection is pursuant to a formal decision of the Review Panel.
- 2) Findings and recommendations of the Review Panel shall be communicated in writing to the Authority and the Authority shall forward the decision of the Review Panel to the complainant with a copy to the Procuring/Concession Entity.

Regulations 98 – Review by Authorizing Officer of the Procuring Entity (Article 164 of the Act)

- 1) Pursuant to Article 164 (1) of the Act, the complaint made shall indicate:
 - (a) the name and contact details of the bidder or the person representing the bidder;
 - (b) the procurement or disposal requirement to which the complaint relates;
 - (c) the substantive and factual grounds of the complaint, including:
 - (i) the provision of the Act or Regulations made under the Act which are the subject of the breach or omission by the Procuring Entity; and
 - (ii) where known, the names of the person involved in the subject of the complaint, the events and the facts that constitute the complaint.
 - (d) the corrective measures requested by the bidder;
 - (e) the documentary evidence and any other evidence, relevant to the complaint, that is in the possession of the bidder; and
 - (f) any other information relevant to the complaint.
- 2) The Authorizing Officer shall investigate a complaint filed under sub-regulation 1 above by considering:
 - (a) the information and evidence contained in the complaint;
 - (b) the records of the procurement or disposal, kept by the Procuring Entity;
 - (c) information provided by the staff of the Procuring Entity, if any;
 - (d) where appropriate, information provided by other bidders; and
 - (e) any other relevant information.

- 3) Furtherance to Article 164(2) of the Act, an Authorizing Officer shall not investigate a complaint where:
- (a) the complaint does not fulfill the requirement of sub-regulation 1 and Article 164 of the Act;
 - (b) the complainant is not a bidder in respect of the procurement or disposal proceeding for which the complaint is made;
 - (c) a complaint is not in respect of any procurement or disposal proceeding;
or
 - (d) the complaint is not in respect of an omission or breach by the Procuring Entity, of the Act, Regulations made under the Act, guidelines issued under the Act or a provision of a solicitation document.
- 4) Pursuant to Article 164(5) of the Act, a bidder who is aggrieved by a decision of the Authorizing Officer made under Article 164 (4) of the Act and sub-regulation (2), may within ten (10) days from the receipt of the notification from the Authorizing Officer, make a complaint to the Independent Procurement Review Panel.

Regulations 99 – Review by Independent Procurement Review Panel (Article 165 of the Act)

- 1) Pursuant to Article 165(1) of the Act, a complaint to the Independent Procurement Review Panel shall be in writing, addressed to the Director of the Authority
- 2) A complaint made shall:
- (a) indicate the name and contact details of the bidder or the person representing the bidder;
 - (b) indicate the Procuring Entity against which the complaint is made;
 - (c) indicate the procurement or disposal requirement to which the complaint relates;
 - (d) indicate the complaint made to the Authorizing Officer;
 - (e) include a record of the correspondences regarding the complaint, between the Authorizing Officer and the bidder;
 - (f) indicate the grounds of the complaint;
 - (g) indicate the corrective measures requested for by the bidder from the Authority; and
 - (h) provide any other information relevant to the complaint.
- 3) The Review Panel shall, where a complaint is filed, and subject to fulfilment of provisions under Article 165(1) and (2) by the complainant, shall within a week:
- (a) notify the procuring entity of the complaint; and
 - (b) suspend the procurement or disposal proceedings.

- 4) The Review Panel shall request the Procuring Entity to provide the records of the procurement or disposal process and shall institute an investigation into the complaint.
- 5) Pursuant to Article 165(2), the fees as indicated in the Schedule 2 of these Regulations shall be paid to the Review Panel for the administrative review for a procurement or disposal of a value specified in the same schedule.
- 6) Where a complaint is upheld by the Review Panel, the fee shall be refundable.
- 7) Where a complaint is withdrawn or dismissed by the Review Panel, the fee shall not be refundable.
- 8) The Review Panel shall, in carrying out an investigation under Article 165 (3) consider:
 - (a) the information and evidence contained in the complaint;
 - (b) the records of the procurement or disposal kept by the Procuring Entity;
 - (c) the information provided by the staff of the Procuring Entity, if any;
 - (d) the information provided by the interested bidders; and
 - (e) any other relevant information.

Regulations 100 – Independent procurement review procedures (Article 166 of the Act)

- 1) The Head of Procuring Entity shall notify all bidders of any complaint received and the decision on the complaint with a copy to the Authority.
- 2) Where a bidder lodges a complaint to the Procuring Entity and such Entity decides on the complaint a copy of the decision shall be brought to the notice of the Authority.
- 3) Where a complaint has been reviewed by the Review Panel, the Authority shall notify all bidders of complaints received and the decision on the complaint.

Schedule 1: Threshold Matrix

- 1) In accordance with Article 24.1 of the Act and Article Regulations 14, contract awards shall be published when the estimated value of the contract is above:
 - (a) In the case of contracts for the procurement of goods, US\$100,000
 - (b) In the case of contracts for the procurement of services, US\$100,000
 - (c) In the case of contracts for the procurement of works, US\$100,000

- 2) In accordance with Article 27.3 of the Act and Regulations 16(4), Procurement Plans must be approved by the Authority where the Procurement Plan contains an individual procurement with an expected contract above:
 - (a) In the case of contracts for the procurement of goods, US\$500,000
 - (b) In the case of contracts for the procurement of services, US\$500,000
 - (c) In the case of contracts for the procurement of works, US\$1,00,000 .

- 3) In accordance with Article 30.1 of the Act and Regulations 18(4), contract awards must be approved by the following Approving Authority:
 - (a) Head of the Procuring Entity
 - (i) In the case of contracts for the procurement of goods of less than US\$10,000
 - (ii) In the case of contracts for the procurement of services of less than US\$10,000
 - (iii) In the case of contracts for the procurement of works of less than US\$40,000
 - (b) Procurement Committee
 - (i) In the case of contracts for the procurement of goods of less than US\$1,000,000
 - (ii) In the case of contracts for the procurement of services of less than US\$1,000,000
 - (iii) In the case of contracts for the procurement of works of less than US\$2,000,000
 - (c) Contracts Committee
 - (i) In the case of contracts for the procurement of goods at or above US\$1,000,000
 - (ii) In the case of contracts for the procurement of services at or above US\$1,000,000
 - (iii) In the case of contracts for the procurement of works at or above US\$2,000,000

- 4) In accordance with Article 71.1 of the Act and Regulations 30, National Competitive Bidding shall be used when the estimated value of the procurement is below:
 - (a) In the case of contracts for the procurement of goods, US\$100,000
 - (b) In the case of contracts for the procurement of services, US\$100,000
 - (c) In the case of contracts for the procurement of works, US\$200,000

- 5) In accordance with Article 72.1 and 94 of the Act and Regulations 31, International Competitive Bidding shall be required when the estimated value of the procurement

exceeds:

- (a) In the case of contracts for the procurement of goods, US\$100,000
 - (b) In the case of contracts for the procurement of services, US\$100,000
 - (c) In the case of contracts for the procurement of works, US\$200,000
- 6) In accordance with Article 86.1 of the Act and Regulations 42, the use of limited or restricted competitive bidding shall require the approval of the Authority when the value of the procurement exceeds:
- (a) In the case of contracts for the procurement of goods, US\$100,000
 - (b) In the case of contracts for the procurement of services, US\$40,000
 - (c) In the case of contracts for the procurement of works, US\$200,000
- 7) In accordance with Article 88.1 of the Act and Regulations 43, shopping Procedures shall be used when the estimated value of the procurement is below:
- (a) In the case of contracts for the procurement of goods, US\$50,000
 - (b) In the case of contracts for the procurement of technical services, US\$50,000
 - (c) In the case of contracts for the procurement of works, US\$50,0000
- 8) In accordance with Article 89.1 and 105.1 of the Act and Regulations 44, the use of direct contracting or sole sourcing shall require the approval of the Authority when the value of the procurement exceeds:
- (a) In the case of contracts for the procurement of goods, US\$100,000
 - (b) In the case of contracts for the procurement of services, US\$40,000
 - (c) In the case of contracts for the procurement of works, US\$200,000

Schedule 2: Fees for Appeals Review

No:	Value of Procurement	Fees payable for Appeals Review in USD
1.	Pre-qualification/ Expression of Interest (EOI)	400
2.	Procurements or disposal of a value of up to USD 100,000	500
3.	Procurements or disposal of a value of more than USD 100,000 up to USD 500,000	1,500
4.	Procurements or disposal of a value of more than USD 500,000 up to USD 1,000,000	2,500
5.	Procurements or disposal of a value of more than USD 1,000,000 up to USD 50,000,000	5,000
6.	Procurements or disposal of a value of more than USD 50,000,000 up to USD 100,000,000	10,000
7.	Procurements or disposal of a value of more than USD100,000,000	15,000

Schedule 3: Contract Types

Lump sum contract

- (a) A lump sum contract shall include fixed price determined in accordance with these Regulations.
- (b) A lump sum contract shall include interim or stage payments.
- (c) Payment for a lump sum contract shall be linked to clearly specified outputs or deliverables, which include:
 - (i) deliveries of supplies, evidenced by the appropriate delivery documentation;
 - (ii) reports;
 - (iii) drawings;
 - (iv) bills of quantities;
 - (v) activity schedules; and
 - (vi) any other outputs or deliverables appropriate to a contract.

Time-based contract

- (a) Payment for a time-based contract shall be based on agreed hourly, daily, weekly, or monthly fees for nominated personnel or a certain type or grade of personnel and reimbursable items using actual expenses or agreed unit prices.
- (b) Payment rates for personnel shall include salary, social costs,
- (c) overhead costs, fee or profit and, special allowances.
- (d) Reimbursable items include: -
 - (i) subsistence, such as per diem or housing;
 - (ii) transport, which may be international or local;
 - (iii) monies for mobilisation and demobilisation;
 - (iv) services and equipment such as vehicles, office equipment, furniture and supplies;
 - (v) office rent;
 - (vi) insurance;
 - (vii) printing of documents;
 - (viii) surveys;
 - (ix) training, if it is a major component of the assignment; and
 - (x) any other appropriate items.

- (e) A time-based contract shall include a maximum amount of total payments to be made including any contingency allowance for unforeseen work and duration.
- (f) A time-based contract shall include interim or stage payments.

Admeasurement contract

- (a) Under an admeasurement contract, works shall be split into various items and the quantity of each item needed to complete the assignment shall be estimated and indicated in the bidding document.
- (b) A Bidder shall price each work item by indicating a unit rate for each item in the bill of quantities.
- (c) The initial total contract price shall be calculated by multiplying the unit rate by the estimated quantity to give a total for each item, and then calculating the sum of the line item totals.
- (d) The actual work done shall be measured during the performance of the contract and shall be finally reconciled upon completion of the contract.
- (e) Payment shall be made for the actual quantity of work performed.
- (f) An admeasurement contract shall include fixed prices or price adjustment.
- (g) An admeasurement contract shall include interim or stage payments.

Framework contract

- (a) Under a framework contract, a Bidder shall indicate the unit rate for each item.
- (b) A procuring entity shall indicate the estimated quantity or value of a procurement where this is possible or necessary to obtain competitive bids, but shall not make a commitment to purchase the full quantity or value.
- (c) Notwithstanding paragraph (b), a procuring entity shall make a commitment to purchase a minimum quantity or value or to purchase all similar requirements from a successful Bidder, where this is necessary or preferable in order to obtain competitive prices.
- (d) A framework contract shall state the arrangements for obtaining specific requirements during the period of the contract, using placement of “call-off” or delivery orders where appropriate.
- (e) Payment shall be made on the basis of the works, services or supplies actually delivered or performed.
- (f) A framework contract shall include fixed prices or price adjustment.

Percentage based contract

- (a) A percentage based contract shall clearly define the total cost from which the percentage is to be calculated.

(b) A Bidder shall be required to indicate the fee rate as a percentage of the total cost of the procurement requirement.

(c) A percentage contract shall include: -

- (i) a fixed target cost;
- (ii) the minimum or maximum fees;
- (iii) sliding scales of the fees, related to the value of the subject of the contract; or
- (iv) incentive fees, related to any savings made through economic design, discounts obtained, cost reductions or similar fees.

Cost reimbursable contract

(a) Under a cost reimbursable contract, a procuring entity shall pay a provider:-

- (i) for the actual cost of the works, evidenced by receipts and other appropriate documentation; and
- (ii) a fee or profit to be agreed upon and specified in the contract.

Target price contract

(a) Under a target price contract, a procuring entity shall pay the provider for the actual cost of the works, evidenced by receipts and other appropriate documentation and a fee, profit or agreed percentage of any cost savings below the target price.

Retainer contract

(a) Payment for a retainer contract shall include a flat fee: -

- (i) which represents the total payment due, irrespective of the level and amount of services provided during the prescribed period; or
- (ii) as a retainer for the prescribed period plus a pre-agreed unit rate for services provided.

Success fee contract

(a) Payment for a success fee contract, shall be a: -

- (i) pre-agreed amount linked to the successful completion of a target or event;
- (ii) percentage of a predetermined amount or proceeds; or
- (iii) basic flat rate, which is not linked to the successful completion of a particular task, event or action.

(b) A success fee contract shall describe the nature of the success to which a success fee shall be applicable and the timescale in which the task, event or action shall be achieved.