

STATUTORY INSTRUMENT

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THE PUBLIC PROCUREMENT REGULATIONS, 2020

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SCHEDULE

STATUTORY INSTRUMENT NO. 5 OF 2020

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THE PUBLIC PROCUREMENT ACT

(ACT NO. 1 OF 2016)

THE PUBLIC PROCUREMENT REGULATIONS, 2020

Short title.

IN EXERCISE of the powers conferred on the Authority by Section 68 of the Public Procurement Act, 2016, the Authority hereby makes the following Regulations -

PART I-PRELIMINARY

1. In these Regulations unless the contrary Interpretation otherwise require-

"Act" means the Public Procurement Act 2016 (Act No. 1 of 2016);

"Authority" means the National Public Procurement Authority established by section 3 of the Public Procurement Act, 2016;

"bid" means a proposal or quotation given by a bidder in response to an invitation by a procuring entity and the terms "bid" and "tender" are synonymous;

"bidder" means a natural person or a legal entity that is a participant or potential participant in procurement proceedings for the provision of works, goods and non-consultant services and for the purpose of these Regulations, bidder includes supplier, contractor and service provider;

"bidding document" means a document or set of documents prescribing the quantity, quality, characteristics, conditions and procedures of a transaction prior to the actual procurement, on the basis of which a bidder is to prepare his bid;

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

"Board" means the board of Authority of the National Public Procurement Authority established under section 4 of the Public Procurement Act, 2016.

"coercive practice" means harming or threatening to harm, directly or indirectly, a person or his property to influence his participation in a procurement process or affect the execution of a contract;

"collusive practice" means a scheme or arrangement between 2 or more parties with or without the knowledge of a procuring entity, designed to establish prices at artificial, non-competitive levels;

"consultant" means a natural person or a legal entity that, according to the context, is a participant or potential participant in procurement proceedings providing consulting services;

"consulting services" mean services of intellectual and non-material nature that do not lead to a measurable physical output, including design, supervision, training, advisory, auditing, software development, and similar services;

"contract" means a written agreement of the parties regarding the procurement, of agreed goods, works, non-consultant services or consulting services, on the basis of which rights and obligations of the parties are determined;

"corrupt practices" means the offering, giving, receiving, directly or indirectly, of anything of value to influence the action of a public officer in the selection process or in the execution of a contract;

"electronic catalogue" means a web resource that provides information on products and services offered and sold by a vendor and supports on-line ordering and payment capabilities;

"electronic government procurement" means the use of information technology, especially the internet, by government in conducting its procurement activities with suppliers for the acquisition of works, goods, and consultancy services required by the public sector;

"endorse" means to signify approval;

"electronic procurement portal" means a web based system through which the various procurement operations are electronically conducted and which provides to bidders information on tender opportunities advertised by procuring entities;

"electronic procurement system" means the use of electronic system by procuring entities in conducting their procurement activities for the procurement of goods, works and services required by these entities;

"Electronic Transaction Act" means the Electronic Transactions Act, 2019 (Act No. 11 of 2019);

"fraudulent practice" means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;

"goods" mean objects of every kind and description, including commodities, raw materials, products, equipment, objects in solid, liquid or gaseous form and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves;

"guidelines" include procurement manual, circulars and policy statements, etc. issued from time to time by the Authority;

"head of procuring entity " means the chief executive officer of the entity such as the Minister of a Ministry or the overall head of an organisation;

"Independent Procurement Review Panel" means the Panel established under section 20 of the Act ;

"National Social Security Insurance Trust" means the National Social Security Insurance Trust established under section 3 of the National Social Security Insurance Trust Act, 2001 (Act No. 5 of 2001);

"non-consultant services" means services which are contracted on the basis of performance of measurable physical outputs, including operation and maintenance of facilities or plant, surveys, exploratory drilling, aerial photography, catering services and satellite imagery;

"National Revenue Authority" means the National Revenue Authority established under section 3 of the National Revenue Authority, 2002 (Act No. 11 of 2002);

"open competitive bidding" means the procurement method, conducted in accordance with section 38 of the Act, in which an interested bidder may submit a bid on the basis of the technical specifications and other requirements set forth in the bidding documents;

"performance security" means a bank guarantee or other form of security submitted by a bidder, contractor or service provider to secure his obligations under a procurement contract, in accordance with the requirements in the bidding documents;

"procurement" means the acquisition by any contractual means of goods, works, intellectual services or other services;

"procurement committee" means the committee established under section 18 of the Act;

"procuring entity " means an organ of the State, regional or local authority including statutory bodies and public sector corporations which are majority owned by the Government, public utilities using revenue collected by the sale of public services, as well as any other physical or juridical person to whom public funds have been allocated for use in public procurement ;

"procurement unit" means the unit established under section 19 of the Act;

"public funds" means any monetary resources of the State's budget, aid and credits under agreement with foreign donors or extra-budgetary resources of procuring entities used in public procurement ;

"public office" means an office of emolument in the public service;

"public officer" means a person holding or acting in a public office including the members and office-holders in a local council;

"request for quotations" means the simplified procurement method used to carry out low-value procurement of standard goods or routine works or services, in accordance with section 44 of the Act;

"request for proposals" means the method to be used for procurement of consultant services and other intellectual services in accordance with section 43 of the Act;

"restricted bidding" means the procurement method, conducted in accordance with section 41 of the Act, in which the invitation to bid is extended to a limited number of bidders;

"review" means to conduct a critical assessment of the procurement process for the purpose of verifying that the legal and regulatory requirements have been complied with;

"securities" means the money or the bank guarantee that a bidder provides to secure his obligations in a bidding proceeding or in contract performance, which the procuring entity cannot claim any property right over, unless the bidder, defaults in those obligations;

"sole-source procurement" means the method of procurement conducted in accordance with section 46 of the Act, by which the procuring entity awards the procurement contract directly without holding competitive proceeding;

"solicitation document" means bidding documents, request for proposals documents, request for quotations documents and any other document inviting bidders or consultants to submit a bid or a proposal for the supply of goods, works or non-consultant services and consulting services;

"two-stage bidding" means the type of bidding proceedings in which, in accordance with section 58 of the Act, the procuring entity holds consultations with bidders following a first stage on the basis of preliminary bidding documents with a view to considering various possible technical and contractual solutions to its procurement need and thereafter, in the second stage, a bidding proceeding is held on the basis of revised bidding documents;

"vote controller" means the Permanent Secretary of a Government Ministry, Chief Administrator of a Local Council, Managing Director or a General Manager, Executive Director or other head of a State-owned enterprise or head of a Government department, agency or commission;

"works" mean all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the contract, if the value of those services does not exceed that of the construction itself.

PART II - INSTITUTIONAL ARRANGEMENTS FOR PUBLIC PROCUREMENT

Authority to provide procurement training.

2. Pursuant to paragraph (c) of subsection (2) of section 14 of the Act, the Authority shall provide training for the public sector, including small enterprises in the application of public procurement policies and procedures and the preparation of bids using standard bidding documents.

Electronic public procurement.

3. (1) Pursuant to paragraph (b) of subsection (2) of section 14 and subsection (2) of section 28 of the Act, public procurement shall be done by electronic procurement through an electronic procurement portal.

(2) Notwithstanding sub regulation (1), the Authority may, on request and on the justification for not using the electronic system, give authorisation to a procuring entity to conduct procurement activities, without using an electronic procurement system.

(3) The Authority may from time to time through the issuance of circular direct the mode for the phased implementation of the electronic procurement.

Communication using electronic system.

4. (1) Communication for the execution of procurement activities and processes under Regulation 3 shall be made through an electronic procurement system prescribed by the Authority.

(2) The Authority may temporarily direct other forms of communication if the users encounter problems in using the electronic procurement system.

(3) A concerned user using the electronic procurement system shall immediately communicate with the Authority when the problem is resolved.

(4) The substance of discussions and clarifications in a pre-tender meeting or on site visit shall be in writing and shall be posted on the electronic procurement system.

(5) An information for the execution of public procurement activities under sub-regulation (1) shall be provided within 5 working days from the date of request.

5. (1) The Authority shall ensure that public procurement policy, systems and procedures are consistent with and integrated into other relevant Government policies, systems and procedures including those related to - Authority to integrate public procurement policy, etc.

- (a) finance, budgeting and expenditure management;
- (b) private sector development or small enterprise development;
- (c) anti-corruption initiatives;
- (e) decentralisation;
- (f) the use of information and communications technology; and
- (g) environmental protection.

(2) The Authority shall under sub-regulation (1), prepare and submit to the Minister, an annual report on the overall functions of the public procurement system including profile of procurement activities, for the consideration and approval of Cabinet and to be tabled in Parliament.

6. (1) Subject to paragraph (p) of subsection (2) of section 14 of the Act, the Authority shall, for the purpose of regulating and monitoring public procurement, institute - Regulating and monitoring of public procurement.

- (a) procurement review from tender preparation to the evaluation process;
- (b) contract review in the course of execution of an awarded tender; and
- (c) procurement performance reviews following contract completion as deemed necessary.

(2) Where the Authority is reasonably satisfied after conducting a review under sub-regulation (1) that a breach of the Act or of these Regulations have occurred, it shall, notwithstanding anything to the contrary in any other law -

- (a) direct a procuring entity to take such actions as necessary to rectify the contravention; or
- (b) terminate the procurement process.

(3) The Authority shall, prior to making a decision under paragraph (b) of sub-regulation (2), give a procuring entity and any other person whose legal right may be adversely affected by the decision, an opportunity to make representation.

(4) The Authority shall, where it finds persistent or serious breach of the Act or these Regulations, recommend -

- (a) the suspension of funds disbursement to any procurement financed by specific public funds where a breach has been established to entities; and
- (b) the disciplining of an accounting officer, chairman or member of a procurement committee or any other officer concerned with the procurement process in issue.

(5) The Authority shall not, in the exercise of its authority under sub-regulation (4), incur liability towards a procuring entity or any other person or body interested in the tender under review or investigation.

(6) The Authority shall, in the exercise of its authority under this Regulation, co-operate and work closely with other bodies responsible for oversight and where appropriate, refer cases to other bodies for action.

(7) Subject to the Act and these Regulations, the Authority may participate in any mechanisms for -

- (a) sharing information with other oversight bodies;
- (b) establishing common methodologies or standards for investigations and the collection of evidence;
- (c) establishing joint teams to conduct oversight functions;
- (d) promoting joint capacity building programmes relating to oversight functions;
- (e) scheduling work programmes, so as to avoid the duplication of effort or overlapping investigations;
- (f) conducting any other function which facilitates the conduct of oversight functions.

(8) The Authority shall for the purpose of exercising its power to obtain information under section 15 of the Act, request a report from a procuring entity relating to any aspects of procurement covered by the Act and these Regulations as may be required.

7. (1) The Authority shall be responsible for developing certification schemes for procurement officers and members of procurement committees and for that purpose work with appropriate bodies responsible for public sector employment and capacity building. Capacity building functions of Authority.

(2) In developing certification schemes for procurement officers and members of Procurement committees under sub-regulation (1), the Authority shall take into account -

- (a) the differing types, volumes and complexity of procurement managed by different procuring entities;
- (b) the needs of small procuring entities, where it may not be necessary to employ a full-time procurement officer;
- (c) the skills needed in ministries, local government and state-owned enterprises;
- (d) the skills needed in central offices, provincial branches and district branches of procuring entities; and
- (e) requirements for different levels of procurement staff and requirements for career progression for procurement officers.

Data management functions of Authority.

8. (1) The Authority shall issue circulars requesting procuring entities to -
- (a) submit regular reports of procurement activities;
 - (b) facilitate the establishment and maintenance of data and information bases concerning procurement ; and
 - (c) assist in the monitoring and evaluation of public procurement and development of public procurement policies.

(2) The Authority may where it would increase efficiency and effectiveness, designate a special agency or central administration to establish centralised standing lists of bidders in accordance with Regulation 20 .

9. (1) The Authority may, in revising or updating thresholds, set different thresholds for different types of procuring entities, including -

Setting and updating thresholds.

- (a) Ministries, Departments and Agencies of Government;
- (b) state owned enterprises and public companies with Government ownership; and
- (c) local governments.

(2) Notwithstanding sub-regulation (1), the Authority may -

- (a) set different thresholds for procuring entities of central or head offices and provincial district or branch offices; or
- (b) subdivide types of procuring entities into categories and set different thresholds for each category.

(3) Where different thresholds are set for different categories of procuring entities, the Authority shall publish list of the procuring entities in each category.

(4) The Authority shall in allocating procuring entities into categories, take into account -

- (a) the need for the procuring entity to process its procurement in an efficient manner, considering its procurement budget and workload;
- (b) the capacity of the procuring entity and its awarding authorities to manage its procurement.

Registration of suppliers, contractors and consultants.

10. (1) The Authority shall register and renew bi-annually suppliers, contractors and consultants involved with public procurement.

(2) The Authority shall charge minimal registration and renewal fees as may be determined by the Board in collaboration with the Ministry of Finance.

Environmental protection in public procurement.

11. (1) The Authority may, in consultation with other competent authorities, issue circulars on environmental protection in public procurement.

(2) Procuring entities shall implement measures to protect the environment in accordance with circulars issued by the Authority under sub-regulation (1).

Procurement committees.

12. A procurement committee may in addition to the structure and functions specified in section 18 of the Act -

- (a) approve applications for contract modifications where the value of the modification exceeds the authorised limits applicable to a procurement unit.
- (b) subject to approval by the Authority, establish subsidiary procurement committees with limited thresholds and levels of authority in district offices of the procuring entity, in accordance with Regulation 9.

Approvals by procurement committees.

13. (1) In considering submissions made by a procurement unit under subsection (13) of section 18 of the Act, a procurement committee -

(a) may -

- (i) approve a submission;
- (ii) reject a submission with reasons; or
- (iii) approve a submission, subject to clarifications or minor amendments;

(b) shall not -

- (i) perform any major modification on a submission, including, recommendations for contract award; or
- (ii) reject any submission without good and justifiable reason;

(c) shall provide explanation and justification of its reasons for any rejection to assist the procurement unit in remedying any defects in the submission prior to re-submission to the procurement committee.

(2) A decision of a procurement committee, including reasons for any rejection, shall be recorded in minutes and notified to the procurement unit in writing.

(3) Where any lower value award of contract or issue of a contract modification is made within the delegated authority granted to a procurement unit or the Head of a procuring entity, the procurement committee shall provide retrospective verification and approval at its next meeting.

14. (1) A procurement committee shall be composed of 5 members appointed under subsection (9) of section 18 of the Act including any rotating member representing the concerned end-user department of a procurement proceeding.

Composition of Procurement Committee.

(2) Additional rotating members may be drawn to provide necessary technical, legal and business expertise to the procurement committee.

Procurement committee meetings.

15. (1) Procurement committee meetings shall be attended by all members of the committee and a quorum for meetings of a procurement committee shall be the Chairman and at least 2 members.

(2) A decision of a procurement committee shall be unanimous and where unanimity cannot be achieved, the decision shall be deferred for further consultation and clarification to ensure that unanimous decision can be made at the next meeting.

(3) Where a member of a procurement committee has an interest in a submission, he shall -

- (a) declare his interest in the submission;
- (b) leave the meeting while the matter is considered; and
- (c) not participate in the deliberations or decision making process of the committee in relation to that submission.

(4) The secretary of a procurement committee shall record minutes of all procurement committee meetings, which shall include -

- (a) a register of attendance;
- (b) a list of all submissions considered;
- (c) the decision made for each submission, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval is subjected;

(d) any interest declared by a member; and

(e) any dissenting opinions among procurement committee members.

16. (1) A procurement unit and a subsidiary procurement unit shall report to a subsidiary procurement committee or to a procurement committee through the main Procurement unit.

Procurement units.

(2) The size and level of staffing of a procurement unit and any subsidiary procurement units shall be determined by the procurement workload of a procuring entity, taking into account the volume, value, complexity and type of procurement conducted.

(3) The location and structure of a procurement unit and any subsidiary procurement units shall be determined by a procuring entity, in accordance with its operational requirements.

(4) A procurement unit shall include staff with appropriate technical skills and where a procuring entity has significant volume of specialised procurement or procurement activity requires significant technical input.

(5) Staff of a procurement unit shall be appointed in accordance with the normal procedures applicable to a procuring entity, taking into account the certification and approval requirements issued by the Authority.

17. (1) Subject to subsection (3) of section 19 of the Act, a procurement unit shall -

Functions of procurement unit.

- (a) receive procurement requests from originating officers and check whether-
 - (i) the proposed procurement is within the approved procurement plan; and
 - (ii) the budgeted funds are available prior to the commencement of a procurement proceedings;

- (b) ensure that funds are properly committed prior to the issuance of a contract or purchase order;
- (c) conduct the procurement process for approval of contract award by the head of a procuring entity without prior reference to a procurement committee if the value is within the appropriate thresholds set out in the First Schedule or such lower thresholds as may be authorised by the Procurement Committee;
- (d) provide a written report to each meeting of a procurement committee detailing all contracts awarded under the authority of the head of a procuring entity or under the authority delegated to the procurement unit since the previous meeting;
- (e) maintain any standing lists of bidders or lists of pre-qualified bidders required by a procuring entity;
- (f) prepare, publish and distribute invitations to pre-qualify, pre-qualification documents and invitations for expression of interest;
- (g) receive, open and safeguard applications to pre-qualify and expressions of interest;
- (h) evaluate applications to pre-qualify and assess expressions of interest;
- (i) propose shortlists and lists of pre-qualified bidders to a procurement committee for approval;
- (j) propose the membership of evaluation committees to a procurement committee for approval;

- (k) participate in or advise evaluation committees, as appropriate;
- (l) participate in negotiations with bidders and consultants where permitted;
- (m) prepare notices of proposed award and letters of acceptance;
- (n) publish notices of proposed contract award;
- (o) prepare contract documents and purchase orders, in line with the award decision;
- (p) prepare and issue bid rejection and bidder debriefing letters;
- (q) prepare contract variations and modifications;
- (r) assist with the inspection and acceptance of goods, works and services, including participating in inspection and receipt committees as required;
- (s) ensure that procurement records are maintained, in accordance with these Regulations;
- (t) prepare any reports required;
- (u) provide information, as required, for any petition or investigation to debar a bidder or consultant or any investigation under review procedures; and
- (v) submit procurement documents, after the approval of the procurement committee, to the Authority for appropriate action.

(2) In the performance of its functions under sub-regulation (1), the procurement unit shall liaise with -

- (a) the originating officer or end-user who initiated the procurement to ensure that the procurement meets the requirement;
- (b) a 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.

Approval or rejection of procurement contract award by Head of procuring entity.

18. (1) In considering submissions made by a procurement unit, the head of the procuring entity may -

- (a) approve a submission;
- (b) reject a submission with reasons; or
- (c) approve a submission, subject to clarifications or minor amendments;

but shall not -

- (a) modify a submission; or
- (b) reject any submission without good reason in writing.

(2) A submission rejected by the head of a procuring entity may be corrected and resubmitted and the head of a procuring entity shall provide explanation and justification of the reasons for any rejection to assist the procurement unit in remedying any defects in the submission.

(3) Where the head of a procuring entity has an interest in any submission, he shall declare his interest in the submission, in writing, and refer it to the procurement committee for a decision.

(4) The head of a procuring entity may summon independent advisers or members of the procurement unit or procurement committee to explain submissions or provide technical advice, where required.

19. Subject to section 65 of the Act, an application by a bidder for a review by the Independent Procurement Review Panel shall be accompanied by an administrative fee of 2% of the applicant's bid price up to a maximum of Le 2 million.

20. (1) The Authority may designate a special agency, central administration, special procurement unit or procurement committee to conduct the procurement of common use items for which the benefits of centralised purchasing can be demonstrated.

(2) An agency, an administration, a procurement unit or a procurement committee designated under sub-regulation (1) shall -

- (a) liaise with all procuring entities, as part of the annual procurement planning process and on an ongoing basis, to establish a list of common use items and estimated requirements;
- (b) issue regularly updated information to all procuring entities on the items available, prices, delivery times and arrangements established for ordering or obtaining such items;
- (c) utilise warehouses to store common supplies; and
- (d) utilise framework contracts or other appropriate contractual arrangements for the purchase of common use goods, works or services.

PART III - QUALIFICATION OF BIDDER

Eligibility and qualification of bidder.

21. (1) A bidder shall, in order to participate in public procurement, be eligible and qualified in accordance with subsection (1) of section 21 of the Act.

(2) A procuring entity shall clearly state the eligibility and qualification requirements in all solicitation documents and shall require a bidder to provide signed statements or documentary evidence to certify his eligibility and qualification.

(3) Documentation required as evidence of a bidder's eligibility and qualification under sub-regulation (2) shall include-

- (a) copies of the bidder's certificate of registration, certificate of incorporation, trading licence or similar document;
- (b) copies of the bidder's tax registration, tax clearance certificates or similar documentation issued by the National Revenue Authority;
- (c) a signed declaration that the bidder does not have a conflict of interest in relation to the procurement ;
- (d) a signed declaration that the bidder, or any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of procurement proceedings;

(e) a signed declaration that the bidder is not subject to debarment pursuant to subsection (1) of section 35 of the Act and Regulation 160 and that any of its directors or officers have not been involved with a bidder or consultant currently subject to debarment.

(f) appropriate required evidence or statements of -

- (i) country of origin;
- (ii) general and particular experience;

(iii) professional and technical qualifications;

(iv) availability of equipment;

(v) adequacy of financial resources;

(vi) past performance;

(vii) after sales service;

(viii) spare parts availability;

(ix) past litigation history;

(x) manufacturer's authorisation to supply goods in Sierra Leone when required in the bidding documents; and

(xi) payment of social security contributions.

(4) A procuring entity shall, in determining the documentation required as evidence of a bidder's eligibility and qualification under sub-regulation (2), ensure that the requirements-

- (a) do not discriminate unfairly against foreign bidders, and
- (b) permit the submission of equivalent documents from the relevant authorities in the bidder's country of origin or the submission of statements certifying that equivalent documentation is not issued in the bidder's country of origin.

(5) A Government-owned enterprise shall be eligible to participate in public procurement if it can establish that it is -

- (a) legally and financially autonomous;
- (b) operating under commercial law, and
- (c) not a dependent agency of a procuring entity.

Verification of bidder's qualification.

22. (1) A procuring entity shall verify the qualification of a bidder through pre-qualification proceedings in accordance with Regulation 23 or post-qualification proceedings in accordance with Regulation 24 .

(2) A Consultant's qualifications for consultancy services shall be verified as part of the short-listing process in accordance with Regulation 81, based on the information provided in expressions of interest.

Pre-qualification.

23. (1) Pre-qualification may be used to restrict bidding to a list of bidders who have been identified as qualified to perform the contract satisfactorily and is appropriate if -

- (a) the goods, works or services are highly complex, specialised or require detailed design or methodology;

- (b) the costs of preparing a detailed bid would discourage competition;
- (c) the evaluation process is particularly detailed and the evaluation of a large number of bids would require excessive time and resources; or
- (d) bidding is for a group of contracts.

(2) Pre-qualification may also be used to pre-qualify bidders for a group of similar contracts or to register bidders to facilitate the preparation of shortlists under restricted bidding or request for quotations procedures.

(3) When pre-qualification proceedings are held, a procuring entity shall -

- (a) provide to all bidders responding to the invitation the pre-qualification documents which provide bidders with the information required to enable them to prepare and submit their applications for pre-qualification;
- (b) make available to each applicant the results of his assessment of qualifications;
- (c) invite all applicants that meet minimum criteria for pre-qualification to bid.

24. (1) Post-qualification, in which a procuring entity verifies the qualifications of the bidder selected for award against the criteria stated in the bidding documents, shall be used by the procuring entity to determine whether the bidder who submitted the lowest evaluated responsive bid is qualified to perform the contract effectively. Post-qualification.

(2) Post-qualification shall also be used to verify updated statements made by a previously pre-qualified bidder.

(3) Post-qualification proceedings shall be conducted in accordance with Regulation 76.

Qualification criteria.

25. (1) Qualification criteria shall be set to ensure that a bidder has the legal capacity for public procurement and is capable of effectively performing the proposed contract.

(2) Qualification criteria referred to in sub-regulation (1), shall be limited to those criteria necessary for the effective performance of the proposed contract, and shall not be unduly restrictive or designed to reduce competition.

(3) Qualification criteria shall be prepared for each procurement requirement, taking into account the size, complexity and technical requirements of the proposed contract.

(4) Qualification criteria may relate to -

- (a) technical competence and resources, including, the availability of sufficient manpower, the qualifications and experience of key personnel or managers, available equipment, manufacturing or construction facilities;
- (b) available capacity to perform the proposed contract, including, available manufacturing or production capacity, considering other commitments or manufacturer's authorisations to supply;
- (c) financial position, including financial soundness, sufficient turnover or sufficient cash flow; or

- (d) experience and satisfactory performance of similar contracts, taking into account relevant factors, including, references and litigation record.

(5) A procuring entity shall state in the pre-qualification or bidding documents, the documentary evidence required from a bidder, as evidence of their qualifications.

(6) Non-registration with a procurement entity by suppliers, contractors, service providers or consultants shall not be a bar to their participation in public procurement unless the circumstances demand and it is expressly stated in the particular bidding document.

26. An 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.

Qualification requirements for subcontractors and joint venture partners.

27. (1) Procuring entities, or any special agency designated to conduct the procurement of common use items in accordance with Regulation 20, shall establish Registers of Suppliers in order to provide information on potential bidders, to facilitate the development of shortlists and the identification of sole-sources.

Register of suppliers.

(2) A Register of Suppliers shall be established and maintained in accordance with the requirements of Regulation 20.

PART IV - PREPARATION FOR PROCUREMENT

A - ANNUAL PROCUREMENT PLANNING

Requirement for annual procurement planning.

28. (1) Procuring entities shall prepare a procurement plan for each fiscal year, containing the information required by Regulation 29 using the template provided by the Authority.

(2) Annual procurement planning shall be fully integrated with applicable budget processes and circulars issued by the Authority and instructions of the Ministry of Finance.

(3) Procuring entities shall revise and update their procurement plans as appropriate in consultation with the Ministry of Finance and the Authority, during the course of each fiscal year.

(4) Subject to paragraph (p) of subsection (2) of section 14 of the Act and after the approval by a procurement committee, a procuring entity shall seek the joint review and endorsement of the Authority and the Ministry, of the procurement plan within 5 working days per plan from the date of the request.

Contents of annual procurement plan.

29. (1) The annual procurement plan for each procuring entity shall include -

- (a) a detailed breakdown of the goods, works and services required and the interdependency of consulting services, works and goods that form part of a particular procurement ;
- (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
- (c) an indication of any items that can be aggregated for procurement as a single

package, or for procurement through any applicable arrangements for common use items;

- (d) an estimate of the value of each package of goods, works and services required and the source of funding;
- (e) an indication of the rules applicable to the procurement , where any procurement is not subject to these Regulations in accordance with section 1 of the Act; and
- (f) details of any committed or planned procurement expenditure under existing multi-year contracts.

30. Procuring entities shall procure common use items in accordance with an instruction issued by the Authority under Regulation 20. Procurement of common use items.

31. (1) Procuring entities shall aggregate procurement requirements, where appropriate, in order to achieve economies of scale. Aggregation of requirements.

(2) A procurement unit shall in deciding whether aggregation under sub-regulation (1) is appropriate, consider all relevant factors including-

- (a) which procurements are of a similar nature and likely to attract the same potential bidders;
- (b) when delivery, implementation or completion is required;
- (c) the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the requirement;

- (d) which procurements will be subject to the same bidding requirements and conditions of contract; and
- (e) the potential to realise savings in time or transaction costs or to facilitate contract administration by a procuring entity.

Division into lots.

32. (1) Notwithstanding the prohibition on artificially splitting of procurement under section 37 of the Act, procuring entities may divide a procurement requirement into several lots to be tendered under one procurement process, where it is anticipated that the award of several separate contracts may result in the best overall value for the procuring entity.

(2) In splitting the procurement requirements into several lots, the procuring entities should take into consideration the following factors -

- (a) the nature of the requirements;
- (b) the source of the requirement;
- (c) critical dates for each lot;
- (d) timeliness, when items are required;
- (e) economy of scale;
- (f) capacity of potential bidder;
- (g) point of delivery;
- (h) dates for delivery of each lot;
- (i) appropriate size of contract to maximize competition;
- (j) procuring items from the source; and
- (k) financiers' requirements.

(3) The division of a requirement into a package of separate lots is appropriate where this is likely to increase the number of responsive bid by enabling the participation of -

- (a) a bidder who is able to bid for some, but not all types of item; or
- (b) a small enterprise who would not be qualified to bid for the complete package as a single contract.

(4) A requirement shall not be divided into lots -

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

(5) Where a requirement is divided into lots, which may result in separate contracts, the selection of procurement method shall be determined by the estimated total value of all lots.

(6) Where a requirement which could be procured as a single contract is divided into lots, a procuring entity shall -

- (a) permit a bidder to bid for a single lot, any combination of lots or all lots; and

- (b) demonstrate, prior to contract award, that the recommended contract award or combination of contract awards offers the best overall value for the procuring entity .

B - INITIATION OF PROCUREMENT PROCESS

Purchase requisition and authorisation.

33. (1) A procurement requirement shall be documented using purchase requisition, which shall include -

- (a) a description of the goods, works or services required, in accordance with Regulations 35 or 38, as appropriate;
- (b) the estimated value of the goods, works or services; and
- (c) details of the estimated cost of the requirement, including any need for funds to be budgeted in future years for multi-year contracts.

(2) An originating officer shall-

- (a) in preparing the description of goods, work or services, ensure that appropriate technical advice is sought, where required; and
- (b) in estimating the value of the goods, works or services, ensure that the estimate is realistic and based on current information of economic and market conditions.

(3) Purchase requisitions shall be approved by the head of department or unit, prior to the initiation of procurement proceedings.

(4) Approved purchase requisitions shall be submitted to the procurement unit of a procuring entity to initiate procurement proceedings.

34. (1) A procurement unit shall ensure that the proposed procurement is identifiable within the annual procurement plan and adequate funds are available within the remaining annual budget, prior to initiating procurement proceedings. Budget verification and commitment of funds.

(2) A procurement unit shall, under sub-regulation (1) take into account all costs involved in procurement and in addition to the total contract price-

- (a) contingencies, including any anticipated contract variations, exchange rate fluctuations or allowance for price adjustment;
- (b) other costs relating to the successful completion of a procurement requirement for which a procuring entity will be liable, such as freight charges, insurance, customs clearance, inland delivery, import taxes or duties, inspections, installation or any costs relating to service or maintenance agreements;
- (c) costs relating to facilities, services or resources to be provided by a procuring entity, such as office space or communication facilities for consultants or counterpart staff; and
- (d) cost of any related contract, which is necessary for the successful implementation of the procurement, such as a contract for engineering supervision of a construction contract.

(2) Notwithstanding sub-regulation (1), a procurement unit shall ensure that adequate funds are available for managing the procurement proceedings, including funds required for publication of advertisements or procurement notices.

(3) A procuring entity shall not commence a procurement activity for which funds are not available or for which the Ministry or supervising authority has not issued a written confirmation of budgetary allocation that the required funds shall be made available in a timely manner and in the amount required.

(4) Where a procuring entity wishes to initiate procurement proceedings for a multi-year contract, which will commit the procuring entity to make payments in subsequent fiscal years, the procuring entity shall -

- (a) obtain the approval of the Ministry of Finance, prior to initiating procurement proceedings; and
- (b) ensure that funds for future fiscal years are included in the procurement plan and budgets for subsequent fiscal years.

Description of goods.

35. (1) In addition to the requirements of section 23 of the Act, every purchase requisition for the procurement of goods shall contain or be accompanied by a complete and unambiguous description of the goods required.

(2) A description under sub-regulation (1) shall include, where appropriate -

- (a) a list of goods and the quantities required, including any incidental services or works, such as delivery, installation, commissioning, maintenance, repair, user training, user's operation and maintenance manuals, tools for maintenance, the provision of spares and after-sales services;

- (b) point of delivery and delivery and completion schedule;
- (c) detailed specifications; and
- (d) drawings.

(3) Specifications under paragraph (c) of sub-regulation (2) shall include, where appropriate -

- (a) the purpose and objectives of the goods;
- (b) a full description of the requirement;
- (c) a generic specification to an appropriate level of detail;
- (d) a functional description of the goods, including any environmental or safety features;
- (e) performance parameters, including outputs and any indicators or criteria by which satisfactory performance can be judged;
- (f) process and materials descriptions;
- (g) dimensions, symbols, packaging, marking and labelling requirements;
- (h) inspection and testing requirements; and
- (i) Any applicable national or international standards required.

(4) The description of goods shall be drawn up in an objective manner so as to maximise competition.

Use of
brand names.

36. (1) Descriptions of goods shall not include any reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item, unless there is no other sufficiently precise or intelligible way of describing the requirement, in which case the words "or equivalent" shall be included and the description shall serve only as a benchmark during the evaluation process.

(2) Notwithstanding sub-regulation (1), where a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item is essential for reasons of technical compatibility, servicing, maintenance or preservation of warranty conditions, such description may be used, subject to written justification.

Description
of works.

37. (1) A purchase requisition for the procurement of works shall be accompanied by a complete, precise and unambiguous description of the works required.

(2) A description of work under sub-regulation (1) shall include, where appropriate -

- (a) the full scope of the works, which may include the design, construction or installation of equipment;
- (b) the purpose and objectives of the works;
- (c) the duration or completion schedule for the works;
- (d) details of the supervision requirements, working relationships and other arrangements for the administration of the contract;
- (e) soils investigations, preliminary surveys, drawings, and design requirements;

(f) national or international specifications and standards required;

(g) bill of quantities or activity schedule; and

(h) inspection and testing requirements.

38. (1) A purchase requisition for the procurement of services, consulting and non-consultant services, shall be accompanied by a complete, precise and unambiguous description of the services required. Description
of services.

(2) A description of service under sub-regulation (1) shall include, where appropriate -

(a) a background narrative to the required services;

(b) the objectives of the services and targets to be achieved;

(c) terms of reference;

(d) a list of specific tasks, duties or responsibilities;

(e) required deliverables or outputs for the services and relevant timeframe;

(f) the role, qualifications or experience required for any key staff;

(g) contract management and administrative arrangements including the reporting requirements of the procuring entity;

(h) any facilities, services or resources to be provided by the procuring entity;

- (i) inspection or quality testing requirements or other indicators of successful performance; and
- (j) the duration of the contract or implementation schedule.

C - SELECTION OF BIDDING DOCUMENTS AND PROCUREMENT METHOD

Selection of bidding documents.

39. (1) The procuring entity shall use the most appropriate format from among the standard bidding documents specified in the Second Schedule of the Act, or as specifically approved for use by the Authority with regard to -

- (a) the nature, value and complexity of the procurement requirement;
- (b) the need to and minimise risks and uncertainties for the procuring entity;
- (c) the procuring entity's ability to define its precise requirements, including the quantities and delivery or completion dates required;
- (d) the need for effective contract administration and cost control; and
- (e) the resources available for contract administration.

(2) A proposed variation to a standard bidding document or the substitution of other formats of bidding documents shall be fully justified in writing by the procurement unit and approved by the procurement committee.

(3) A variation or substitution of other formats of bidding documents under sub-regulation (2) shall only be permitted where -

- (a) the use of a specific alternative format is required by a donor providing the funds;
- (b) the procurement is a highly specialised or complex requirement where the standard bidding documents do not provide an appropriate basis for the bidding process or contractual requirements; and
- (c) in the case of paragraph (b), the procurement unit has sought the advice of the Authority in writing on any substantial variation of an existing standard bidding document or on substitution of an alternative bidding document.

(4) The Authority may issue additional guidelines and standard bidding documents for specialist requirements such as two-stage bidding procedures and procurement of complex Internet Telecommunication systems.

40. (1) Procurement units shall use the -

- (a) appropriate method of procurement in accordance with the thresholds set in the First Schedule; and
- (b) standard bidding documents prescribed in the Second Schedule of the Act.

Selection of procurement method.

(2) A proposed variation of a procurement method shall be fully justified in writing by a procurement unit and approved by a procurement committee.

(3) A variation under sub-regulation (2) shall only be permitted where -

- (a) there is a justifiable emergency need;
- (b) there is a severely limited number of sources for the procurement requirement; or
- (c) procurement is subject to the exemption for defence considerations in subsection (3) of section 1 of the Act.

(4) Pursuant to subsection (3) of section 14 of the Act and after the approval of a procurement committee, a procuring entity shall seek the Authority's endorsement on any proposed variation of the procurement method specified by the thresholds specified in the First Schedule.

National competitive bidding.

41. (1) A procuring entity shall use the national competitive bidding method where -

- (a) the estimated contract amount is higher than the value threshold specified in the First Schedule;
- (b) there are enough qualified local bidders capable of executing the contract;
- (c) the nature of the required works, goods and services are not complex;
- (d) works or goods that, by nature and scope, are unlikely to attract foreign bidders;
- (e) works and goods are available locally at prices lower than the international market; and
- (f) international competitive bidding is not cost-effective.

42. (1) A procuring entity may use restricted bidding procedures for goods, works or services in accordance with section 41 of the Act -

Restricted bidding.

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

(2) Subject to subsection (3) of section 14 of the Act and after the approval of a procurement committee, a procuring entity shall seek the Authority's endorsement on the use of restricted bidding procedures above the request for quotation threshold and the Authority may endorse the use of restricted bidding procedures within 3 working days from the date of the request.

43. A procuring entity shall conduct open or restricted bidding on an international basis, where -

International competitive bidding.

- (a) the estimated value of a procurement exceeds the threshold specified in the First Schedule;
- (b) the goods, works or services are not available under competitive price and other conditions from three or more bidders in Sierra Leone; or
- (c) a national competitive bidding proceeding has failed to identify an acceptable bidder.

44. A procuring entity shall use the request for proposals procurement method for all procurement of consultancy services, except where -

Request for proposals.

- (a) the estimated value is less than the threshold for the issuing of an expression of interest as specified in the First Schedule;

- (b) the procurement meets the conditions for use of sole source procurement specified in Regulation 46; or
- (c) the procurement meets the conditions for the use of restricted bidding specified in Regulation 42.

Request for quotations.

45. A procuring entity may use the request for quotations procurement method where-

- (a) readily available commercially standard goods, which are not specially manufactured to the particular specification of the procuring entity and the estimated value of the procurement does not exceed the threshold specified in the First Schedule;
- (b) the estimated value of the procurement does not exceed the threshold specified in the First Schedule in the case of works; and
- (c) the estimated value of the procurement does not exceed the threshold specified in the First Schedule in the case of services.

Sole-source procurement.

46. (1) A procuring entity may use the sole-source procurement method where -

- (a) only one bidder has the technical capability or capacity to fulfil the procurement requirement within the time required by the procuring entity or a particular bidder has exclusive rights in respect of the goods, works or services and no reasonable alternative or substitute exists;

- (b) for additional deliveries of goods by the original bidder which are intended either as parts replacement for existing goods, services or installations, or as the extension of existing goods, services or installations where a change of bidder would compel the procuring entity to procure equipment or services not meeting requirements of inter-changeability with already existing equipment or services;

- (d) additional works or services which were not included in the initial contract have, through unforeseeable circumstances, become necessary and the separation of the additional works or services from the initial contract would be difficult for technical or economic reasons;

- (e) in cases of extreme urgency, provided the circumstances which gave rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;

- (f) the services require that a particular consultant be selected due to his unique qualifications, or it is indispensable to continue with the same consultant;

- (g) urgent circumstances or an emergency need affect the choice of procurement method the procuring entity shall not automatically exclude competitive methods of procurement and shall obtain competition to the maximum extent practical in the circumstances.

(2) Where a procuring entity uses restricted bidding on grounds of emergency in accordance with section 41 of the Act or sole source procurement on grounds of an emergency in accordance with section 46 of the Act, the procuring entity shall limit the procurement to the quantity needed to deal with the urgency circumstances.

(3) Procurement under the sole source procurement method shall be subject to prior approval by a procurement committee.

(4) Pursuant to subsection (3) of section 14 of the Act and after the approval of the procurement committee, a procuring entity shall seek the Authority's endorsement on the use of sole-source procurement method.

Two-stage
bidding.

47. (1) A procuring entity may use two-stage bidding when -

- (a) it is difficult to draft precise specifications or prepare drawings for the required procurement; and
- (b) the required procurement is highly technical and specialised.

(2) Bidding using a two-stage procedure shall be conducted in accordance with section 58 of the Act and -

- (a) any announcement shall clearly state that the bidding is being conducted in two stages and that only technical bids are to be submitted in the first stage;
- (b) the initial bidding document shall request technical information only and shall contain outline details of the requirement, indicating any technical, performance required by the bidder and contractual terms and conditions of the proposed contract;

- (c) the initial evaluation shall consist of a preliminary examination and technical evaluation only and shall evaluate the bids against the outline details and parameters in the bidding document.

(3) A procuring entity may engage in discussions with any or all bidders whose proposals satisfy the conditions set forth in the bidding documents with a view to understanding the proposals or to indicate changes required to make them acceptable and to seek the bidder's willingness to make such changes.

(4) Minutes of discussions under sub-regulation (3) shall form part of the procurement records.

(5) At the end of the first stage of the bidding, -

- (a) a procuring entity may -
 - (i) reject those bids which do not, and cannot be changed to meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non-responsive; or
 - (ii) modify the technical specifications, evaluation criteria, and contract conditions, while seeking to maximise competition and articulate appropriate evaluation methodology; and
- (b) a procurement unit shall finalise its requirements and issue a revised bidding document to all bidders who were substantially responsive to the initial bidding document, requesting both technical and financial information.

(5) In the second stage of the bidding, a procuring entity shall invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents.

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

D - PRE-QUALIFICATION

Pre-qualification announcement. 48. (1) Where a procuring entity conducts a pre-qualification pursuant to Regulation 23, it shall publish an invitation to pre-qualify notice, inviting all potential bidders to submit applications to pre-qualify, under the following circumstances -

- (a) large and complex projects;
- (b) supply of complex equipment;
- (c) complex industrial installation;
- (d) specialised technical solutions.

(2) An invitation to pre-qualify shall contain-

- (a) the name, address and contact details of the procuring entity;
- (b) an outline of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
- (c) a statement of the key requirements and criteria to pre-qualify;

(d) instructions on obtaining the pre-qualification documents, including any price payable and the language of the documents; and

(e) instructions on the location and deadline for submission of applications to pre-qualify.

(3) An invitation to pre-qualify notice shall be published in accordance with Regulation 54.

49. (1) A procurement unit shall-

- (a) use the pre-qualification document issued by the Authority;
- (b) issue the pre-qualification documents to all bidders who request for them; and
- (c) maintain a record of all bidders to whom documents are issued.

Pre-qualification document.

(2) A Pre-qualification document shall contain all the information required by bidders to prepare and submit applications to pre-qualify and shall include -

- (a) the name, address and contact details of the procuring entity;
- (b) details of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
- (c) the qualification criteria in accordance with Regulation 25;

- (d) instructions on the preparation of applications to pre-qualify, including any standard forms to be submitted and the documentary evidence and information required from bidders;
- (e) instructions on the sealing, labelling and submission of applications to pre-qualify, including the location and deadline for submission; and
- (f) information on how applications are evaluated.

(3) Subject to paragraph (p) of subsection (2) of section 14 of the Act, after the approval of the procurement committee, a procuring entity shall submit a request to the Authority for review of the pre-qualification document and the Authority shall respond within 5 working days from the date of receipt of the request.

(4) A procuring entity shall allow sufficient period of time, to enable bidders to prepare and submit their applications to pre-qualify.

(5) A procurement unit shall when determining the pre-qualification period, take into account the factors in sub-regulation (4) of Regulation 57.

(6) A procurement unit shall promptly respond to all requests for clarification, in accordance with Regulation 60.

Evaluation of applications.

50. (1) All applications to pre-qualify received on time shall be evaluated by the procurement unit on a pass or fail basis against the criteria in the pre-qualification document.

(2) A procurement unit shall prepare a record of its evaluation of applications, which shall clearly state which bidders were determined to be qualified and the reasons why bidders were not qualified.

(3) The results of the pre-qualification, including the record of the evaluation of applications, shall be submitted to the procurement committee, at the time of obtaining approval for the bidding documents.

(4) Subject to paragraph (p) of subsection (2) of section 14 of the Act, a procuring entity shall submit the pre-qualification evaluation report to the Authority for review.

(5) A procuring entity shall invite all pre-qualified bidders to submit bids.

51. (1) Procuring entities shall maintain a register of bidders who are assessed to be of a suitable standard to meet the specialist requirements of the procuring entity for the purposes of restricted bidding and request for quotations. Registration of bidders, engineers.

(2) The Ministry responsible for Works, Housing and Infrastructure shall maintain a central register of approved contractors classified into categories according to their capability and performance.

(3) The Sierra Leone Institute of Engineers shall maintain a central register of qualified engineers classified into categories according to their capability, performance and speciality.

(4) Pending the issue of any further guidelines by the Authority, the bidder registration process shall be based on the following principles -

- (a) periodic public advertisement to invite applications;
- (b) the establishment and publication of clear evaluation criteria for acceptance into categories and grades;

- (c) monitoring and recording the performance of bidders on contracts awarded;
- (d) sharing of database information with other procuring entities; and
- (e) registration to be subject to formal renewal or cancellation if a bidder has not satisfactorily undertaken any contracts within a three-year period.

(5) The Authority shall maintain a master database of all registered bidders.

(6) At the end of the first quarter of every calendar year, all procuring entities, the Ministry responsible for Works and the Sierra Leone Institute of Engineers shall make available relevant portions of their most updated databases to the Authority to form part of the master database.

(7) Notwithstanding paragraph (a) of sub-regulation (1), the Authority may require that all current and potential bidders register directly to the Authority.

(8) The Authority shall under sub-regulation (7), prescribe the requirements and fees for registration.

(9) Where formal pre-qualification is conducted for any specific procurement proceeding, or bidders respond to an invitation under open competitive bidding and meet the qualification criteria, these bidders shall also be placed on the register of bidders.

(10) Procuring entities shall not be obliged to invite all registered bidders to submit bids, under restricted bidding or request for quotations procedures, but shall ensure a rotation of registered bidders on successive shortlists.

PART V - BIDDING PROCEDURES FOR GOODS, WORKS AND NON-CONSULTANT SERVICES

A - INVITATION FOR BIDS

52. (1) Bids shall be invited - Inviting bids.

(a) in the case of open competitive bidding-

(i) through the publication of an announcement of bidding proceedings where no pre-qualification has been conducted;

(ii) from the list of pre-qualified bidders, where a pre-qualification has been conducted; and

(b) in the case of restricted bidding or a request for quotations from a shortlist of bidders.

(2) An invitation to bid notice shall contain all the information required to be completed in the format provided within the standard bidding document selected for the procurement proceeding and shall be published in accordance with Regulation 53.

53. An invitation for bid notice or an invitation to pre-qualify notice shall be - Publication of announcement.

(a) published on the Authority's website and on a procuring entity's website if such exists;

(b) published in the Sierra Leone Gazette;

(c) published in 2 national print media of wide circulation in Sierra Leone weekly for at least the first 2 weeks of the bidding period;

- (d) optionally broadcast over the radio or television, on the stations and programmes and at a time most likely to target the widest spectrum of potential bidders;
- (e) in the case of international competitive bidding, the notice shall also be published in at least one printed media of wide international circulation on one occasion to ensure wide competition.

Shortlist.

54. (1) Where a procuring entity invites bids from a shortlist of bidders, the shortlist shall include -

- (a) all potential bidders, where restricted bidding is used on the grounds of a limited number of sources, in accordance with paragraph (a) of sub-regulation (1) of Regulation 42;
- (b) sufficient bidders to ensure effective competition, and in any case at least 5 bidders, where restricted bidding is used under paragraph (b) of sub-regulation (1) of Regulation 42; and
- (c) at least 5 bidders, wherever possible, where restricted bidding is used on the grounds of emergency, in accordance with sub-regulation (3) of Regulation 42.

(2) A procurement unit may in developing a shortlist, use -

- (a) registered bidders pre-qualified in accordance with Regulation 27;
- (b) its own knowledge of the market;
- (c) any other appropriate verifiable sources of information.

(3) Bidders shall not be included on a shortlist unless they can be expected to fully satisfy the procuring entity's requirements, including those related to eligibility, qualifications, capacity, resources and experience.

(4) The bidders included on the shortlist shall not have the same ownership and where there is more than one potential bidder having the same ownership, the procurement shall be considered sole source procurement in accordance with Regulation 46.

(5) Where the procuring entity uses restricted bidding on the grounds of a limited number of sources, in accordance with Regulation 2, it shall also publish a notice, in accordance with Regulation 53, which shall state -

- (a) the nature of the procurement requirement;
- (b) that the procuring entity is using restricted bidding on the grounds of a limited number of sources;
- (c) the proposed shortlist of bidders; and
- (d) that any potential bidder requiring information on the procurement requirement or wishing to participate in the procurement may contact the procurement unit of the procuring entity.

(6) The proposed shortlist shall be approved by the procurement committee, prior to issuance of the bidding documents.

55. (1) Procuring entities shall use the appropriate standard bidding document format issued by the Authority for drafting individual bidding documents. Contents of bidding documents.

(2) A procuring entity shall provide, in an expeditious and non-discriminatory manner, the bidding documents to all potential bidders that respond to the invitation for bids or, in the case of pre-qualification proceedings, to all bidders that have been pre-qualified, and the price that may be charged for the bidding documents.

(3) Pursuant to subsection (2), the bidding document shall be readily available prior to the publication of the invitation for bids.

(4) A bidding document shall provide bidders with all the information required to submit bids that are responsive to the needs of the procuring entity through completion of all required sections of the standard bidding document prior to issue.

(5) Pursuant to paragraph (p) of subsection (2) of section 14 of the Act and after the approval of the procurement committee, a procuring entity shall submit a request to the Authority for review of the bidding document and the Authority shall respond within 5 working days from the date of receipt of the request.

Evaluation, methodology and criteria.

56. (1) The methodology for the evaluation of bids and the selection of a successful bidder shall consist of -

- (a) a preliminary examination to determine whether bids are complete and are responsive to the basic instructions and requirements of the bidding document;
- (b) a comparison of each bid to the technical requirements of the description of goods, works or services on a pass or fail basis, to determine whether the bids are substantially responsive; and
- (c) the determination of the bid with the lowest evaluated responsive price.

(2) Where appropriate, a procuring entity may include additional evaluation criteria in the bidding document, which shall be taken into account in determining the evaluated price of each bid and such evaluation criteria shall be related to the performance, characteristics or terms and conditions of a bid, including-

- (a) delivery or completion schedule;
- (b) payment schedule;
- (c) the cost of spare parts or after sales service;
- (d) operating or maintenance costs or
- (e) the productivity of equipment.

(3) An additional evaluation criteria shall be designed to measure the advantage or disadvantage of a factor to the procuring entity, quantified in monetary terms and applied as an increase or decrease to the bid price, for purposes of evaluation only and the bidding document shall state the methodology for calculating and applying the adjustment to the bid price.

(4) A margin of preference for domestic bidders under Regulation 75 and specified in the bidding documents shall apply.

57. (1) The bidding period shall start on the date of the first bidding of the announcement and shall finish on the date of the bid submission deadline.

Minimum periods publication.

(2) The minimum bidding period shall be -

- (a) 4 weeks for national competitive bidding;
- (b) 6 weeks for international competitive bidding;
- (c) 4 weeks for national restricted bidding;
- (d) 6 weeks for international restricted bidding.

(3) Notwithstanding paragraphs (c) and (d) of sub-regulation 2, where restricted bidding is used on grounds of emergency, the minimum bidding period shall not apply.

(4) A procurement unit shall in determining an appropriate bidding period for each requirement, take into account, in addition to the minimum bidding period -

- (a) the time required for preparation of bids, taking into account the level of detail required and the complexity of bids;
- (b) any need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such documents;
- (c) the location of shortlisted or potential bidders and the time required to obtain the bidding document and for the delivery and submission of bids to the procuring entity;
- (d) the extent of any anticipated sub-contractor; and
- (e) any restrictions relating to the time the goods, works or services are required.

(5) Pursuant to paragraph (j) of subsection (2) of section 32 of the Act, where the circumstances so require under open competitive bidding, especially when the items are urgently required, a procurement unit may make recommendation to a procurement committee for a reduction in the advertising period and the procurement committee may give an approval for the reduction of the bidding period which shall not be lower than half of the minimum required bidding period for open competitive bidding.

(6) Pursuant to paragraph (p) of subsection (2) of section 14 of the Act and after the approval of a procurement committee, a procuring entity shall seek the Authority's endorsement for the reduction of the bidding period and the Authority may endorse the reduction of the bidding period within 5 working days from the date of the request.

58. (1) Bidding documents shall be issued to-

- (a) all bidders responding to the invitation to bid notice; or
- (b) all bidders on the shortlist or list of pre-qualified bidders.

Issue and sale of bidding documents.

(2) Where a bidding document is issued to shortlisted or pre-qualified bidders, the document shall be issued to all bidders at the same time.

(3) A procurement unit shall maintain a record of all bidders to whom the documents are issued.

(4) A procuring entity may charge a fee for the bidding documents, which shall be calculated to cover the costs related to printing, copying and distribution of the documents only and shall not include any element of profit.

(5) Payment from the sale of standard bidding documents shall be made into the Consolidated Funds.

(6) The Authority shall receive on a regular basis a percentage of the fees for each standard bidding document paid by bidders.

(7) The percentage of the fees received by the Authority under sub-regulation (6) shall be determined by the Authority after consultation with the Ministry.

(8) Where bidding documents are sold, a procurement unit shall-

- (a) issue signed receipts for the documents and bidders may be required to submit a copy of the receipt with their bid; and

- (b) allow potential bidders to inspect the documents, prior to purchasing the document.

Bid securities.

59. (1) A procuring entity may require bid securities, in order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids and the bidding documents shall state any requirement for a bid security.

(2) The value of any required bid security shall be expressed as a fixed amount and not as a percentage and the amount shall be between 2 and 5 percent of the estimated value of the bid price.

(3) A procurement unit shall in determining the amount of bid security required, take into account-

- (a) the cost to bidders of obtaining a bid security;
- (b) the estimated value of the contract; and
- (c) the risk of bidders failing to fulfil the conditions of their bids.

(4) The amount referred to in sub regulation (3) shall be high enough to deter irresponsible bids but not so high as to discourage competition.

(5) Bid securities shall be valid only when they have been issued by a banking institution acceptable to a procuring entity.

(6) A procurement unit shall release bid securities promptly to unsuccessful bidders upon expiry of the term of the security or formation of a contract with successful bidder and submission of any required performance security.

(7) A bid security of the successful bidder shall not be released, until the contract is signed and any required performance security has been received.

(8) A procurement unit shall manage bid securities in accordance with Regulation 155.

60. The recommended periods for bid clarifications to be accepted under sub-regulation (2) of Regulation 57 shall be as follows- Clarification of bidding documents.

- (a) national competitive bidding 7 days prior to the deadline for bid submission; and
- (b) international competitive bidding 14 days prior to the deadline for bid submission.

61. (1) A procuring entity may organise -

- (a) a pre-bid conference in order to brief potential bidders or to offer the opportunity for them to seek clarifications; or
- (b) a site visit, to enable bidders to gain access to the site for performance of any proposed works or services.

Pre-bid conferences and site visits.

(2) Details of a pre-bid conference and site visit including the date, time, location and contact information shall be included in the bidding document and where possible, in the invitation for bids.

(3) The date of a pre-bid conference or site visits shall be sufficiently early in the bidding period, to enable bidders to take the information into account in preparing their bids, but shall not be so early as to make attendance difficult for any potential bidders.

(4) A procurement unit shall prepare minutes of any pre-bid conference and shall promptly send them to all bidders to whom the bidding documents have been issued and the minutes shall include -

- (a) all information provided as part of any briefing;

- (b) details of any clarifications requested, but without identifying the source of the inquiry; and
- (c) details of responses provided to clarifications.

(5) A procurement unit shall, following any pre-bid conference or site visit and where required, issue clarifications or addendum to the bidding document.

(6) To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, a procurement unit may, at its discretion, extend the deadline for the submission of bids.

Cancellation of procurement proceedings.

62. (1) The cancellation of procurement proceedings or rejection of all bids in accordance with section 25 of the Act may be undertaken where -

- (a) the procurement need has ceased to exist or changed significantly;
- (b) insufficient funding is available for the procurement;
- (d) there is significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the recommencement of proceedings is necessary;
- (e) insufficient, or no responsive bids are received;
- (f) there is evidence of corruption, fraud, coercion or collusion among bidders; or
- (g) cancellation is deemed to be in the interest of national security.

(2) Before rejecting all bids or cancelling any procurement proceedings, a procurement unit shall notify the originating officer and prepare a written request to a procurement committee for approval of the cancellation, which shall clearly state -

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

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

(4) Pursuant to paragraph (p) of subsection (2) of section 14 of the Act and after the approval of the procurement committee, a procuring entity shall inform the Authority in writing of its decision to cancel the procurement proceeding and the reasons for cancellation prior to commencing any cancellation process.

(5) A procuring entity shall not be liable to a bidder by reason only of rejection of all bids or cancellation of procurement proceedings under sub-regulation (1).

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

(7) In the event of cancellation of procurement proceedings, the procurement shall not be re-bid to the same specifications and contract conditions unless the cancellation of the initial proceeding is for budgetary or other reasons unrelated to the specifications and contract conditions, but if the procurement is to be repeated, the reasons for the cancellation of the initial proceeding shall be examined and the technical specification or contract conditions, or both may be suitably modified prior to re-bidding.

Receipt of bids.

B - RECEIPT AND OPENING OF BIDS

63. (1) A procurement unit shall ensure that there is a wall clock in the designated venue for the submission of bids showing the exact local time in Sierra Leone.

(2) A procurement unit shall make arrangements for the receipt and safekeeping of bids up until the deadline for submission of bids, which may include -

- (a) the use of a tender box, in which bidders are responsible for depositing their bids directly and which shall remain locked until the time for bid opening; or
- (b) the receipt of bids by staff of a procurement unit, who shall be responsible for issuing signed receipts, showing name of a bidder, the precise date and time of receipt and keeping bids in a secure location until the time for bid opening.

(3) Where a bid is too large for the tender box, or samples are required to be submitted separately, a procurement unit shall receive and keep the bid, or samples, in accordance with paragraph (b) of sub-regulation (2) of Regulation 63.

(4) Where a procurement unit receives bids and issues receipts, it shall maintain a record of all bids received, indicating the name of each bidder, the date and time of receipt and the name of the person responsible for receipt.

(5) A procuring entity shall not be held liable for the loss or delay in delivery of any bid delivered by mail or courier.

(6) A procurement unit shall ensure that appropriate staff are available at the location for submission of bids or that bidders have access to the tender box, for a reasonable period of time prior to the deadline.

(7) A procuring entity shall not disclose the number or identity of bids received, prior to the bid opening, other than to public officials who require the information as part of their official duties.

64. (1) Bidding shall be closed at the precise date and time of the deadline for submission of bids stated in the bidding document and where a tender box is used for the receipt of bids, a procurement unit shall seal the tender box at the date and time of the deadline and ensure that no further bids are placed in the bid box. Bid closing.

(2) A procurement unit shall assign suitable, experienced staff to manage bid closing.

(3) A bid that is received after the date and time of the deadline for submission of bids shall not be accepted, but shall be declared late.

(4) Late bids shall be labelled as late, stating the date and time of receipt and shall be returned unopened to a bidder and any late bid which is not correctly labelled with the bidder's name shall be left unopened and destroyed.

(5) Notwithstanding sub-regulation (1) where a bid is submitted using a two-envelope system, a procurement unit may open the outer envelope only, for the purpose of identifying the name and address of the bidder on the inner envelopes and the inner envelopes shall not be opened, but shall be returned unopened to the bidder or left unopened and destroyed.

(6) Immediately after the bid closing, the tender box or bids received by hand by the deadline for submission of bids shall be taken to the location for bid opening.

Public opening of bids.

65. (1) All bids received on time at the date, time and location indicated in the bidding document shall be opened in public and the time for bid opening shall be the same as, or immediately after, the time of the deadline for submission of bids.

(2) Bidders, or their representatives, shall be permitted to attend the opening of bids.

(3) A bid opening committee shall first open any envelopes marked "withdrawal" and the corresponding bids shall be located and returned unopened to a bidder and no bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at bid opening.

(4) All other envelopes, including substitutions and modifications and alternative bids shall be opened and the details indicated in the bidding document read out and all bids opened shall be stamped on key pages and signed or initialled by the chairman and 2 other members of the Bid Opening Committee.

(5) A bid substitution shall not be permitted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out at bid opening.

(6) A bid modification shall not be permitted unless the corresponding modification notice contains a valid authorisation to request the modification and is read out at bid opening.

(7) With the exception of late bid, a bid shall not be accepted, rejected, disqualified or evaluated in any way at the bid opening, and any discrepancies or missing documents shall be noted in the record of bid opening.

(8) A procurement unit shall make a record of the bid opening, which shall be kept as part of the procurement record and a copy of the record made available to a participating bidder on request and the record shall include -

- (a) the names of all bidders whose bids were opened;
- (b) the presence or absence of a bid security, if one was required;
- (c) bid forms duly signed by bidder;
- (d) the total price of the bid, including the currency and amount, and any discounts offered, except where the opening is of technical bids only; and
- (e) the names of all staff of a procuring entity and bidders' representatives attending the bid opening.

(9) Bidders' representatives attending the bid opening shall be requested to sign an attendance register, but the absence of any such signature shall not invalidate the record of bid opening.

(10) Pursuant to paragraph (p) of subsection (2) of section 14 of the Act, a procuring entity shall provide the Authority with a copy of the bid opening record immediately after bid opening session.

(11) An opened bid shall immediately be taken to a secure location, where it shall be kept until the evaluation begins.

C - EVALUATION OF BIDS

66. (1) A procurement committee may appoint evaluation committee for any procurement requirement which exceeds the authority of a procurement unit, for the evaluation of bids and the preparation of an evaluation report with recommendations for approval by the procurement unit, the head of the procuring entity or the procurement committee in accordance with authority levels given in the First Schedule of the Act.

Evaluation committees.

(2) The number and level of members of an evaluation committee shall depend on the value and complexity of the procurement requirement, but shall be a minimum of 3 members.

(3) An evaluation committee shall comprise skills, knowledge and experience relevant to the procurement requirement, which may include-

- (a) technical skills relevant to the procurement requirement;
- (b) end user representation;
- (c) procurement and contracting skills;
- (d) financial management or analysis skills; or
- (e) legal expertise.

(4) To ensure transparency, members of an evaluation committee shall not be directly involved in the approval of any award of contract.

(5) Pursuant to section 33 of the Act, each member of an evaluation committee shall declare any interest in the bid in writing to the head of the procurement committee and shall ask to be relieved from his duty.

(6) Membership of an evaluation committee shall be recommended by the procurement unit, subject to the approval of the procurement committee.

Assessing
responsiveness
of bids.

67. (1) An evaluation committee shall, following the opening of bids, first examine the bids in order to determine whether-

- (a) a bid is complete and signed;

(b) the required documents to establish legality, validity and required bid security have been furnished; and

(c) a bid is substantially responsive to the technical specification and contract conditions set forth in the bidding documents.

(2) A bid shall be rejected and excluded from further evaluation and comparison where it is-

(a) not complete, not signed, not accompanied by a bid security in the prescribed form, where one is required;

(b) not accompanied by essential supporting documents such as business registration certificates and tax receipts, or

(c) substantially non-responsive to the technical specifications, contract conditions or other critical requirements in the bidding documents.

(3) Where a pre-qualification procedure is applied, a bid received from any other, than the pre-qualified bidders shall be rejected and excluded.

(4) A procuring entity's determination of a bid's responsiveness shall be based on the contents of the bid itself, subject to any clarifications received under Regulation 69.

(5) A substantially responsive bid shall be one which conforms to all the instructions, requirements, terms and conditions of the bidding documents, without material deviation, reservation or omission.

(6) A material deviation, reservation, or omission is one that -

- (a) affects in any substantial way the scope, quality, or performance of the works, services or supplies specified in the bidding documents;
- (b) would limit in any substantial way, inconsistent with the bidding documents, the procuring entity's rights or the bidder's obligations under any resulting Contract; or
- (c) if corrected would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

(7) A bid which contains a material deviation, reservation or omission, and is therefore not substantially responsive, shall be rejected and may not subsequently be made responsive by the bidder or the procuring entity.

(8) The classification of a deviation, reservation or omission as material or non-material shall be determined by the objectives and requirements of the individual procurement requirement, as stated in the bidding document, and shall take into account the impact on key factors, such as cost, risk, time and quality.

(9) 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.

(10) The classification of deviations, reservations and omissions as material or non-material shall be consistently applied to all bids.

68. (1) Where a bid is substantially responsive, a procuring entity may waive, clarify or correct any non-conformity, error or omission, which does not constitute a material deviation.

Correction of non-conformities, errors and omissions.

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

(3) A procuring entity may correct purely arithmetical errors in bids in accordance with the procedure stated in the bidding document.

(4) Bidders shall be notified in writing of any arithmetic corrections and request, to agree to the correction.

(5) Where a bidder does not accept the correction of an arithmetical error, his bid shall be rejected and the bid security may be forfeited.

69. (1) A procuring entity may request clarification from a bidder of its bid in writing.

(2) A request for clarification under sub-regulation (1) shall not seek and the bidder shall not be permitted to -

- (a) amend the bid price, except to accept the correction of arithmetic errors;
- (b) change the substance of the bid; or
- (c) substantially alter anything which is a deciding factor in the evaluation.

(3) Any clarification received, which is not in response to a written request from a procuring entity, shall not be taken into account.

(4) The failure of a bidder to reply to a request for clarification may result in the rejection of the bid.

Preliminary examination.

70. (1) An evaluation committee shall conduct a preliminary examination to determine whether bids are complete and are responsive to the basic instructions and requirements of the bidding document.

(2) A preliminary examination under sub-regulation (1) shall determine whether -

- (a) a bid has been submitted in the correct format;
- (b) any required bid security has been submitted, in the correct form and amount and valid for at least the period required;
- (c) the bidder meets the eligibility criteria;
- (d) the bid has been submitted without material reservations or deviations from the terms and conditions of the bidding document;
- (e) the bid has been correctly signed and authorised;
- (f) the correct number of copies of the bid have been submitted;
- (g) the bid is valid for at least the period required;

- (h) all key documents and information have been submitted;
- (i) any required samples have been submitted; and
- (j) the bid meets any other key requirements of the bidding document.

(3) Any deviation, which is considered to be a material deviation, shall result in rejection of the bid and such bids shall not be subject to technical evaluation and a deviation which is considered to be non-material shall not result in rejection of a bid.

(4) A preliminary examination shall also determine whether bidders are eligible, where this has not been determined prior to inviting bids.

71. (1) An evaluation committee shall conduct technical evaluation by comparing each bid to the technical requirements of the description of goods, works or services in the bidding document, to determine whether the bids are substantially responsive. Technical evaluation.

(2) A technical evaluation under sub-regulation (1) shall -

- (a) determine whether a bid is, or is not, substantially responsive to the technical standard defined in the bidding document but shall not be used to assess the relative quality of bids; and
- (b) not take into account any requirement which is not specified in the bidding document.

(3) The factors to be taken into account shall be those indicated in the bidding document only including -

- (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; and
- (c) suitable staffing or arrangements for supervision or management of an assignment.

(4) A material deviation shall result in rejection of the bid and such bid shall not be subject to financial evaluation and comparison.

(5) A non-material deviation may be corrected in accordance with Regulation 68 or clarified in accordance with Regulation 69 .

Alternative bids.

72 . (1) Alternative bids shall not be permitted, except where specifically indicated in the bidding document.

(2) A procuring entity may permit alternative bids, where 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 an alternative manner.

(3) An alternative bid under sub-regulation (2) may be permitted in areas of rapidly changing technology or where a need could be satisfied in a number of different ways and a procuring entity wishes to encourage cost efficient and technically innovative approaches by bidders.

(4) Where an alternative bid is permitted, the bidding documents shall state that the alternative bid does not need to conform precisely to the description of requirements, but shall -

- (a) meet the objectives or performance requirements prescribed in the description of requirements;
- (b) be substantially within any delivery or completion schedule, budget and other performance parameters stated in the bidding documents; and
- (c) clearly state the benefits of the alternative bid over any solution which conforms precisely to the description of requirements, in terms of technical performance, price, operating costs or any other benefit.

(5) An alternative bid 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.

73 . (1) An evaluation shall comprise a financial evaluation and comparison to determine the evaluated price of each bid and determine the lowest evaluated bid, which is substantially responsive to the requirements of the bidding document.

Financial evaluation and comparison.

(2) An evaluated price for each bid shall be determined by -

- (a) taking the bid price, as read out at the bid opening;
- (b) correcting any arithmetic errors, in accordance with the methodology stated in the bidding document;
- (c) correction of provisional sums, if any, by subtracting these from the bid price;

- (d) applying any non-conditional discounts offered in the bid;
- (e) converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding document;
- (f) making adjustments for any omissions, non-material non-conformity, or priced deviations in accordance with Regulation 68;
- (g) applying any additional evaluation criteria, through an increase or decrease to the bid price, in accordance with sub-regulation (3) of Regulation 56;
- (h) applying any margin of preference indicated in the bidding document, in accordance with Regulation 75.

(3) Bids shall be compared by ranking them according to their evaluated price and determining the bid with the lowest evaluated price.

(4) 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.

Application of discounts.

74. (1) Bidders shall be permitted to offer discounts to their bids, which shall be included in the bid and read out at the bid opening.

(2) A discount offered after the deadline for submission of bids shall not be taken into account.

(3) Non-conditional discounts shall be taken into account in the financial evaluation and comparison of bids, in accordance with paragraph (d) of sub-regulation (2) of Regulation 73.

(4) Bidders may also be permitted to offer discounts, which are conditional on the award of one or more lots.

(5) A conditional discount offered under sub-regulation (4) shall be taken into account in a further financial evaluation, in accordance with sub-Regulation (4) of Regulation 73.

(6) A prompt payment discount included in a bid shall become a term of the contract, if that bid is accepted, and shall be utilised by the procuring entity, if payment is made in accordance with the terms of the discount except that prompt payment discounts shall not be considered in the evaluation and comparison of bids, unless such discount is taken into account through the application of any additional evaluation criteria, in accordance with sub-regulation (2) of Regulation 56.

75. (1) Where so indicated in the bidding document, and in accordance with any rules or schemes for margin of preference issued by the Authority through circulars, the evaluators shall apply a margin of preference to eligible bids. Margin of preference.

(2) Any rules or schemes issued by the Authority through circulars and the bidding documents, shall clearly state -

- (a) eligibility for the margin of preference, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with local partners or any other relevant factor;

- (b) the documentation required as evidence of eligibility for the margin of preference; and
- (c) the percentage of the margin of preference and the manner in which it will be applied during the evaluation.

(3) The percentage of preference in schemes issued by the Authority shall be between 5 and 12 percent and the Authority may review these percentages periodically.

Post-qualification.

76. (1) A procuring entity shall conduct post-qualification of a bidder who submitted the lowest evaluated responsive bid, to determine whether the bidder is qualified to perform the contract effectively.

(2) The criteria for qualification shall be as set out in the bidding document and shall be drafted in accordance with Regulation 25.

(3) Where a bidder is ruled as not qualified, the bid shall be rejected and a post-qualification conducted on the bidder who submitted the next lowest evaluated responsive bid.

(4) Where a pre-qualification or bidder registration has been conducted, a procuring entity shall verify the information submitted by the bidder who submitted the lowest evaluated responsive bid and where the bidder no longer meets the qualification criteria, the bidder shall be rejected and the qualifications of the next bidder verified.

Evaluation reports and recommendations.

77. (1) The evaluators shall use the standard bid evaluation form issued by the Authority to prepare an evaluation report for submission to a procurement committee or any other required authority for the award of contract.

(2) An evaluation report under sub-regulation (1) shall include -

- (a) a summary of the bids received and opened;
- (b) a summary of the read out prices during the bid opening session;
- (c) checklist for each bid that was accepted and opened;
- (d) the results of the preliminary examination;
- (e) the results of the technical evaluation;
- (f) reasons why bids were declared non-responsive;
- (g) details of any non-material deviations, which were accepted and the way in which they were quantified and taken into account in the financial evaluation;
- (h) the evaluated price of each bid, showing any corrections or adjustments to the bid price and any conversion to a common currency;
- (i) the ranking of the bids, according to their total evaluated price;
- (j) a statement of the lowest evaluated substantially responsive bid, for each lot where applicable;

- (k) a summary of the application of any conditional discounts and the lowest evaluated combination of bids, where applicable;
- (l) the results of any post-qualification; and
- (m) a recommendation to award the contract or contracts to the lowest evaluated responsive bid or combination of bids, or other appropriate recommendation, such as the cancellation of the procurement process.

(3) An evaluation report and recommendations shall be approved by the appropriate awarding authority, prior to proceeding with contract award, in accordance with Part IX, or any other action, such as cancellation of the procurement process.

(4) Pursuant to paragraph (p) of subsection (2) of section 14 of the Act and after the approval of a procurement committee, a procuring entity shall submit a request to the Authority for review of the evaluation report and recommendation to award and the Authority shall respond within 5 working days from the date of receipt of the request.

PART VI -BIDDING PROCEDURES FOR CONSULTING SERVICES

Use of
request for
proposals
procedures.

78. Procuring entities shall comply with all relevant requirements of Part IV, prior to initiating request for proposals procedures under this Part.

A - REQUEST FOR EXPRESSIONS OF INTEREST

Notice
inviting
expressions.

79 (1) A procuring entity shall in order to develop a shortlist, publish a notice seeking expressions of interest.

(2) Notwithstanding sub-regulation (1) where the estimated value of procurement is below the threshold specified in the First Schedule or where restricted bidding is justified as specified in Regulation 42, procuring entities may develop a shortlist without seeking expressions of interest in accordance with sub-regulation (2) of Regulation 53 and Regulation 81.

(3) A notice under sub-regulation (1) shall contain -

- (a) details of the scope of the assignment;
- (b) statement of the key criteria for short-listing, which shall be related to the consultants' experience, qualifications, personnel and any other factor related to their ability to successfully perform the assignment;
- (c) specific information on conflict of interest related to this assignment as stipulated in the Act;
- (d) details of the information to be included with the expression of interest, including any information or documentation required to verify the consultant's eligibility or qualifications; and
- (e) the date, time and address for submission and any special instructions on sealing, marking or submission of expressions of interest.

Publication of notice.

80. A notice seeking expression of interest under Regulation 79 shall be published within 14 days prior to the deadline for submission and in accordance with Regulation 53.

Evaluation of expressions of interest and development of shortlists.

81. (1) Expressions of interest shall be evaluated using the criteria stated in the notice in order to develop a shortlist of consultants who are expected to be able to meet the requirements of the procuring entity and a record of the evaluation of expressions of interest shall be maintained where the number of suitable consultants is greater than the number of consultants to be included on the shortlist, the consultants who best meet the procuring entity's requirements shall be included on the shortlist.

(2) A shortlist under sub-regulation (1) shall include minimum of 3 and maximum of 6 consultants, sufficient to ensure effective competition.

(3) A consultant shall not be included unless he is expected to fully satisfy a procuring entity's requirements, including those related to eligibility, qualification, capacity, resources and experience.

(4) The results of an evaluation of expression of interest and the proposed shortlist shall be approved by a procurement committee, prior to the issuance of the request for proposals.

(5) Pursuant to paragraph (p) of subsection (2) of section 14 of the Act and after the approval of a procurement committee, a procuring entity shall submit a request to the Authority for review of the evaluation report and the proposed shortlist and the Authority shall respond within 5 working days from the date of receipt of the request.

B - INVITATION OF PROPOSALS

Contents of request for Proposals.

82. (1) A procuring entity shall use the standard request for proposals document issued by the Authority for the selection of consultants.

(2) A request for proposals shall contain all information necessary to enable consultants to participate in the procurement proceedings and to submit proposals that are responsive to the needs of a procuring entity including -

- (a) a letter of invitation addressed to each short-listed firm and the full list of short-listed firms;
- (b) instructions on the conduct of the selection process, including the preparation and submission of proposals, the opening and evaluation of proposals and award of contract;
- (c) information relating to eligibility to submit proposal, including restrictions relating to conflict of interest;
- (d) a description of the services required, in accordance with Regulation 38 ;
- (e) an explanation of the selection procedure to be applied in evaluating proposals, in accordance with Regulation 83;
- (f) the evaluation criteria to be applied, in accordance with Regulation 85;
- (g) the type of contract to be awarded, (lump sum or time based);
- (h) the terms and conditions of contract which will apply; and
- (i) information on the consultant's rights to appeal under the administrative review process and on the Government's policy on fraud and corruption, including the debarment of consultants.

Choice of
selection
method

83. (1) A procuring entity shall choose the most appropriate selection to be used to evaluate proposals and shall state the selection method in the request for proposals.

(2) A selection method chosen under sub-regulation (1), shall be -

- (a) quality and cost based selection, which takes into account both the quality and the cost of proposals and selects the proposal which offers the optimum balance of quality and cost;
- (b) quality based selection, which focuses exclusively on quality and selects the highest quality technical proposal;
- (c) fixed budget selection, which selects the highest quality proposal, which is within the procuring entity's pre-disclosed budget; or
- (d) least cost selection, which selects the lowest priced proposal, which meets the technical requirements of the procuring entity.
- (e) consultant qualification selection, which selects the most qualified consultant from the shortlist.
- (f) sole-source selection, which can be used where exceptional circumstances under sub-regulation 10 exists.

(3) Subject to sub-regulations (4), (7) and (8), quality and cost based selection shall normally be used as the selection method for consultancy services.

(4) The use of sole-source selection method shall be subject to the approval of a procurement committee.

(5) Pursuant to subsection (3) of section 14 of the Act and after the approval of a procurement committee, a procuring entity shall seek the Authority's endorsement of the use of sole-source and the Authority may endorse the use of sole-source within 3 working days from the date of receipt of the request.

(6) Quality based selection method may be used for -

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

(7) Fixed budget selection method may be used for assignments, which are simple, can be precisely defined and where the budget is fixed.

(8) Least cost selection method may be used for assignments of a standard or routine nature, where well established practices and standards exist.

(9) Consultant qualifications selection method may be used for small assignments for which the need for preparing and evaluating competitive proposals is not justified.

(10) Sole-source selection method may be used for small assignments below the threshold of a specialised nature, for emergency situations or when the assignment represents a natural or direct continuation of a previous one awarded competitively, and the performance of the incumbent consultant has been satisfactory.

Submission of proposals for consultancy services.

84. (1) A request for proposals shall require consultants to submit separately sealed technical and financial proposals, both sealed in an outer envelope.

(2) Notwithstanding sub-regulation (1) where the selection method is -

- (a) quality based selection, the request for proposals may require consultants to submit a technical proposal only, with a financial proposal to be submitted at a later date only by the consultant with the highest technical score;
- (b) fixed budget selection, the request for proposals will require consultants to submit technical and financial proposals. Financial proposals higher than the allocated budget will be rejected;
- (c) least cost selection, the request for proposals will require consultants to submit technical and financial proposals and the contract will be awarded to the Consultant with the least cost whose technical proposal has passed the minimum qualifying mark.
- (d) selection based on consultant qualifications, the selected consultant is asked to submit a combined technical and financial proposal and is then invited to negotiate the contract if the technical proposal proves acceptable; and

- (e) sole-source selection, the selected consultant to prepare technical and financial proposals, which are then negotiated.

85. (1) A request for proposals shall state the evaluation criteria to be applied during the technical evaluation.

Evaluation criteria for consultancy services.

(2) An evaluation criteria under sub-regulation (1), shall be designed to assess the ability of consultants to -

- (a) perform the assignment, through assessment of their experience, proposed methodology and personnel; and
- (b) meet objectives of the assignment, including the transfer of knowledge or involvement of national consultants in the assignment.

(3) Each criterion shall be allocated a maximum number of points equal to 100 in total and the number of points allocated to each criterion shall be directly related to its importance to the procurement, noting that the points allocated to the firm's experience may be limited, when experience has already been taken into account in the development of the shortlist.

(4) A request for proposals may include sub-criteria, not exceeding 3 to provide further guidance on the allocation of points under each main criterion.

(5) Pursuant to paragraph (p) of subsection (2) of section 14 of the Act and after the approval of the procurement committee, a procuring entity shall submit a request for proposal document to the Authority for review and the Authority shall respond within 5 working days from the date of receipt of the request.

Issue of request for proposal.

86. A request for proposals shall be issued to all shortlisted consultants at the same time and a record of the issue of the documents shall be maintained.

Clarification and amendment of request for proposal.

87. (1) A request for proposal shall state that a consultant may seek clarification of the request for proposal including the period, before the deadline for submission of bids, after which such clarification may not be sought.

(2) Where a request for clarification is received, the procurement unit shall promptly provide a clarification in writing including a description of the inquiry, copied to all consultants without identifying the source.

(3) At any time prior to the deadline for submission of proposals, a procuring entity may, either at its own initiative or in response to a request for clarification from a consultant, amend the request for proposal by issuing an addendum.

(4) An addendum issued under sub-regulation (1) shall be issued in writing, numbered sequentially and the same information shall be provided to all consultants at the same time.

(5) All clarifications and addenda to the request for proposals shall be binding on consultants.

Extension of bidding period

88. To give consultants reasonable time in which to take a clarification or addendum into account in preparing their proposals, the procuring entity, may, extend the deadline for the submission of proposals, through the issuance of an addendum in accordance with Regulation 87.

C - RECEIPT AND OPENING OF PROPOSALS

89. (1) A procurement unit shall -

Receipt of proposals.

(a) ensure that there is a wall clock in the designated venue for the submission and opening of proposals showing the exact local time in Sierra Leone; and

(b) make arrangements for the receipt and safekeeping of proposals up until the deadline for submission of proposals, which may include -

(i) the use of a tender box, in which consultants are responsible for depositing their proposals directly and which shall remain locked until the time for proposal opening; or

(ii) the receipt of proposals by staff of the procurement unit, who shall be responsible for issuing signed receipts, showing the name of the consultant, the precise date and time of receipt of the proposals and keeping proposals in a secure location until the time for proposal opening.

(2) Where a proposal is too large for the tender box, the procurement unit shall receive and keep the proposal in accordance with paragraph (b) of sub-regulation (1).

(3) Where a procurement unit receives proposals and issue receipts, it shall maintain a record of all proposals received, indicating the name of each consultant, the date and time of receipt and the name of the person responsible for receipt.

(4) A procuring entity shall not be held liable for the loss or delay in delivery of any proposal delivered by mail or courier.

(5) A procurement unit shall ensure that appropriate staff are available at the location for submission of proposals or that consultants have access to the tender box, for a reasonable period of time prior to the deadline.

(6) A procuring entity shall not disclose the number or identity of proposals received, prior to the proposal opening, other than to public officials who require the information as part of their official duties.

Deadline for submission of proposals.

90. (1) A procurement unit shall ensure that the selection process is closed at the precise time and date of the submission deadline and shall ensure that no further proposals are received and that the tender box is sealed.

(2) A proposal received after the deadline shall not be accepted, but shall be declared late, labelled as such and returned to the consultant unopened.

Opening of technical proposals.

91. (1) Following the deadline of submission of proposals under Regulation 90, the proposal opening committee shall commence immediately thereafter with the opening of the proposals in accordance with procedures stipulated in the request for proposals document and consultants or their representatives shall be permitted to attend and witness the opening of proposals.

(2) A proposal opening committee shall first open envelopes marked "withdrawal" or "substitution" and the corresponding proposal located and returned unopened to the consultant and any substituted proposal opened, stamped, read out and recorded in accordance with sub-regulation (6) of Regulation 92.

(3) A proposal withdrawal or substitution shall not be permitted unless the corresponding withdrawal or substitution notice contains a valid authorisation to request the withdrawal or substitution and is read out at proposal opening.

(4) Any envelopes marked "modification" shall be opened with the corresponding proposal and both the original proposal and the modification shall be stamped and the modified details read out and recorded in accordance with sub-regulation 0.

(5) A proposal modification shall not be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the modification and is read out at proposal opening.

(6) The proposal opening committee shall -

(a) open the outer envelopes of all proposals and the technical proposal within and the key pages of the proposal shall be stamped and initialled by the Chairman and 2 other members; and

(b) read out and record the following details -

(i) the name of the consultant;

(ii) whether or not a separate sealed financial proposal has been submitted, if required; and

- (iii) any other information required, as stated in the Request for Proposals.

(7) With the exception of late proposals, a proposal shall not be accepted, rejected or evaluated in any way at the proposal opening.

(8) Technical proposals shall be taken immediately to a secure location, where they shall be kept until the evaluation begins and financial proposals shall be maintained unopened in a secure location, until the time for opening of financial proposals.

Record of opening.

92. (1) A procurement unit shall maintain a record of the proposal opening, which shall form part of the procurement record.

(2) Consultants' representatives attending the opening shall be requested to sign an attendance register, which forms part of the record, but the absence of any signature by a consultant on the attendance register shall not invalidate the record.

(3) Pursuant to paragraph (p) of subsection (2) of section 14 of the Act, a procuring entity shall provide the Authority with a copy of the proposal opening records immediately after proposal opening session.

D - TECHNICAL EVALUATION OF PROPOSALS

Evaluation committees.

93. (1) A procurement committee shall establish an evaluation committee to conduct the evaluation of proposals.

(2) Pursuant to section 33 of the Act, each member of the evaluation committee shall declare any conflict of interest to the head of the procurement committee and shall ask to be relieved from duty.

(3) An evaluation committee shall have a minimum of 3 members, with appropriate skills and experience for the type, value and complexity of the procurement requirement.

(4) An evaluation committee shall use the proposal evaluation report format issued by the Authority to prepare an evaluation report, with recommendations, for submission to the appropriate authority for approval.

94. (1) An evaluation committee shall conduct a preliminary examination to determine whether technical proposals are complete and responsive to the basic instructions and requirements of the request for proposal. Preliminary examination of technical proposals.

(2) A preliminary examination conducted under sub-regulation (1), shall determine whether -

- (a) the proposal has been submitted in the correct format;
- (b) the proposal has been submitted without material reservations or deviations from the terms and conditions of the request for proposals;
- (c) the proposal has been correctly signed and authorised;
- (d) the correct number of copies of the proposal have been submitted;
- (e) a separately sealed financial proposal has been submitted, if required;
- (f) the proposal is valid for at least the period required;
- (g) curriculum vitae have been correctly signed, if required;

- (h) all key documents and information have been submitted; and
- (i) the proposal meets any other key requirements of the request for proposals.

(3) Any material deviation in the evaluation shall result in rejection of the proposal and such proposals shall not be subject to technical evaluation.

(4) A material deviation under sub-regulation (3) is one that -

- (a) affects in any substantial way the scope, quality, or performance of the, services specified in the request for proposals documents; or
- (b) would limit in any substantial way, inconsistent with the request for proposals documents, the procuring entity's rights or the consultant's obligations under any resulting contract; or
- (c) if corrected would unfairly affect the competitive position of other consultants presenting substantially responsive and compliant proposals.

(5) A preliminary examination shall also determine whether consultants are eligible and qualified, where this has not been determined prior to inviting proposals.

Evaluation
of technical
proposals.

95. (1) An evaluation committee shall, prior to the commencing of the technical evaluation, review the request for proposals document, to ensure that all members have a common understanding of the criteria and their relative importance and of the terms of reference.

(2) A member of an evaluation committee shall-

- (a) independently conduct a technical evaluation of each proposal;
- (b) award scores against each criterion; and
- (c) record the score sheets signed by the evaluators.

(3) An evaluation committee shall-

- (a) compile and calculate the average score for each proposal;
- (b) consider any significant deviations from the average score or inconsistencies in scoring; and
- (c) require the evaluators to justify the scores awarded.

(4) Where an evaluator has misunderstood a proposal, the criteria or has evaluated proposals in an inconsistent manner, the evaluator may be permitted to adjust his scores, but shall not be required to make adjustments to his scores or to adjust scores without justification.

(5) Where a score is adjusted, the original score sheet shall be kept as part of the record of the evaluation and the adjusted scores shall be recorded on a new score sheet including the reasons for making the adjustments.

(6) An average score for each proposal shall be its total technical score for evaluation purposes.

Technical evaluation for quality and cost based selection, fixed budget selection and least cost selection.

96. (1) The total technical score of each proposal shall be compared to the minimum technical qualifying mark stated in the request for proposals document.

(2) A proposal with a score less than the minimum technical qualifying mark shall be rejected and eliminated from further evaluation.

(3) A proposal with a score equal to or higher than the minimum technical qualifying mark shall be recommended to proceed to financial evaluation.

(4) An evaluation committee shall prepare a technical evaluation report for quality based and cost based selection, fixed budget selection and least cost selection, which shall include-

- (a) the record of the opening of technical proposals;
- (b) the results of the preliminary examination, with reasons why a proposal was rejected;
- (c) a summary of the relative strengths and weaknesses of each proposal;
- (d) the technical scores awarded by each evaluator for each proposal;
- (e) the total technical score for each proposal;

(f) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to scores;

(g) a list of the proposals which reached the minimum technical qualifying mark and a recommendation to proceed to the public opening of the financial proposals of these consultants; and

(h) a recommendation to reject all proposals which did not reach the minimum technical qualifying mark.

(4) A technical evaluation report shall be submitted to the appropriate authority for approval, prior to calling for a public opening of the financial proposals.

97. (1) The total technical scores of all proposals shall be compared and the proposal with the highest total technical score shall be recommended for financial evaluation. Technical evaluation for quality based selection.

(2) An evaluation committee shall prepare a technical evaluation report for quality based selection, which shall include-

- (a) minutes of the opening of technical proposals;
- (b) the results of the preliminary examination including the reason why a proposal was rejected;

- (c) a summary of the relative strengths and weaknesses of each proposal;
- (d) the technical scores awarded by an evaluator for each proposal;
- (e) an analysis of any significant discrepancies or inconsistencies in scoring and reasons for an adjustments made to scores;
- (f) the total technical score for each proposal;
- (g) any items requiring further negotiations; and
- (h) a recommendation to open the financial proposal of the bidder with the highest total technical score and to reject all other proposals.

(3) A technical evaluation report shall be submitted to the appropriate authority for approval, prior to any further proceedings or the rejection of other proposals.

Technical evaluation for selection based on consultant's qualifications.

98. An evaluation committee shall evaluate the technical proposal to ensure consultant's understanding of the terms of reference and shall prepare a combined technical and financial report submitting it to the appropriate authority for approval.

99. (1) An evaluation committee shall evaluate the technical proposal to ensure consultant's understanding of the terms of reference and shall prepare a combined technical and financial report submitting it to the appropriate authority.

Technical evaluation for sole-source selection.

(2) Pursuant to paragraph (P) of subsection (2) of section 14 of the Act, and notwithstanding the selection method used, a procuring entity shall provide the Authority with a copy of the technical evaluation report.

100. (1) A procurement unit shall after the approval of the technical evaluation report by the appropriate authority, notify the consultant of the date and time set for the opening of financial proposals.

Notification of results of technical evaluation.

(2) The opening date shall be-

(a) in the case of international consultant, 2 weeks after the notification date;

(b) in the case of national consultant one week after the notification date.

(3) Notwithstanding sub-regulation (1), in the case of quality based selection where only technical proposals have been submitted, the procurement unit shall notify the consultant who achieved the highest technical score, requesting the submission of a financial proposal.

Financial opening.

E- FINANCIAL EVALUATION OF PROPOSALS

101. (1) A procurement committee shall open the recommended financial proposal at the time, date and location notified to the consultant in accordance with Regulation 100.

(2) A consultant's representative shall be permitted to attend and witness the financial opening proposals.

(3) The Chairman and 2 other members of a proposal opening committee shall stamp and initial key pages of the financial proposals.

(4) A procurement committee shall, during the financial opening proposals, read out and record the following information-

- (a) the name of the consultant;
- (b) the consultant's total technical score; and
- (c) the total proposal price.

(5) An opened financial proposal shall be taken immediately to a secure location, where it shall be kept until the financial evaluation begins.

(6) A procurement unit shall maintain a record of the financial proposal opening, which shall form part of the procurement record.

(7) A consultant's representative attending the financial opening shall be requested to sign a register of attendance which forms part of the record, but the absence of any signature in the register of attendance shall not invalidate the record.

(8) Pursuant to paragraph (p) of subsection 2 of section 14 of the Act, the procuring entity shall provide the Authority with a copy of the financial proposal opening records immediately after the financial proposal opening session.

102. (1) An evaluation committee shall determine the evaluated price of each proposal for quality and cost based selection -
- Financial evaluation for quality and cost based selection.
- (a) by correcting arithmetic errors;
 - (b) by determining whether financial proposals are complete and have costed all corresponding inputs in the technical proposal;
 - (c) by costing any missing items and adding them to the proposal price, in accordance with Part 14.4 of the Public Procurement Manual, 2005;
 - (d) where an activity or line item is quantified in the financial proposal differently from the technical proposal and the time-based form of the contract has been included in the request for proposals-
 - (i) correct the quantification indicated in the financial proposal so as to make it consistent with that indicated in the technical proposal;
 - (ii) apply the relevant unit price included in the financial proposal to the corrected quantity and correct the total proposal cost;
 - (iii) make no corrections to the financial proposal where a lump-sum form of contract has been included in the request for proposals,; and

- (e) by converting all proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the request for proposals.

(2) The lowest priced proposal shall be given a financial score of 100 and other proposals shall be given a financial score which is inversely proportional to the lowest evaluated price, using the methodology stated in the request for proposals.

(3) The technical and financial scores of each proposal shall be weighted, using the weights stated in the request for proposals.

(4) The weighted technical and financial scores shall be added together, to give a total score for each proposal.

(5) The proposal with the highest total score shall be recommended for award of contract, subject to any negotiations required.

(6) An evaluation committee shall prepare a combined technical and financial evaluation report for quality and cost based selection, which shall include -

- (a) the technical evaluation report;
- (b) the record of the opening of financial proposals, including the technical scores and proposal prices read out;
- (c) the evaluated price of each proposal, following corrections, adjustments and the conversion to a single currency;

- (d) the financial score of each proposal and the methodology used for allocating financial scores;

- (e) the weighting of the technical and financial scores;

- (f) the total score for each proposal;

- (g) the recommendation to award the contract to the consultant obtaining the highest total score, subject to any negotiations required; and

- (h) the currency and price of the proposed contract, subject to any changes following negotiations.

(7) A combined technical and financial evaluation report for quality and cost based selection shall be submitted to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

103. (1) An evaluation committee shall determine the evaluated price of each proposal for quality based selection by-

- (a) correcting arithmetic errors and determine whether the financial proposal is complete and has costed all corresponding inputs in the technical proposal;
- (b) analysing the financial proposal to determine whether it offers value for money and to prepare for negotiations;
- (c) preparing a combined technical and financial evaluation report, which shall include-

Financial evaluation for quality based selection.

- (i) the technical evaluation report;
- (ii) the record of the opening of the financial proposal, with the technical score and proposal price read out;
- (iii) any corrections to arithmetic errors and a statement of whether the proposal appears to be complete;
- (iv) a recommendation to award the contract to the bidder, subject to any negotiations required; and
- (v) the currency and price of the proposed contract, subject to any changes following negotiations.

(2) The combined technical and financial evaluation report for quality based selection shall be submitted to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

Financial
evaluation for
fixed
budget
selection.

104. (1) An evaluation committee shall determine the evaluated price of each proposal for fixed budget selection by-

- (a) correcting arithmetic errors;
- (b) determining whether financial proposals are complete and have costed all corresponding inputs in the technical proposal, costing any missing items and adding them to the proposal price; and
- (c) converting all proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the request for proposals.

(2) An evaluated price of a proposal shall be compared to the budget indicated in the request for proposals and a proposal which exceeds the budget shall be rejected.

(3) Subject to sub-regulation (2), a proposal that is within the budget shall be ranked according to their technical score.

(4) A proposal with the highest technical score, which is within the budget, shall be recommended for award of contract, subject to any negotiations required.

(5) An evaluation committee shall prepare a combined technical and financial evaluation report for fixed budget selection, which shall include-

- (a) the technical evaluation report;
- (b) minutes of the opening of financial proposals, including the technical scores and proposal prices read out;
- (c) the evaluated price of each proposal, following any corrections, adjustments and the conversion to a single currency;
- (d) a statement of any proposals which exceeded the budget and were rejected;
- (e) the technical score of each proposal within the budget;
- (f) a recommendation to award the contract to the bidder obtaining the highest technical score, which was within the budget, subject to any negotiations required; and

- (g) the currency and price of the proposed contract, subject to any changes following negotiations.

(6) The combined technical and financial evaluation report for fixed budget selection shall be submitted to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

Financial evaluation for least cost selection. 105. (1) The evaluation committee shall determine the evaluated price of each financial proposal for least cost selection by -

- (a) correcting arithmetic errors;
- (b) determining whether financial proposals are complete and have costed all corresponding inputs in the technical proposal, costing any missing items and adding them to the proposal price; and
- (c) converting all proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the request for proposals.

(2) Proposals for least cost selection shall be ranked, according to their evaluated price.

(3) A proposal with the lowest evaluated price shall be recommended for award of contract, subject to any negotiations required.

(4) An evaluation committee shall prepare a combined technical and financial evaluation report for least cost selection, which shall include-

- (a) the technical evaluation report;
- (b) minutes of the opening of financial proposals, including the technical scores and proposal prices read out;
- (c) the evaluated price of each proposal, following any corrections, adjustments and the conversion to a single currency;
- (d) a recommendation to award the contract to the bidder with the lowest evaluated price, subject to any negotiations required; and
- (e) the currency and price of the proposed contract, subject to any changes following negotiations.

(5) A combined technical and financial evaluation report for least cost selection shall be submitted to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

106. (1) An evaluation committee shall determine the evaluated price of the financial proposal for consultant qualification by- Financial evaluation for consultant qualification.

- (a) correcting arithmetic errors;
- (b) determining whether the financial proposal is complete and have costed all corresponding inputs in the technical proposal; and

- (c) costing any missing items and adding them to the proposal price.

(2) An evaluation committee shall prepare a combined technical and financial evaluation report for consultant qualification and submit to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

Financial evaluation for sole-source selection.

107. (1) An evaluation committee shall determine the evaluated price of the financial proposal for sole-source selection by-

- (a) correcting arithmetic errors;
- (b) determining whether financial proposal is complete and have costed all corresponding inputs in the technical proposal; and
- (c) costing any missing items and adding them to the proposal price.

(2) An evaluation committee shall prepare a combined technical and financial evaluation report for sole-source selection and submit to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

Scope of negotiations.

108. (1) A negotiation for the award of a contract may be conducted relating to -

- (a) minor alterations to the terms of reference, methodology and staffing;
- (b) minor amendments to the special conditions of contract;

- (c) mobilisation arrangements, the work-plan and completion schedule; or

- (d) inputs required from a procuring unit.

(2) A negotiation shall not be conducted to -

- (a) substantially change the technical quality or details of the proposal, including the tasks or responsibilities of a consultant;
- (b) materially alter the terms and conditions of contract;
- (c) reduce fee rates or reimbursable costs, except where such changes relate to an agreed changes to the scope of the technical proposal; or
- (d) substantially alter anything which was a deciding factor in the evaluation of proposals.

(3) Notwithstanding sub-regulation (2), where an evaluation was conducted without using cost as an evaluation criterion, negotiations may relate to the total proposal price and its constituent costs, to ensure value for money.

109. (1) A negotiation shall not be conducted until after the financial evaluation report has been approved by the appropriate authority.

Procedure for negotiation.

(2) A negotiation shall be held with a consultant recommended for contract award but where the negotiation fails, approval of the appropriate authority shall be obtained to open negotiations with the next ranked consultant.

- (3) A procurement unit shall-
- (a) prepare plan for a negotiation;
 - (b) specify the items to be negotiated and objectives to be achieved;
 - (c) quantify the objectives; and
 - (d) set maximum and minimum negotiation parameters.

(4) A negotiation shall be conducted by a minimum of 2 staff members of a procuring entity who shall not commit the procuring entity to any proposed arrangements or agreements without the approval of the appropriate authority.

(5) The staff members conducting a negotiation under sub-regulation (4) shall prepare minutes of the negotiation, which shall form part of the record of the procurement and shall obtain the consultant's written agreement that they are true and accurate record of the negotiation.

- (6) Where a negotiation -
- (a) with a first ranked consultant fails, the negotiation shall be terminated and the procurement unit shall invite the second ranked consultant for negotiation;
 - (b) with a second ranked consultant fails, the negotiation shall be terminated and the procuring unit shall invite the third ranked contract is concluded;

- (c) with a third ranked consultant fails, the negotiation shall be terminated.

(7) Where a negotiation with a consultant under sub-regulation (6) fails, the procuring unit shall not re-open negotiation with that consultant.

(8) A procurement unit shall notify its proposed award to all short-listed consultants at the same time it notifies the selected consultant, but where the value of a contract exceeds the levels set out in the First Schedule or in these Regulations, a contract shall not be signed until 14 calendar days have passed following the giving of that notice.

(9) Pursuant to paragraph (p) of subsection 2 of section 14 of the Act and notwithstanding the selection method, a procurement unit shall after the approval of the procurement committee, submit a request to the Authority for review of the combined technical and financial evaluation report and the draft contract.

(10) The Authority shall respond to the request for review of the combined technical and financial evaluation report and the draft contract, under sub-regulation (9) within 5 working days from the date of receipt of the request.

PART VII – PROCEDURES FOR REQUEST FOR QUOTATIONS

110. A procuring entity shall, prior to initiating request for quotation, comply with the requirements under Part IV. Procedure for requesting for quotation.

111. (1) A procurement unit shall prepare a written request for a quotation document using the appropriate standard document issued by the Authority. Contents of quotation document.

(2) A request for quotation shall contain all information necessary to enable bidders to participate in the procurement proceedings and to submit quotations that are responsive to the needs of a procuring entity including-

- (a) instructions on the conduct of the procurement process, the preparation and submission of quotations and information on the evaluation of quotations and award of contract;
- (b) list of documents required to be submitted with the quotation such as-
 - (i) copy of a valid business licence;
 - (ii) copy of a valid business registration certificate;
 - (iii) copy of a valid National Revenue Authority tax clearance certificate;
 - (iv) copy of a valid National Social Security Insurance Trust clearance;
- (c) a list of recent Government contracts performed;
- (d) a description of goods, works or services required in accordance with Regulations 35, 37 or 38;
- (e) information on the methodology and criteria for the evaluation of quotations;

- (f) the form and type of contract to be awarded, which shall normally be a purchase order for a lump sum contract;
- (g) the terms and conditions of contract which will apply; and
- (h) information on the bidder's right to appeal under the administrative review process and on the Government's policy on fraud and corruption, including the debarment of bidders.

112. (1) A shortlist for invitation for quotation shall contain a minimum of 3 bidders.

Invitation for quotations and development of shortlist.

(2) Notwithstanding sub-regulation (1), a shortlist for invitation for quotation shall contain 2 bidders, where only 2 suitable potential sources exist.

(3) A procurement unit in developing a shortlist for invitation for quotation-

- (a) may use -
 - (i) standing lists maintained in accordance with Regulation 27;
 - (ii) lists of pre-qualified bidders;
 - (iii) its own knowledge of the market; and
 - (iv) any other appropriate sources of information;
- (b) shall comply with the following rules-

- (i) a fair and equal opportunity afforded to all bidders;
- (ii) the shortlist shall not include bidders who are not expected to fully satisfy any eligibility and qualification requirements; and
- (iii) the shortlist shall not include bidders with the same ownership.

(4) A procurement unit shall record the names of the bidders included on the shortlist and the reasons for their inclusion and shall be kept as part of the procurement record.

Request and submission of quotations.

113. (1) A procuring entity shall request a shortlisted bidder to submit a quotation.

(2) A request for quotation document shall specify the method of submission permitted including submission by-

- (a) postal or courier service;
- (b) facsimile;
- (c) electronic mail subject to any guidance or instructions provided by the Authority; or
- (d) any other form which leaves a formal record of the quotation.

(3) A request for quotation document shall specify the location, date and time for submission of quotation.

(4) A quotation received after the deadline for submission shall be rejected and returned unopened.

(5) A quotation shall be kept securely until after the deadline for submission of quotation and where a quotation is received in an unsealed form prior to the submission deadline, the contents of the quotation shall be kept confidential and shall not be revealed to any person other than the officer responsible for receiving the quotation.

(6) A procurement unit shall prepare a record of a quotation submitted and of a quotation opening session.

114. (1) A procurement committee may appoint an evaluation committee or designate the person responsible for an evaluation in accordance with Regulation 66. Evaluation of quotations.

(2) An evaluation of quotation shall be conducted in accordance with the rules and procedures in Part V except that -

- (a) an alternative quotation shall not be permitted; and
- (b) the determination of the evaluated price of a quotation shall not include an application of any additional evaluation criteria as prescribed under sub-regulation (3) of regulation 56 and paragraph (g) of sub-regulation (2) of Regulation 73.

(3) A quotation with the lowest evaluated price, which is substantially responsive to the requirements of a procuring unit shall be recommended for an award of a contract.

PART VIII – PROCEDURES FOR SOLE-SOURCE PROCUREMENT

115. A procuring entity shall prior to initiating sole source procurement procedures comply with Part IV of these Regulations. Sole source procurement procedures.

A–SOLE-SOURCE PROCUREMENT FROM A SOLE BIDDER

Procedure for procurement from sole bidder.

116. (1) Where a procuring entity conducts a sole source procurement and one bidder meets a procuring entity's needs in accordance with sub-regulation (1) of Regulation 46, the procuring unit shall-

- (a) prepare justification on the use of sole-source and obtain the approval of a procurement committee on the use of the sole-source;
- (b) prepare a written request for a bid, containing a description of the goods, works or services required in accordance with Regulations 35, 37 or 38 as appropriate and a statement of the proposed form of contract and terms and conditions of contract;
- (c) issue a written request to the sole bidder and obtain a written bid;
- (d) evaluate the bid in accordance with Regulation 120;
- (e) negotiate with the bidder, if required, in accordance with Regulation 121; and
- (f) prepare a report for submission to the procurement committee, or other awarding authority, which shall contain-
 - (i) summary of the evaluation of the bid;
 - (ii) record of any negotiations held; and
 - (iii) recommendation to award the contract or take other appropriate action.

(2) Pursuant to subsection (3) of section 14 of the Act and after the approval of a procurement committee, a procuring entity shall seek the Authority's endorsement on the use of Sole-Source.

(3) The Authority may endorse the use of sole-source within 3 working days from the date of the request.

117. (1) An evaluation of a sole bid shall be conducted to determine whether the bid- Evaluation of sole bid.

- (a) meets the technical needs of a procuring unit, as defined in the description of goods, works or services;
- (b) accepts the contractual terms and conditions proposed by a procuring unit or offers other terms and conditions which are acceptable to the procuring unit; and
- (c) offers value for money, based on prices previously obtained for similar goods, works or services or a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement .

(2) A procurement unit shall determine whether negotiations are required with the bidder.

118. (1) A procurement unit shall-

- (a) prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved;
- (b) quantify the objectives; and

Procedure for negotiations of a sole bidder.

- (c) set maximum and minimum negotiation parameters.

(2) A negotiation shall be conducted by a minimum of two staff of the procuring unit, who shall not commit the procuring entity to any proposed arrangements or agreements, but shall seek the approval of the relevant authority, prior to confirming any agreement reached.

(3) Staff conducting the negotiations shall prepare minutes of the negotiations, which shall form part of the record of the procurement and shall obtain a bidder's written agreement that they are a true and accurate record of the negotiations held.

C – SOLE-SOURCE PROCUREMENT FOR EMERGENCY NEEDS

Procedures for procurement in an emergency.

119. Where a procuring entity conducts sole-source procurement on the grounds of an emergency need in accordance with Regulation 46, the procuring unit shall-

- (a) confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;
- (b) identify a suitable bidder;
- (c) where time permits, prepare a written request for a bid, containing a description of the goods, works or services required in accordance with Regulations 35 , 36 or 37 and a statement of the proposed contract form and terms and conditions of contract;
- (d) issue written or verbal request to the sole bidder and obtain written bid:

provided where verbal request is issued, it shall be followed by a written request;

- (e) evaluate a bid in accordance with Regulation 120;
- (f) negotiate with a bidder, if required, in accordance with the procedure in Regulation 121; and
- (g) prepare a brief report for submission to a procurement committee, or other award authority, which shall contain-
 - (i) details of the requirement and the emergency circumstances;
 - (ii) summary of the action taken to invite, evaluate and negotiate a bid; and
 - (iv) retake other appropriate action.

120. (1) An evaluation of a bid shall be conducted to determine whether a bid- Evaluation of bid.

- (a) meets a procuring unit's technical needs and in particular, its required delivery or completion schedule;
- (b) accepts the contractual terms and conditions proposed by a procuring unit or offers other terms and conditions which are acceptable to a procuring entity; and
- (c) offers value for money based on-

- (i) prices previously obtained for similar goods, works or services; or
- (ii) a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement; and
- (iii) any additional costs involved in meeting the procuring unit's delivery or completion schedule.

(2) A procurement unit shall during an evaluation determine whether negotiations are required with a bidder.

Procedure for negotiations of bid.

121. (1) A procurement unit shall –
- (a) prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved;
 - (b) quantify the objectives; and
 - (c) set maximum and minimum negotiation parameters.

(2) A negotiation shall be conducted by a minimum of two staff of the procuring unit, who shall not commit the procuring entity to any proposed arrangements or agreements, but shall seek the approval of the relevant authority, prior to confirming any agreement reached.

(3) Staff conducting the negotiations shall prepare minutes of the negotiations, which shall form part of the record of the procurement and shall obtain the bidder's written agreement that they are a true and accurate record of the negotiations held.

122. (1) A procurement unit shall notify a procurement committee and any other awarding authority as soon as it identifies a procurement requirement which will be subject to sole-source procurement on the grounds of an emergency need.

Approval arrangements for emergency procurement.

(2) The chairperson of the procurement committee, or any other member designated by the chairperson, shall give approval to award a contract for an emergency procurement unless alternative arrangements are agreed upon by a procurement committee.

(3) A procurement committee shall meet to consider a contract award recommendation and where a procurement committee is unable to meet within a reasonable time, the contract award may be approved by the written approval of a majority of members, without the committee having met, unless alternative arrangements are agreed by the procurement committee.

(4) Pursuant paragraph (p) of subsection (2) to section 14 of the Act and after the approval of the procurement committee, the procuring entity shall submit a request to the Authority for review of the evaluation report including minutes of the negotiations and recommendation to award.

(5) The Authority shall respond within five working days from the date of receipt of the request

PART IX – CONTRACT AWARD

A – CONTRACT AWARD

123. (1) A contract award decision shall be taken by an appropriate awarding authority, in accordance with the levels of authority specified in the First Schedule of the Act.

Contract award decisions.

(2) An appropriate awarding authority shall be determined by the actual value of the recommended contract and not the estimated value prepared during the procurement planning process.

(3) A contract award decision shall be taken in response to a recommendation for contract award, contained in an evaluation report, unless otherwise permitted by these Regulations.

(4) A contract award decision by the awarding authority does not constitute a contract, but only a decision as to the winning or recommended bidder.

(5) A contract award shall be made in accordance with Regulations 126, 128 or 129.

(6) A procurement unit shall also obtain any other required approvals whenever donor funds are used for the procurement.

Commitment
of Funds.

124. (1) A procuring entity shall following a contract award decision by the awarding authority, commit the required funds, before proceeding to award the contract.

(2) Where a contract is a multi-year contract, a procuring unit shall obtain approval from the Ministry, prior to awarding the contract.

(3) A procuring entity shall also commit funds for any other costs linked to the contract, as described in sub-regulation (1) of Regulation 34.

Notice of
proposed
award.

125. (1) Where the value of the proposed contract exceeds the levels set in the First Schedule of the Act or in these Regulations, following the contract award decision by the awarding authority, the procuring entity shall publish a notice of the proposed award.

(2) The notice shall specify-

- (a) the name and address of the bidder recommended for contract award;
- (b) the proposed contract price; and
- (c) that a bidder has the right to submit an application for review of the decision in accordance with section 63 of the Act.

(3) A notice under sub-regulation (1) shall clearly state that it does not constitute the award of a contract.

(4) A notice under sub-regulation (1) shall be -

- (a) published in the Gazette;
- (b) published on the internet;
- (c) published on the Authority's website; and
- (d) be sent directly to all bidders.

(5) Except in the case of sole-source procurement on grounds of emergency, the procuring unit shall not award the contract until 14 calendar days have elapsed after publication of the notice of proposed award.

126. (1) A procuring entity shall following the commitment of funds in accordance with Regulations 124 and 125 and provided no application for review has been received, award the contract by issuing a letter of acceptance to the recommended bidder. Contract award.

- (2) A letter of acceptance shall state -
- (a) the name and address of the procuring entity;
 - (b) the name and address of the bidder;
 - (c) the date and reference number of the bid being accepted;
 - (d) any modifications to the bid, resulting from clarifications, corrections or negotiations;
 - (e) any items excluded from the contract or variations in quantity or any other detail;
 - (f) the total contract price; and
 - (g) the letter of acceptance constitutes a contract between the procuring entity and the bidder, until such time as a formal contract is signed.

(3) A procurement unit shall obtain a signed acknowledgement from the bidder, confirming that it has received the letter of acceptance.

(4) Where a recommended bidder fails to conclude a contract, or provide a performance security or any other action required by the solicitation document, the procuring entity shall annul the contract award and award the contract to the next ranked bidder, subject to the bidder being qualified and the approval of the award authority.

127. (1) A procurement unit shall following the issue of a letter of acceptance in accordance with Regulation 126, prepare a written contract, using the contract included in the bidding document or request for proposals. Contract preparation under open or restricted bidding.

(2) A procurement unit shall obtain approval of the contract document from a procurement committee or other awarding authority, before sending it to a bidder for signature.

(3) A procurement unit shall ensure that a bidder signs and returns the original copy of a contract and provides any performance security required as a condition for effectiveness of the contract and failure to provide performance security at the time specified in the bidding documents may result in cancellation of the award and forfeiture of the bid security.

128. (1) Where procurement is conducted using the request for quotation method, following the contract award decision by the awarding authority and the commitment of funds, a procurement unit shall prepare a written purchase order and send it to a recommended bidder. Contract award in request for quotations.

(2) A purchase order shall not contain any modifications which differ from the bidder's quotation, unless these have been agreed in writing with a bidder.

(3) A purchase order shall constitute a contract between a Procuring Unit and a bidder.

(4) A procuring entity shall require a bidder to provide a written that it has received the purchase order and is proceeding with performance of a contract.

(5) Failure by a bidder to provide a confirmation under sub-regulation (4) shall not invalidate a contract.

Contract
award in sole
source
procurement.

129. (1) Where the procuring entity conducts sole-source procurement under section 46 of the Act, following the contract award decision by the awarding authority and the commitment of funds, a procurement unit shall prepare a written contract or purchase order and send it to a recommended bidder.

(2) A procuring entity may send a letter of acceptance to a bidder prior to sending a contract document, in accordance with sub-regulation (2) of Regulation 126.

(3) A procurement unit shall obtain a signed acknowledgement from a bidder, confirming that it has received a letter of acceptance, contract or purchase order and that it is proceeding with performance of a contract.

(4) A failure by a bidder to provide confirmation under sub-regulation (3) shall not invalidate a contract.

(5) Pursuant to paragraph (p) of subsection 2 of section 14 of the Act, and after the approval by a procurement committee, a procuring unit shall submit a request to the Authority for review of the draft contract.

(6) The Authority shall respond within 5 working days from the date of receipt of the request except for emergency procurement when it shall respond within 2 working days, in accordance with Regulation 46.

Performance
security.

130. (1) A procuring entity may request a performance security from a reputable banking institution, to secure a bidder's obligation to fulfil a contract.

(2) A bidding document and contract shall state the requirement for a performance security including warranty obligations, if so stated in the contract.

(3) A value of a required performance security may be expressed either as a fixed amount or as a percentage of the contract value. The amount shall be between five and ten percent of the contract value.

(4) A procurement unit shall in determining the amount of performance security required take into account-

- (a) the cost a bidder would incur in obtaining a performance security;
- (b) the value of a contract,
- (c) the risk of a bidder failing to fulfil his contractual obligations; and
- (d) the extent of protection offered to the procuring unit through alternative means, such as payment retentions.

(5) Where appropriate, the value of the performance security may be progressively reduced, in line with the bidder's progress in delivering or completing the goods, works or services to which the security relates.

(6) Performance securities shall conform to the requirements and conditions for forfeiture stated in a bidding document and the form of contract.

(7) A procurement unit shall release the performance security to a bidder upon completion of all the bidder's contractual obligations which are subject to a security or termination of the contract for a reason that is not attributable to any fault of a bidder.

(8) A procurement unit shall manage performance securities in accordance with Regulation 155.

Rejection of bids and debriefing unsuccessful bidders.

131. (1) A Procurement unit shall upon entry into force of a contract and a provision by a bidder of a required performance security, reject a bid of an unsuccessful bidder.

(2) A procurement unit shall under sub-regulation (1) return a bid security and any unopened financial proposals to an unsuccessful bidder.

(3) A procurement unit shall, where upon a requested by an unsuccessful bidder-

- (a) provide him in writing the reasons for the failure of its application to pre-qualify or bid;
- (b) state at which stage of the evaluation the bid was rejected;
- (c) provide brief details of any material deviation, reservation of omission leading to rejection of the bid; or
- (d) state that a bid was substantially responsive, but failed to offer the lowest evaluated price or highest score, as required.

(4) An unsuccessful bidder shall not be entitled to details of other bids other than information that is publicly available from bid openings, published notices, or in accordance with subsection (4) of section 32 of the Act.

(5) A procuring entity shall publish-

- (a) in the Gazette;
- (b) on the Procuring Unit's website;
- (c) on the Authority's websites; and

(d) on a newspaper of wide national circulation, notice of each contract award in which the price of the contract exceeds the threshold set out in the First Schedule, indicating the contract price, scope of the contract and the name and address of a successful bidder.

B – TYPES OF CONTRACT

132. (1) A procuring entity shall use a contract format included in a standard bidding documents issued by the Authority. Contract format.

(2) Where no relevant standard bidding documents or contract formats for a specific procurement exist, a procuring entity shall use a contract format approved by the Authority.

133. (1) A procuring entity may use a lump sum contract for goods, works or services, where the content, duration and outputs of a contract is well defined. Lump sum contract.

(2) A lump sum contract shall consist of an agreed total price for the performance of a contract.

(3) A procuring entity shall, subject to the conditions of a contract, pay a bidder the agreed lump sum price, irrespective of the actual quantity, time or work required for performance of a contract.

(4) Payments under a lump sum contract shall be dependent on clearly specified outputs, deliverables or events, which may include-

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

Unit price contract.

134. (1) A procuring entity may use a unit price contract for-
- (a) services, where the contract has few if any measurable milestones or deliverables or these are difficult to define with accuracy; or
 - (b) works, which are not well defined, likely to change in quantity or specification or where difficult or unforeseen site conditions are likely.

(2) Payments under a unit price contract shall be for the actual quantity delivered or performed, using fixed unit prices for different items specified in a contract.

(3) For a service contract, payment shall be based on-

- (a) agreed fee rates for a specified period of time, for either nominated personnel or a certain type or grade of personnel; and
- (b) reimbursable items, such as transportation and subsistence, using either actual expenses or agreed unit prices.

(4) For a work contract, payment shall be based on agreed rates for various items of work, as priced by a contractor in a bill of quantities.

(5) A unit price contract shall provide for a total contract sum, which may include a contingency amount for unforeseen work or variations in quantities.

(6) A procuring entity shall not allow payments to exceed a contract sum, without gaining approval for a contract modification.

(7) A procurement unit shall monitor unit price contract closely to ensure that progress is in accordance with a contract and that payments claimed by a contractor are appropriate and in accordance with a contract.

135. (1) A procuring entity may use a framework contract for goods, works or services-

Framework contract.

- (a) where the items are needed “on call” but the quantity and timing of the requirements cannot be defined precisely in advance; or
- (b) to reduce procurement costs or lead times for items which are needed repeatedly or continuously over a period of time, by having them available on a “call off” basis.

(2) Payments under a framework contract shall be for the actual quantity delivered or performed during the time period covered by a contract using a fixed unit price specified in a contract.

(3) A framework contract may-

- (a) include an estimated quantity or value, but shall not commit to purchasing an estimated quantity or value; and
- (b) commit to purchasing a minimum quantity or value or to purchasing all similar requirements from a bidder, where this is necessary or preferable to obtain competitive prices.

(4) A Framework contract shall specify the arrangements for obtaining specific requirements during the period of a contract, using “call-off” or delivery orders.

Percentage based contract.

136. (1) A procuring entity may use a percentage based contract whereit is appropriate to relate the fee paid directly to estimated or actual costs or amounts, such as the value of a contract or sale.

(2) A contract shall clearly define the total cost from which the percentage is to be calculated and the percentage to be paid.

(3) A percentage based contract may include-

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

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

Cost reimbursable and target price contract.

- (a) emergency works, where there is insufficient time to fully calculate the costs involved; or
- (b) high risk works, where it is more economical for a procuring unit to bear the risk of price variations than to pay a contractor to accept the risk, or where a contractor will not accept the risk.

(2) Payment shall be for-

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

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

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

C – MISCELLANEOUS PROVISIONS WITHIN CONTRACT DOCUMENTS

Price adjustment.

138. (1) Price shall not be adjusted unless provided for in a procurement contract and shall be subjected to the provisions of section 31 of the Act.

(2) A procuring entity may include a price adjustment provision in a procurement contract with duration of more than 12 months, and in circumstances where the inflation rate would prevent a contractor from maintaining prices.

(3) Where a price adjustment provision is included in a procurement contract, it shall clearly state-

- (a) the formula for calculating adjustments, which shall separate the total price into components, such as labour, equipment, materials and fuel;
- (b) price indices for each component specified in the formula;
- (c) any correction factor to take into account differences in the payment currency and the currencies of the source of the input and price index;

(d) the base date for application of the formula;

(e) the frequency with which the formula shall be applied; and

(f) any minimum variation required to qualify for price adjustment and any other restrictions or conditions.

(g) that when a price adjustment provision results in an increase exceeding a specified percentage or amount of a contract, a procuring entity may–

(i) terminate a contract; or

(ii) renegotiate a contract in order to stay with the budget or otherwise minimise costs for a procuring entity.

139. (1) The period for payment shall be 30 days from the date a procuring entity accept the goods, works or services, unless this is varied in the conditions of the contract. ^{Payment terms.}

(2) A procurement contract shall provide for interest to be paid to a bidder, where a procuring entity fails to make payment within the period specified in the contract.

(3) A procurement contract shall clearly specify-

(a) an interest rate to be applied, how interest payments shall be calculated and any other conditions relating to payment of interest;

(b) the currency or currencies of payment and, where required, the exchange rates or the source of exchange rates applicable;

- (c) the payment schedule and conditionality, which may include advance payments, progress payments, deduction and release of retention monies in accordance with Regulations 140, 141, and 142.

Advance payment.

140. (1) A procurement contract may provide for advance payment to a bidder to ensure effective implementation of a contract or to obtain competitive prices.

(2) Advance payments may be made for costs such as mobilisation, start up, the purchase of materials or costs related to goods which are specially or custom manufactured for the procuring entity.

(3) The total amount of an advance payment shall not exceed 30 percent of the total contract price.

(4) Unless otherwise specified in a procurement contract, an advance payment shall only be made where a bidder provides an advance payment guarantee in accordance with the form included in the bidding documents, or other form acceptable to a procuring entity, and issued by a bank acceptable to the procuring entity, covering the full amount of the advance payment and in accordance with Regulation 144.

(5) A procurement contract shall state that materials, equipment and personnel for which an advance payment is received, shall be used only for performance of that contract.

(6) A procurement contract for work shall state that materials, equipment and personnel for which an advance payment is received, shall be committed to the site of the works.

(7) Where so specified in a procurement contract, advance payment may be recovered in instalments from subsequent payments to a bidder, which shall be subjected to a total deduction equal to the sum paid as an advance payment.

141. (1) A procurement contract may provide for progress payments to a bidder. Progress payments.

(2) A progress payment shall be -

(a) payment of a specified percentage or amount of a contract value following particular events, milestones or submission of deliverables specified in the contract; or

(b) payment for an actual quantities of goods, works or services delivered or completed.

(3) A progress payment shall not exceed the cost or value of the goods, works or services delivered or completed.

(4) A progress payment shall only be made against interim certificates or other supporting documentation proving delivery or completion of the goods, works or services subject to the progress payment, or submission of the deliverables specified.

142. (1) A procurement contract may provide for a specified percentage or amount of payment to a contractor to be retained pending final acceptance of the goods, works or services. Retentions.

(2) A procurement contract for retention shall clearly specify-

(a) the percentage or amount to be retained from each payment;

- (b) the period or event at which the retention is to be released including installation of goods, completion of a contract or expiry of a warranty period; and
- (c) the documents required in evidence for release of the retention.

(3) Where specified in a procurement contract, a contractor may substitute a payment security in exchange for an early release of retention monies.

Payment document.

143. (1) A contract document shall require a bidder to submit an original invoice and a copy for each payment requested and shall clearly state the documentary evidence against which payments shall be made.

(2) A contract document required shall relate to the delivery, progress or performance of a contract for which the payment is due or provide evidence of fulfilment of contract terms and conditions.

(3) A contract document may include -

- (a) goods received notes, bills of lading, air waybills or other documentation proving delivery or receipt of goods, in accordance with the terms of the contract;
- (b) packing lists, or other documentation proving the content of a consignments delivered;

- (c) inspection certificates or reports, or other documentation proving that goods, works or services have passed inspection;
- (d) installation, commissioning, acceptance or handover certificates, or other documentation proving that goods, works or services have been accepted;
- (e) insurance certificates or other documentation proving that the bidder has taken out the required insurance for the goods, works or services;
- (f) certificates of origin or evidence of nationality, where goods supplied or personnel employed under a contract are subject to restrictions on origin or nationality;
- (g) interim certificates, certifying the progress made in performance of a contract, as evidence of entitlement to progress payments;
- (h) final certificates, certifying completion of the contract and commencement of the warranty period;
- (i) receipts or other documentation, proving that specified costs have been incurred, such as air tickets or timesheets for personnel; and
- (j) any other document that the nature of the goods, works and services may dictate.

Payment securities.

144. (1) Where a procurement contract permits prepayment to a bidder prior to the delivery or completion of the goods, works or services to which the payment relates, a procuring unit shall require a payment security from a bidder, unless otherwise specified in a procurement contract.

(2) The value of a payment security shall be equal to the payment to which it relates.

(3) Where appropriate, the value of a security may be progressively reduced, in line with a bidder's progress in delivering or completing the goods, works or services to which the payment relates.

(4) A procurement contract shall state that a payment security shall be—

- (a) in accordance with the format and wording provided in a contract;
- (b) in a form acceptable to a procuring entity;
- (c) from an institution acceptable to a procuring entity; and
- (d) valid for a period prescribed in a contract, which shall be one month beyond the anticipated due date of the repayment.

(5) Notwithstanding the provisions of sub-regulation (1) of Regulation 144, a contract may permit alternative security arrangements, acceptable to a procuring entity.

(6) The conditions for forfeiture of the payment security shall be as specified in a contract document.

(7) A procurement unit shall release the payment security promptly to a bidder upon completion of all the bidder's contractual obligations which are subject to a security, or upon expiry of a security.

(8) A procurement unit shall manage payment securities in accordance with Regulation 155.

PART X – CONTRACT ADMINISTRATION

A – CONTRACT ADMINISTRATION

145. (1) A procuring entity shall designate a member of staff, or a team of staff as a contract administrator for each contract.

Contract administration responsibilities.

(2) A procuring entity may in the case of large or complex contract, select and employ a consulting firm, in accordance with Part VI of these Regulations, to assume the role of contract administrator.

(3) A contract administrator shall—

- (a) manage the obligations and duties of a procuring entity specified in a contract; and
- (b) ensure that a bidder or consultant performs a contract in accordance with the terms and conditions of a contract.

(4) A contract administrator shall in administering a contract, use existing systems, procedures and resources within a procuring entity including existing payment systems and verification procedures for processing payments to bidders and consultants.

(5) A contract administrator shall be responsible for—

- (a) monitoring the performance of a bidder or consultant, to ensure that all delivery or performance obligations are met or appropriate action taken by a procuring entity in the event of obligations not being met;
- (b) ensuring that a bidder or consultant submits all required documentation;
- (c) ensuring that a procuring entity meets all its payment and other obligations on time and in accordance with a contract;

- (d) ensuring that there is adequate cost, quality and time control, where required;
- (e) preparing or co-ordinating the preparation of any required contract variations or change orders and obtaining all required approvals before their issue;
- (f) preparing or co-ordinating the preparation of any required contract modifications and obtaining any required approvals before their issue;
- (g) managing any handover or acceptance procedures;
- (h) making recommendations for contract suspension or termination, where appropriate, obtaining all required approvals and managing any termination process;
- (i) ensuring that a contract is completed in all respects, prior to closing a contract file;
- (j) ensuring that all contract administration records are maintained and archived as required; and
- (k) ensuring that a bidder or consultant and a procuring unit act in accordance with the Act, these Regulations and a contract.

Technical inspection of goods and works.

146. The requirement for inspections and tests shall be as stated in abidding document and the conditions of contract, including—

- (a) the type of inspection or test to be performed and the standards to be met;

- (b) the location for inspection;
- (c) the person, or third party acceptable to a procuring entity, to carry out the inspection or tests;
- (d) when inspection is to be conducted;
- (e) the person responsible for payment of the various costs of inspection;
- (f) any notification or documentation required from a bidder relating to inspection or testing;
- (g) samples provided for testing shall be provided free of charge by a bidder; and
- (h) where goods or works fail an inspection, a bidder shall be liable for the correction of any defects at his own expense and the costs of any re-inspection required.

147. (1) A procuring entity shall ensure that all goods, works and services are subjected to inspection and verification by a formal inspection and receipt committee, prior to their acceptance.

Inspection and acceptance of goods, works and services.

(2) An inspection and verification shall ensure that-

- (a) the correct quantity of goods has been received;
- (b) the goods, works or services meet the technical standards defined in a contract;
- (c) the goods, works or services have been delivered, completed on time or that a delay has been noted;

- (d) the goods, works or services have been completed at the named place of destination and at the designated site;
- (e) all required deliverables have been submitted; and
- (f) all required manuals, “ as built drawings”, warranties or any other required documentation have been received.

(3) An Inspection and Receipt Committee responsible for inspecting the goods, works or services shall issue interim or final completion certificates in accordance with a contract.

Inspection and Receipt Committee.

148. An Inspection and Receipt Committee under Regulation 147 shall consist of–

- (a) a representative of a procurement unit;
- (b) a supervising engineer, contract manager or public officer with appropriate technical knowledge; and
- (c) a storekeeper or representative of the end user department or unit.

B – CONTRACT MODIFICATION

Contract modification.

149. (1) Where a change to the terms and conditions of a contract is required other than contract variations permitted in accordance with Regulation 150, a procurement unit shall prepare a written contract modification.

(2) A procurement unit shall obtain the approval of the appropriate awarding authority, prior to the issue of a contract modification.

(3) A contract modification shall be valid when signed by authorised representatives of a procuring entity and a bidder.

(4) Where a contract modification causes a contract value to be increased by up to 25 percent of the original contract value, a procurement unit shall obtain the approval of the appropriate awarding authority specified in the First Schedule of the Act.

(5) Pursuant to section 14 of the Act and after the approval of a procurement committee, and where contract modifications or accumulated modifications would cause a contract value to be increased by up to 25 percent of the original contract value, a procuring entity shall submit a request to the Authority for review of all contract modifications including all the details.

(6) The Authority shall under sub-regulation (5) respond to a request within 5 working days from the date of receipt.

(7) Where a contract modification would cause a contract value to be increased by more than 25 percent of the original contract value, the additional requirement shall be treated as a new procurement requirement.

(8) Where an additional requirements could be obtained from an–

- (a) alternative bidder, the end user shall initiate new procurement proceedings rather than proceeding with a contract modification; or
- (b) existing bidder, the end user shall justify the procurement as a sole source procurement and seek approval from the appropriate award authority.

150. (1) Where in order to facilitate adaptations to Contract unanticipated events or changes in requirements, a contract may variation. permit-

- (a) a contract administrator, supervising engineer or other designated official to order variations to the description of goods, works or services, the price or the completion date; or
- (b) a defined compensation event to justify variations in the price or in the completion date.

(2) Where a variation results in a change in price an additional funds shall be committed prior to the issuance of a variation order, unless such funds are already provided by a contingency amount already included in a contract.

(3) A contract may include a maximum limit on the variations which can be issued without a contract modification in accordance with Regulation 149.

(4) A contract shall clearly state an approval requirement for contract variations.

(5) Pursuant to paragraph (p) of subsection (2) of section 14 of the Act, and after the approval of a procurement committee, and where a variation or accumulated variations would cause the contract value to be increased by up to 25 percent of the original contract value, a procuring entity shall submit a request to the Authority for review of all contract variations including all the details.

(6) The Authority under sub-regulation (5) shall respond to a request within 5 working days from the date of receipt.

Contract termination.

151. (1) A contract document shall specify the grounds on which a contract may be terminated and the procedures for termination.

(2) A procurement unit shall obtain an approval of the awarding authority which authorised the original contract, prior to terminating the contract.

- (3) A request for approval shall state-
 - (a) the reasons for termination;
 - (b) actions which have been taken to avoid the need for termination;
 - (c) the contractual grounds for termination; and
 - (d) the costs, if any, for which a procuring unit will be liable following termination.

PART XI – MEASURES TO PROMOTE TRANSPARENCY AND ACCOUNTABILITY

A – TRANSPARENCY

152. (1) A procurement unit shall maintain an individual file for each procurement requirement, which shall be marked with the relevant procurement reference number. Procurement records.

(2) A file under sub-regulation (1) shall contain all information, documents and communications related to that procurement proceeding including–

- (a) the authorised procurement requisition with the description of goods, works or services required;
- (b) a procurement plan, stating the justification for the use of any method other than open competitive bidding or request for proposals;
- (c) a copy of an invitation to pre-qualify or call for expressions of interest notice and any pre-qualification documents;
- (d) all applications to pre-qualify or expressions of interest received and the evaluation of qualifications or comparison of expressions of interest;

- (e) an invitation to bid notice or any shortlist or list of pre-qualified bidders;
- (f) the bidding documents, request for proposals or other solicitation document issued, with any clarifications or amendments issued and minutes of a pre-bid meetings;
- (g) a record of solicitation documents issued, bids received and all bid or proposal openings;
- (h) all bids, proposals or quotations received, other than bids or proposals returned unopened to bidders;
- (i) copies of all clarifications requested and responses received;
- (j) the evaluation report, including any individual score sheets or other documentation;
- (k) records of a negotiations;
- (l) a notice of proposed award;
- (m) letter of acceptance;
- (n) a copy of the contract or purchase order document;
- (o) copies of letters rejecting and debriefing unsuccessful bidders;
- (p) a copy of any published notice of contract award;

- (q) copies of original securities, negotiable documents or financial instruments;
- (r) copies of all contract variations and modifications;
- (s) all documentation and correspondence relating to contract administration;
- (t) copies of all documentation demonstrating performance of the contract, such as inspection reports, delivery documentation, interim certificates and payment authorisations;
- (u) any documentation relating to cancellation of a procurement process or termination of a contract;
- (v) information relating to an application for review;
- (w) all approvals from a procurement committee and any other awarding authority; and
- (x) all copies of Authority reviews and all correspondence with the Government Ministry, Department or Agency.

(3) Procurement records shall be kept for a minimum period of 6 years following completion or termination of a contract or cancellation of a procurement proceedings.

(4) Procurement records and associated supporting documentation shall be made available for inspection to the Authority, Anti-Corruption Commission, and Auditor General upon request and to donor officials if donor funds are used for the procurement, in accordance with subsection (6) of section 32 of the Act.

(5) Procurement records shall be kept in a safe and secure environment.

(6) Where procurement records are archived electronically, it shall be protected from power failure, viruses or vicious software and a procurement unit shall have a back-up copy of the electronic procurement records which shall be updated on a regular basis.

Summary record of procurement proceedings.

153. (1) A procurement unit shall prepare a summary record of a procurement proceedings, containing the information required under subsection (2) of section 32 of the Act.

(2) Parts of the summary record may be made available to bidders on request in accordance with subsection (3) of section 32 of the Act.

Confidentiality and disclosure of records.

154. In disclosure of a summary record of procurement proceedings, under Regulation 153 debriefing bidders under Regulation 131, or in any other context, a procuring entity shall not, except when ordered to do so by a competent court, and subject to the conditions of such an order, disclose-

- (a) information, if its disclosure-
 - (i) would be contrary to law,
 - (ii) would impede law enforcement,
 - (iii) would not be in the public interest,
 - (iv) would prejudice legitimate commercial interest of the parties or
 - (v) would inhibit fair competition; or
- (b) information relating to the procurement process, other than the summary required in accordance with Regulation 143.

Management of securities and similar documents.

155. (1) All original securities, negotiable documents, financial instruments or similar documents received by a procuring unit shall be kept in a locked safe or other secure locked location by a procurement entity.

(2) Copies of the original documents referred to in sub-regulation (1) shall be kept in a procurement register-

- (a) the procurement proceedings or contract to which it relates;
- (b) the name of a financial institution who issued the document;
- (c) the date of issue and receipt of the document;
- (d) the expiry date of the document; and
- (e) the value of a security.

(3) A procurement unit shall implement systems and procedures to ensure that-

- (a) the register referred to in sub-regulation (2) is dated whenever documents are added, removed or amended;
- (b) the expiry date of a document is monitored and the appropriate staff notified before the expiration of a document;
- (c) a required extension of a document is requested before the expiration of a document;
- (d) a reduction in the value of securities are recorded; and
- (e) documents which have expired or are to be released are returned to bidders.

156. All communications between a procuring entity and a bidder or consultant shall be in writing. Communications.

B–ACCOUNTABILITY

Conduct of
public
officials.

157. A public officer involved in requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of contracts, shall–

- (a) discharge his duties impartially so as to assure fair competitive access to public procurement by bidders;
- (b) always act in the public interest, and in accordance with the object and procedures set out in the Act, these Regulations, the Public Service codes of ethics if any, and where applicable, the Local Government Act;
- (c) at all times avoid conflicts of interest in carrying out his duties and conducting himself and immediately disclose any conflict of interest and excuse himself from an involvement in the matter;
- (d) not commit or abet corrupt or fraudulent practices, coercion or collusion including the solicitation or acceptance of any inducements;
- (e) keep confidential the information that comes into his possession relating to procurement proceedings and to bids including bidders' proprietary information;
- (f) not take up a position of authority in any private entity with which he undertook procurement activities for a period of 3 years after departure from a procuring entity.

158. (1) A public officer of a procuring entity or their close relatives, shall not participate as bidders in a procurement proceeding of that procuring entity. Declaration of conflict of interest.

(2) A public officer shall recuse himself from participating in a procurement proceeding where a bid or proposal has been submitted by a bidder or consultant who is a close relative of the public officer, or by a bidder or consultant by whom the public officer or the close relative is employed in a management capacity, or as an agent or in which he is member of the board of director, or has a financial interest.

(3) A recusal under sub-regulation (2) shall be effected immediately a public officer becomes aware of the submission of such a bid, but not later than the opening of bids and the requirement of recusal shall extend to the administration and management of any procurement contract awarded to such a bidder.

(4) A public officer and other persons involved in public procurement shall, in accordance with the Act and other applicable legislation–

- (a) provide full co-operation and disclosure to the Authority, the National Revenue Authority, Auditor-General, and other authorities exercising monitoring and supervisory jurisdiction over public procurement ;
- (b) no later than 30 days from assuming responsibility and 30 days after leaving office, make a declaration of their assets and liabilities in such form as the Anti-Corruption Commission may determine and shall be updated annually as well as whenever there is a substantial change in assets and liabilities.

(5) A public officer who contravene the Act and these Regulations is liable to applicable administrative and civil sanctions as well as to prosecution pursuant to applicable criminal law, including the Anti-Corruption Act, 2008.

C – CONDUCT OF BIDDERS AND CONSULTANTS

Obligations of bidders and consultants. 159. (1) A bidder and consultant shall at all times abide by their obligations under the Act, these Regulations, contracts, and other instruments applicable to their conduct and activities related to procurement.

(2) A bidder or consultant shall not engage in or abet corrupt or fraudulent practices including–

- (a) offering or giving directly or indirectly of any inducement;
- (b) the misrepresentation of facts in order to influence a procurement process or the execution of a contract; or
- (c) interference in the ability of competing bidders or consultants to participate in procurement proceedings.

(3) A bidder and consultant shall not engage in any activity prior to or after bid submission, designed to deprive a procuring entity of the benefits of free and open competition, including collusion over bidding for opportunities and price fixing and coercive corrupt or fraudulent practices.

(4) A procuring entity shall reject a bid where a bidder or consultant offers, gives or agrees to give an inducement referred to under sub-regulation (2) and shall notify the rejection to a bidder, the Authority, and the relevant law enforcement authorities.

(5) A procuring entity shall not award a contract to a bidder or consultant who is responsible for preparing the specifications or bidding documents for a contract or supervising the execution of a contract, or to any affiliate of such a bidder or consultant.

(6) Sub-regulation (5) shall not apply to consultant and bidder which together are performing a bidder's obligations under a turnkey or design and build contract.

(7) A bidder and consultant who engage in fraudulent, corrupt, collusive or coercive practices in connection with public procurement shall be prosecuted under the Act, these Regulations or any other law including the Anti-Corruption Act, 2008.

160. (1) The Authority may exclude a bidder or consultant from participating in all public procurement, for a minimum period of one year and a maximum period of 6 years on any of the grounds specified in subsection (2) of section 35 of the Act.

Grounds for debarment of bidder or consultant.

(2) A petition to debar a bidder or consultant may be brought by a procuring entity, the Authority, the Auditor-General or any other oversight organs established by an Act of Parliament.

(3) Upon receipt of a petition to debar a bidder or consultant, the Authority shall immediately–

- (a) consult with the procuring unit to gather detailed information on the circumstances;
- (b) notify a bidder or consultant–
 - (i) of the petition;
 - (ii) his right to a hearing; and
 - (ii) to submit written evidence within 10 working days of receipt of the notice

(4) In investigating a petition to debar a bidder or consultant, the Authority shall consider—

- (a) the information contained in a petition and other information obtained through consultation with the affected procuring unit and the entity bringing the petition;
- (b) information provided by a bidder or consultant, through a hearing or in written form; and
- (c) any other relevant sources of information, including audits already conducted by the Authority or other oversight bodies or information from other bidders.

(5) During a debarment hearing, the following procedures shall apply—

- (a) a hearing shall be organised within 10 working days of the request for a hearing from a bidder or consultant;
- (b) a bidder or consultant may be represented by a counsel;
- (c) the hearing shall be recorded and all evidence presented shall be preserved; and
- (d) witness shall testify under oath and may be cross-examined.

(6) During an investigation of a petition to debar a bidder or consultant, a bidder or consultant shall be permitted to participate in public procurement and shall be required to continue performance of a contract, but any recommended contract award to a bidder shall be delayed, pending the outcome of an investigation.

161. (1) Upon completion of its investigation and following any hearing, the Authority shall issue a written decision, indicating— Decisions to debar.

- (a) whether the petition is upheld or rejected;
- (b) the reasons for its decision; and
- (d) the length of any debarment imposed.

(2) A written decision under sub-regulation (1) shall be sent to—

- (a) a bidder or consultant;
- (b) the person who submitted the petition; and
- (c) the affected procuring unit, where the petition was not submitted by the procuring entity.

(3) A debarment imposed shall take effect immediately upon the issuance of a written decision.

(4) During the period of a debarment, a bidder or consultant shall not be permitted to participate in any public procurement proceedings, but shall be required to continue performance of a contract already awarded.

(5) The Authority shall maintain a list of excluded bidders and consultants, which shall be circulated to all procuring entities and the Authority shall immediately inform all procuring entities of any changes to the list.

162. (1) Upon the expiration of a debarment imposed on a bidder or consultant, a debarred bidder or consultant may apply to the Authority to lift the debarment and shall specify the reasons for lifting the debarment, and submit any evidence in support of the application. Lifting of debarment.

(2) The Authority shall upon receipt of an application, send a copy of an application to an institution which proposed the debarment requesting for comments and recommendations from that institution.

(3) An institution under sub-regulation (2) shall submit its comments and recommendations within 10 days of the receipt of a copy of an application.

(4) The Authority shall convene a panel to review an application within 10 days of the receipt of the comments and recommendations of an institution.

(5) The debarment panel shall upon completion of its review sub-regulation (4) issue a written decision stating the outcome of its findings indicating–

- (a) whether the application is upheld or rejected;
- (b) the reasons for its decision; and
- (c) the length of any subsequent extension of the debarment period if required.

(6) A debarment panel shall notify a bidder or consultant in writing of the decision of the panel.

(7) A decision of the debarment panel with respect to the lifting of debarment of a bidder or consultant, shall be circulated to all procuring entities and placed on the Authority's webpage.

D – COMPLAINTS PROCEDURE

Submission of application for administrative review.

163. (1) A potential, actual bidder or consultant that claims to have suffered or that is likely to suffer loss or injury due to a breach of a duty imposed on a procuring unit by the Act, these Regulations or a bidding document, may seek a review at any stage of a procurement proceeding.

(2) An application for review submitted by a bidder or consultant in accordance with section 63 of the Act, shall contain–

- (a) details of a procurement proceedings to which an application relates, including a procurement reference number;
- (b) details of the provision of the Act, these Regulations or other instrument which has been breached;
- (c) an explanation of how the provision has been breached including, where known, the date and the names of responsible officers; and
- (d) any available documentary or other evidence supporting an application.

(3) An application for review shall be submitted in writing to the head of the procuring entity, unless a contract has already been awarded.

(4) An application for review may be submitted to the Authority where–

- (a) a contract has already been awarded;
- (b) the head of the procuring entity has failed to issue a decision within 10 working days of the date of receipt of an application for review; or
- (c) a bidder or consultant wishes to appeal against the decision of the head of a procuring entity.

(5) An application for review shall be submitted within 14 working days from–

- (a) the date when a bidder or consultant became aware of the circumstances giving rise to an application for review; or
- (b) the date of the head of a procuring entity's decision or failure to issue a decision.

Review by head of procuring entity.

164. (1) Upon receipt of an application for review, the head of a procuring entity shall institute an investigation taking into consideration an information—

- (a) and evidence contained in an application for review;
- (b) from a procuring entity's procurement records;
- (c) provided by staff of the procuring entity; and
- (d) from other bidders and consultants.

(2) The head of a procuring entity shall issue a written decision within 5 working days of receipt of an application for review, which shall indicate—

- (a) whether the application is upheld or rejected;
- (b) the reasons for the decision; and
- (c) any corrective measures to be taken.

(3) A decision under sub-regulation (2) shall be sent to—

- (a) bidder or consultant who submitted an application for review;
- (b) all other bidders and consultants;
- (c) a procurement unit and procurement committee of a procuring entity; and
- (d) the Authority.

165. (1) A bidder or consultant may apply to an Independent Procurement Review Panel for review of a procurement proceeding.

Review by Independent Procurement Review Panel.

(2) Subject to section 65 of the Act an application by a bidder for a review by the Independent Procurement Review Panel shall be accompanied by an administrative fee of 2% of the applicants bid price up to a maximum of 2 million Leones.

(3) Upon a receipt of an application for review and payment of the prescribed fee, an Independent Procurement Review Panel shall institute an investigation, taking in to account an information—

- (a) and evidence contained in the application for review;
- (b) from a procuring entity's procurement records;
- (c) provided by staff of the procuring entity;
- (d) from other bidders and consultants; and
- (e) in the investigation and decision of the head of the procuring entity, where applicable.

(4) A procurement proceedings shall be suspended until a decision on the complaint is issued by an Independent Procurement Review Panel, unless the procuring entity certifies that urgent public interest considerations such as natural disasters, medical emergencies, civil strife and outbreak of war, require the procurement to proceed in accordance with the subsection (7) of section 65 of the Act.

(5) An Independent Procurement Review Panel shall issue a written decision within 10 working days, indicating—

- (a) whether an application is upheld or rejected;
- (b) the reasons for the decision; and
- (c) any corrective measures to be taken, in accordance with subsection (5) of section 65 of the Act.

(6) A complaint may be dismissed for—

- (a) failure to comply with any of the requirements of this Part;
- (b) setting forth only allegations that do not state a valid basis for a complaint, or that do not set forth a detailed legal and factual statement;
- (c) having been filed in an untimely manner, either at the initial level of review by a procuring entity, or with respect to deadlines for filing of a complaint with the Independent Procurement Review Panel;
- (d) concerning contract implementation or administration rather than contract award;
- (e) challenging an affirmative determination of qualifications as regards a competing bidder or consultant.

Right of a bidder or consultant to commence judicial review with respect to procurement complaint.

166. (1) Where an application for review is rejected by an Independent Procurement Review Panel, a complainant may submit an application for judicial review to the court.

(2) A procuring entity and an Independent Procurement Review Panel shall extend all help required including attending a court hearing on the complaint and provision of any documents the court may request.

(3) Where an application under sub-regulation (1) is upheld, a procuring entity shall undertake corrective measures, in accordance with subsection (5) of section 65 of the Act.

PART XIII – DISPOSAL OF STORES AND EQUIPMENT

167. (1) These regulations shall cover the identification, aggregation and disposal of stores and equipment of a procuring entity subject to Part VII of the Act, including— Application.

- (a) surplus to requirements;
- (b) obsolete; damaged;
- (c) worn out and beyond economic repair; and
- (d) to be scrapped.

(2) The disposal of land, and sales of samples to bidders, textbooks, publications, reports, works of art, medicines or other items purchased for resale shall not be subjected to these regulations.

(3) All disposals of fixed assets shall be recorded in the Asset Register of the procuring entity and a formal notification of the disposal sent to the National Assets and Government's Property Commission.

168. (1) The head of the procuring entity shall in every year appoint a board of survey to examine, group and price all surplus, returned and scrap assets, and report its findings and recommendations. Authority to dispose.

(2) A Board of Survey shall—

- (a) classify the goods for disposal into homogeneous groups;
- (b) accurately describe the variety and type of goods;
- (c) specify weights, number, and measurements;
- (d) describe the condition and other specifications;
- (e) arrange the disposal of scrap items of no value;

- (f) for assets to be sold, establish the reserve sale price by obtaining 2 independent market-based valuations of goods in the same condition including previous selling prices for similar goods sold by a procuring entity or another government entity may be used to establish the reserve price; and
- (g) propose the method for sale and prepare draft advertisements and sale documents.

(3) Where items become unserviceable for reasons other than fair wear and tear, such as through accident or expiry, the Board of Survey shall ensure that all practical measures are taken for the recovery of losses before the items are boarded and disposed of.

Disposal procedures.

169. (1) Disposal of obsolete or surplus items shall be by–
- (a) transfer to other government departments or public entities, with or without financial adjustment;
 - (b) sale by public bid to a highest bidder, subject to reserve price;
 - (c) sale by public auction, subject to reserve price; or
 - (d) destruction, dumping, or burying as appropriate.

(2) Pooling of assets for disposal shall be done in order to minimise administration and transactional costs and to attract maximum possible competition.

Transfer to Government department or public entity.

170. (1) Where an asset may be usefully utilised by another procuring entity, the disposal of the asset shall be by formal transfer.
- (2) The receiving entity shall issue an authorised receipt of the asset to the originating entity.

171. (1) An item not exceeding an estimated sale value of 10 million Leones may be disposed of through the formal invitation of public bids. Public bid.

(2) A public advertisement shall be issued in one official local newspaper inviting bidders to inspect the items and submit sealed bids, not less than 14 days before the deadline set for the opening of bids.

(3) Bidders shall be required to include a bid security at the value set in the advertisement with their bid and a bid submitted without the required bid security shall be rejected.

172. (1) Public auction shall be a required method of asset disposal for all goods with an estimated sale value exceeding 10 million leones. Public auction.

(2) A public advertisement shall be issued in at least one official local newspaper inviting bidders to inspect the items and attend the auction proceedings not less than 14 days before the date set.

(3) Bidders shall be required to pay a bid bond at the value set in an advertisement as a condition of entry to the auction room.

173. (1) Destruction, dumping or burying of items shall be used where the asset has no residual value and cannot be transferred to any other entity or converted into any other form which subsequently gives it value. Destruction, dumping or burying.

(2) The Board of Survey shall under sub-regulation (1) ensure that–

- (a) environmental and safety factors are taking into consideration; and
- (b) minimising the possibility that items or equipment may be subsequently recovered and used in fraudulent claims for substitution with a new item.

SCHEDULES

First Schedule.

Regulations 17, 40, 41, 43, 44, 45, 79, 123, 121

THRESHOLDS

1. Contract awards shall be published when the estimated value of the contract is above-

- (a) in the case of contracts for the procurement of goods, Le 300.00 million
- (b) in the case of contracts for the procurement of works, Le 600.00 million
- (c) in the case of contracts for the procurement of services, Le 300.00 million

2. Request for Quotation shall be used when the estimated value of the procurement is below-

- (a) in the case of contracts for the procurement of goods, Le 100.00 million
- (b) in the case of contracts for the procurement of works, Le 200.00 million
- (c) in the case of contracts for the procurement of services, Le 100.00 million

3. National Competitive Bidding (N.C.B.) shall be used when the estimated value of the procurement is below-

- (a) in the case of contracts for the procurement of goods, Le 5.00 billion;
- (b) in the case of contracts for the procurement of works, Le 8.00 billion;
- (c) in the case of contracts for the procurement of services, Le 5.00 billion.

4. International Competitive Bidding (I.C.B.) shall be held when the estimated value of the procurement exceeds –

- (a) in the case of contracts for the procurement of goods, Le 5.00 billion;
- (b) in the case of contracts for the procurement of works, Le 8.00 billion;
- (c) in the case of contracts for the procurement of services, Le 5.00 billion.

5. Expression of interest for selection of consultants

The solicitation of expressions of interest is required when the estimated value of the consultants' services is above Le 5.00 billion .

6. Approval of Contract Awards			Procurement Item	Validation	Review	Review/Endorse	For Information	Regulation No.
	Types of contract	Contract Value Threshold in SLL million	Authority approving proposed contract award	Use of restricted bidding				42
1	Goods	Less than 45	Head of procurement unit or department	Sole-source method				46
		45-100	Head of procuring entity	Pre-qualification document				49
		Above 100	Procurement Committee	Pre-qualification evaluation report				50
2	Works/Technical Services	Less than 60	Head of procurement unit or Department	Draft bidding document				50
		60-200	Head of procuring entity	Reduction of the bidding period				57
		Above 200	Procurement Committee	Cancellation of procurement proceedings				62
3	Consulting Services	Less than 45	Head of procurement unit or Department	Bid opening record				65
		45-100	Head of Procuring entity	Bid evaluation report				77
		Above 100	Procurement committee	Justification on sole-source				116
Second Schedule		Regulations 28, 40, 42, 46, 49, 50, 57, 62, 65, 77, 116, 119, 129, 149, 150.		Emergency procurement				119
MONITORING OF WORKS, GOODS AND NON-CONSULTANT SERVICES								
	Procurement Item	Validation	Review	Review/Endorse	For Information	Regulation No.		
	Procurement Plan ¹					28		
	Variation of the procurement method					40		
								129
								149
								150
								Procurement plan for works, goods, non-consultant services and consulting services

Third Schedule. Regulations 81, 83, 86, 92, 99, 101, 109, 149, 150

MONITORING OF CONSULTING SERVICES

Procurement Item	Validation	Review	Review/Endorse	For Information	Regulation No.
Evaluation report of expressions of interest			“		81
Sole-source selection method					83
Request for proposals document		“			86
Technical proposals opening record				“	92
Technical evaluation report				“	99
Financial proposals opening record				“	101
Combined technical and financial evaluation report and draft contract		“			109

Procurement Item	Validation	Review	Review/Endorse	For Information	Regulation No.
Contract modifications		“			149
Contract variations		“			150

After the review of and approval of the procurement plan, in order to ensure compliance with the Act, the Regulations and the procurement plan, the Authority shall review the first five contracts above open competitive bidding threshold undertaken by a procuring entity upon receipt of their allocation of funds for the financial year and take the appropriate action. After the review of the first five contracts, the Authority shall conduct random post-reviews.

MADE this 10th day of January, 2020.

JACOB JUSU SAFFA,
Minister of Finance

FREETOWN,
SIERRA LEONE.