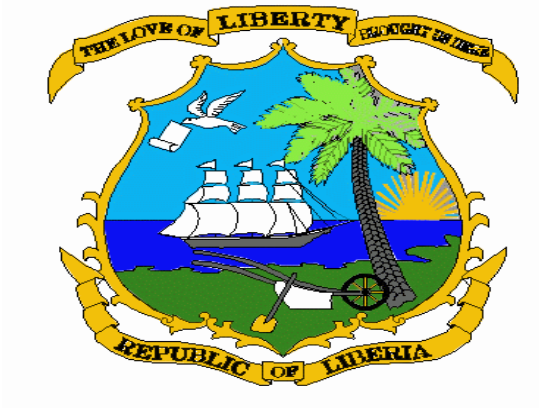




**THE REPUBLIC OF LIBERIA  
PUBLIC PROCUREMENT AND CONCESSIONS  
COMMISSION  
PUBLIC PROCUREMENT AND CONCESSIONS  
ACT, 2005, as amended and restated in 2010**

**PUBLIC PROCUREMENT AND CONCESSIONS**

# **AMENDED REGULATIONS**



**REPUBLIC OF LIBERIA**

**JUNE 2014**

**REGULATIONS ACCOMPANYING THE PUBLIC PROCUREMENT AND  
CONCESSIONS COMMISSION ACT OF 2005 OF AS AMENDED AND  
RESTATED IN 2010**

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IN exercise of the powers conferred on the Public Procurement and Concessions Commission under section 134 of the Public Procurement and Concessions Act 2005, as amended and restated in 2010 these Regulations are made on the ..... (day) day of .....(month).....(year) and shall apply to the scope of Procurement and Concession as spelt out under the Act.

## **PART 1 - PRELIMINARY**

### ***Regulation 1 - Conditions Applicable To Exemptions (Section 1 of the Act)***

Any notification given pursuant to Section 1(4) of the Act concerning an agreement referred to in clause (a) or (b) of Section 1(3) of the Act shall be in writing and copies thereof shall be furnished at the same time to the Commission and the Ministry of Justice

### ***Regulation 2 - Interpretation (Section 2 of the Act)***

Words used in this Regulation shall have the meaning ascribed to them under Section 2 of the Act and the following words used in the Regulations but which are not defined under the Act shall have the meaning ascribed to them under these Regulations:

- (1) “**Advisor**” means an expert, a team of experts or advisors with the skills and knowledge related to concessions who are engaged pursuant to the Act and may advise on the technical, legal, financial and/or any other aspect of the concession or a concession processes.
- (2) “**Project Steering Committee**” means a team constituted by the Concession Entity for the co-ordination, supervision and monitoring of the implementation of the concession under the Provision or Regulation 44 of these Regulations.
- (3) “**Value for money**” means an assessment of the maximum net benefit to the Government of Liberia from the use of the government’s resources and assessment of risk in terms of cost, price, quality , quantity, timeliness or risk transfer or combination thereof.
- (4) “**Force Account**” refers to the method in which the procurement is carried out with self-supervision, utilizing the Procuring Entity’s own existing personnel and equipment or those of another Government institution.
- (5) “**Interest**” shall mean “private interest” which includes any relationship, investment, benefit (pecuniary or non-pecuniary) or any direct or indirect involvement or engagement of a person or a “Close Relative” of that person in any business transaction or arrangement for profit. A “Close Relative” as used in the definition of “interest,” means persons who are related to the public officer by birth, marriage, common-law partnerships, adoption or affinity.
- (6) “**Procurement Agent**” means a partnership, corporation, limited liability company, business entity or any governmental body, organization or authority engaged by a Procuring entity to administer the procurement of specified goods, works and services on behalf of the Procuring entity in accordance with these Regulations and the terms of a written agreement.

- (7) **“Stakeholder”** means a person whose day-to-day life will be significantly affected, affirmatively or negatively by the implementation of the proposed Concession or who has an economic, professional interest or cultural interest that will be enhanced or disadvantaged by the implementation of the proposed Concession. Stakeholders will include, but are not necessarily limited to:
- (i) residents of the area(s) in which the concession will operate
  - (ii) businesses serving the area(s) in which the concession will operate,
  - (iii) counties having jurisdiction over the area(s) in which the concession will be executed
  - (iv) civic, cultural and social groups and institutions based in or serving the area(s) in which the concession will operate.
- (8) **“Schedule”** means the Schedule of Thresholds set out in these Regulations.
- (9) **“Thresholds”** means the thresholds set out in the Schedule to these Regulations.

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

### **Regulation 3 - Functions of the Commission (Section 5 of the Act)**

- (1) The list of suppliers, contractors, consultants, and prospective bidders who have been debarred from public procurement, referred to in clause (m) of Section 5 of the Act, shall be maintained and displayed on the Commission’s website and the list shall be updated within ten (10) days after any name is added to or removed from the list.
- (2) Each Procuring and Concession Entity shall be responsible for consulting the list of debarred parties before completing any procurement or entering into any concession agreement under the Act and these Regulations.

#### **Regulation 4 – Complaints, Appeal and Review Process**

In addition to the provisions of Sections 10, 125, 126, 127, 128 and 129 of the Act the provisions of Part VIII of these Regulations shall be observed in respect of matters related to the Complaints, Appeals and Review Panel (CARP) set up under (Section 10) of the Act.

#### **Regulation 5 - Power to Obtain Information (Section 11 of the Act)**

Pursuant to section 11 of the Act:

- (1) A notice issued by the Commission or the CARP requiring a person to provide information shall give such a person at least seven (7) days from the date of the request to provide the information.
- (2) The person or entity shall respond to the request within the time indicated either by providing the information or indicating the reason why the information cannot be provided within the time specified.
- (3) Where the entity or person gives reason for the inability to provide the information to the Commission or CARP within the time specified, the Commission or CARP may grant such extension of time as the context may require.
- (4) The provisions relating to the offence of non-compliance under Section 11(5) of the Act shall apply to any failure to comply with any extension of time granted by the Commission or the CARP pursuant to these Regulations.

#### **Regulation 6 - Disclosure of Interest (Section 13 of the Act)**

- (1) The disclosure of interest required under Section 13(1) under the Act shall be made prior to the first sitting of the Commission related to that matter but where the member or person becomes aware of the interest during the sitting of the Commission, the member or person shall immediately disclose the interest and shall excuse himself/herself from taking part in further proceedings of the Commission on that matter.
- (2) The reference to “interest” of a member of the Commission or a person in a matter under Section 13(1) and (2) of the Act shall be construed to mean interest as defined under Regulation 2(5) of these Regulations.

#### **Regulation 7 - Financing of the Commission (Section 17 of the Act)**

- (1) Pursuant to Section 17 of the Act, all funds accruing to the Commission shall be deemed to be Public Funds and the use of such funds shall be subject to the general or specific guidelines issued by the Ministry of Finance and/or Bureau of Budgets regarding the use of Public Funds.
- (2) In accordance with section 17(2) of the Act, the fees paid by appellants who file appeals to the Commission shall only cover the cost of reproduction of the Commission’s application forms.



- (3) The schedule of fees shall be determined from time to time by the Commission and published by the issue of a general notice on fees.

### **Regulation 8 - Accounts and Audit (Section 18 of the Act)**

Pursuant to section 18 of the Act, the Commission shall:

- (1) Manage and operate the Commission's accounting system in such a manner as to ensure accountability and transparency in the use of all funds of the Commission.
- (2) Ensure that the Commission's accounting system has been approved by the appropriate government authority.
- (3) Ensure the efficient and effective use of appropriations made available to the Commission within the ambit of government policy and in compliance with any enactment or instructions issued under the authority of the applicable enactment.
- (4) Prepare, sign and submit the annual account of the Commission in the form prescribed by the appropriate government authority.
- (5) Answer questions raised by the Auditor General or the legislature in respect of the financial transactions and accounts of the Commission.

## **PART III - ENTITIES**

### **Regulation 9 - Use of Private Sector Practices by Entities (Section 24 of the Act)**

A Procuring Entity that meets the requirements of Section 24 (1) of the Act may undertake procurement for specific procurement packages in accordance with established private sector procedures or commercial practices by complying with the following additional requirements:

- (a) the entity must submit to the Executive Director of the Commission a statement of the type of private sector or commercial practice to be adopted in the Entity's Procurement Plan and include timelines for the following:
  - (i) Source Identification
  - (ii) Development of Supplier Profile
  - (iii) Decisions on the Selection of Bidders
- (b) the entity must indicate in its Procurement Plan, the Private Sector Practice proposed for a particular procurement package.
- (c) Where private sector procedures are submitted to the Executive Director for approval pursuant to clause (c) of Section 24(1) of the Act, they must:

- (i) include timelines for identifying the contractors who could supply the goods, works or services;
  - (ii) include timelines for developing clear specifications of requirements;
  - (iii) include timelines for making decisions on selection of the successful bidders.
  - (iv) ensure that the quality of goods, services or works procured meet minimum technical specifications established by the entity in its invitation to bidders; and
  - (v) ensure that the cost of goods, services or works are within the limits of the approved budget of the entity.
- (d) Where a Procurement Agent(s) is engaged to carry out procurement on behalf of an Entity under this regulation, the Procurement Agent shall report to the Head of Entity who shall ensure that the Procurement Agent complies with the Object of the Act.

**Regulation 10 - Functions of Procurement Committee (Section 27 of the Act)**

- (1) In reviewing the activities leading to the selection of the lowest responsive evaluated bid by the Procuring Entity, the Procurement Committee shall ensure that the lowest responsive evaluated bid meets the following requirements:
  - (a) All responsiveness requirements stipulated in the bid documents;
  - (b) All minimum technical or commercial requirements stipulated in the bid documents; and
  - (c) The bid price has been evaluated to be more favorable than those submitted by other responsive and qualified bidders.
- (2) The Procurement Committee shall carry out its functions for all procurement activities within the Entity irrespective of whether the source of funding is from the Government of Liberia, donor fund or any other source. Any decision submitted for review by a donor, where applicable, shall be deemed to have been approved by the Procurement Committee prior to submission to the donor.
- (3) Use of donor procedures may require conformity with donor's guidelines and the use of donor's standard procurement documents. The Procurement Committee shall carry out its functions within the framework of donor guidelines where applicable and in conformity with the roles specified in Part III sub-part II of the Act.

**Regulation 11 - Procurement Unit (Section 29 of the Act)**

- (1) The Procurement Unit shall report to the Head of the Procurement Committee. The Procurement Committee may request clarification and/or information from the Procurement Unit during its sittings.

## **Regulation 12 - Bid Evaluation Panel (Section 30 of the Act)**

- (1) In the establishment of a Bid Evaluation Panel by the Procurement Committee pursuant to Section 30 of the Act, the Procurement Committee shall ensure that:
  - (a) Due regard is given to the subject matter of the bid or the expertise required for the evaluation of the bid.
  - (b) Persons who are qualified and required to serve on a Bid Evaluation Panel for the evaluation of bids are invited formally in writing to serve on the Bid Evaluation Panel.
  - (c) A person who accepts to serve on the Bid Evaluation Panel shall give a written undertaking confirming that, no conflict of interest exists or would arise in the performance of his/her responsibilities as a member of the Bid Evaluation Panel.
  - (d) The Procurement Committee shall appoint an odd number of members to each Bid Evaluation Panel as follows:
    - (i) Request for quotations for goods and works: Minimum of three (3). Quorum for meetings and decisions shall be in two-thirds of the number appointed.
    - (ii) National competitive bidding for goods and works: Minimum of five (5). Quorum for meetings and decisions shall be two-thirds of the number appointed.
    - (iii) International competitive bidding for goods and works: Minimum of Seven(7). Quorum for meetings and decisions shall be two-thirds of the number appointed
    - (iv) Expression of Interest for all methods of consultancy Services selection: Minimum of five (5). Quorum for meetings and decisions shall be two-thirds of the number appointed.
    - (v) Technical and Financial Proposals for all methods of consultancy services selection: Minimum of five (5). Quorum for meetings and decisions shall be two-thirds of the number appointed.
  - (e) Where the Procurement Committee does not specify the Chairman of the Bid Evaluation Panel, the members of the Bid Evaluation Panel shall elect one of their numbers to serve as Chairman of the Bid Evaluation Panel. The Bid Evaluation Panel's recommendations shall be made through the agreement of a majority of its members.
  - (f) The decision of the Bid Evaluation Panel shall be accompanied by information regarding dissenting views where applicable and be signed by all members.
- (2) If the Procurement Committee detects or is of the view that there is or there would be conflict of interest such a person shall be removed from the Bid Evaluation Panel.
- (3) Conflict of Interest shall have the meaning ascribed to it in the Act.
- (4) Members of the Bid Evaluation Panel must be persons who are not members of the Procurement Unit. There is no objection to a person serving on more than one Bid Evaluation Panel.

- (5) In the evaluation of the bids, the Bid Evaluation Panel shall ensure that it complies with the predetermined and published evaluation criteria outlined to the bidders in the bid documents.
- (6) The decision of the Bid Evaluation Panel shall be unanimous provided that where the Bid Evaluation Panel cannot decide unanimously on an issue; its decisions may be taken by vote of the majority of Bid Evaluation Panel members.
- (7) Where there is a tie in votes regarding the decision of the Bid Evaluation Panel, the Chairman shall have a casting vote to determine the matter.
- (8) The Bid Evaluation Panel shall submit an evaluation report including a due diligence report where applicable to the Procurement Committee in accordance with Section 30(2) of the Act.
- (9) Unless otherwise determined by the Procurement Committee, the Bid Evaluation Panel shall be deemed dissolved immediately after the submission and acceptance of the final evaluation report by the Procurement Committee.
- (10) The deliberations of the Bid Evaluation Panel shall be confidential, and members required to sign a confidentiality agreement. The Bid Evaluation Panel shall not involve other persons, including officials of the Procuring Entity, in the process of bid evaluation, except that (i) the Bid Evaluation Panel may ask the Procurement Unit to seek clarification of bids from the bidders by asking questions which shall not give bidders an opportunity to change, expand on, or supplement the bid, and (ii) the Bid Evaluation Panel may request and receive clarifications from the Procurement Unit on questions relating to the meaning of the bid documents or the proper method for conducting the evaluation.
- (11) The Bid Evaluation Panel may also recommend rejection of all bids pursuant to clause (a) of Section 36(2) of the Act and may recommend cancellation of procurement proceedings pursuant to clauses (b) (i) through (b) (v) of Section 36(2) of the Act.
  - (a) The Thresholds set forth in the Schedule of Thresholds determine whether a bid award is to be made by the Procurement Committee or the Head of the Entity.

**Regulation 13 - Time for Entering into Contract (Section 31 of the Act)**

- (1) During the fourteen (14) day waiting period for entering into contracts of specified thresholds as required under Section 31 of this Act, the Commission may:
  - (a) review the entire contract award process, including the following :
    - i. Annual budget
    - ii. Approved Procurement Plan- original and updated versions
    - iii. Specifications/TORs
    - iv. Bidding documents/ Request for Proposals
    - v. Copies of actual advertisements published
    - vi. Minutes of bid opening

- vii. Memo constituting evaluation panel
- viii. Evaluation report
- ix. Letter/memo requesting approval of Head of Entity/Procurement Committee
- x. Minutes of meeting of Procurement Committee
- xi. Letter/Memo approving recommendation for award
- xii. Letter of acceptance and other correspondence with selected bidder
- xiii. Draft contract
- xiv. Correspondence relating to contract execution
- xv. Correspondence relating to complaints if any

and

- (b) issue a notice for the suspension of the award of contract if the Commission is of the view that a stated section of the Act has been breached.
- (2) The Procuring entity may enter into a procurement contract after the expiration of the fourteen (14) day waiting period if no notice is received from the Commission.
  - (3) The notice of intent to award shall contain all of the information required by Section 37 of the Act.
  - (4) When the Commission rejects the proposed award, the reasons provided to the Entity for rejection must include the specific provisions of the Act and these Regulations which the Commission determines were not met.

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

### **Regulation 14 - Qualification of Bidders (Section 32 of the Act)**

- (1) For the purposes of complying with Section 32 of the Act, the Procuring Entity shall ensure that
  - (a) The qualification criteria listed under the Section shall as the context requires be included in the final bidding documents issued to bidders.
  - (b) Evaluation of a bidder's qualification is based solely on the criteria indicated in the bidding documents.
  - (c) Where prequalification procedure is applied, no limit shall be set for the number of prequalified bidders and all bidders who meet the minimum qualification criteria and requirements shall be invited to submit bids.
  - (d) A bidder may as the context require demonstrate its qualification as follows;
    - (i) that it has the professional and technical ability to perform the contract;

- (ii) it possesses relevant past performance,
- (iii) it possesses the appropriate legal status of the bidder (e.g., sole proprietor, corporation, partnership, joint venture) and, if relevant to the procurement, the status of the bidder as a Domestic Business, Liberian Business, or Solely-Owned Liberian Business;
- (iv) it possesses evidence of title, certificate, or otherwise, that the individual representing the entity, signing the bid, and signing the contract is authorized; and
- (v) that the bidder has the financial resources (e.g., capital, credit, etc.) adequate to assure performance of the contract.

(e) In every case a bidder must be required to certify in writing when it submits its bid that it has not been debarred from contracting with the Government of Liberia and is not under the control of any person so debarred by the Government of Liberia.

### **Regulation 15 - Clarification and Modification of Bidding and Prequalification Documents (Section 33 of the Act)**

- (1) Where a Procuring Entity intends to hold a pre-bid meeting, it shall indicate the time, date and place of the meeting in the bidding documents.
- (2) Notwithstanding the pendency of a pre-bid meeting, if the Procuring Entity receives a written request for clarification, it shall respond to the written request for clarification by a bidder prior to the pre-bid meeting and within the time frame provided under Section 33(2) of the Act.
- (3) In responding to the written request for clarification within the time frame provided under Section 33 (1) of the Act, the Procuring Entity shall make the request and its response available to all bidders without disclosing the source of the request.
- (4) No pre-bid meeting shall be scheduled at a date which is later than fourteen (14) days before the date specified in the bidding documents..
- (5) Minutes of the pre-bid meeting shall be provided to all bidders who were issued with bidding documents, whether they attended the pre-bid meeting or not.
- (6) In accordance with Section 33(2) an Entity may extend the deadline for submission of bids if substantial modifications are required after the pre-bid meeting.

### **Regulation 16 - Cancellation of Proceedings or Rejection of Bids (Section 36 of the Act)**

- (1) In addition to the provisions of section 36 the cancellation or rejection of all bids shall also be subject to the following:
  - (a) Submission of a written report to the Procurement Committee that sets out how the requirements stated in section 36 of the Act have been met;
  - (b) Approval of the rejection or cancellation by the Procurement Committee of ~~14~~the

Procuring Entity; and

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

(2) For the purposes of Section 36 of the Act, the Procuring Entity shall ensure that all bidding documents indicate that the Procuring Entity has the right in accordance with the Act to reject all bids or cancel the procurement proceedings at any time prior to the issuance of the Letter of Acceptance..

### **Regulation 17 - Debriefing Of Unsuccessful Bidders (Section 38 of the Act)**

(1) An unsuccessful bidder may, by notice in writing to the Procuring Entity, request for a statement on the general reasons for which its bid was deemed unsuccessful.

(2) The Procuring Entity shall inform the unsuccessful bidder in writing of the reason(s) within fourteen (14) days upon receipt of the request.

(3) Information provided to unsuccessful bidders shall be in writing and copies shall be kept as part of the record of procurement proceedings required under section 43 of the Act.

(4) Any response to a request for debriefing shall comply with section 43 of the Act and no debriefing shall be made in breach of section 43(5) of the Act.

(5) A debriefing shall identify significant weaknesses and deficiencies in the bidder's proposal. A debriefing shall not reveal the evaluation, scoring, or other analysis of bids other than the bids of the successful bidder and the bidder being debriefed and shall not violate the restraints in Section 43(7).

### **Regulation 18 - Procurement Planning (Section 40 of the Act)**

The Procuring Entity shall follow the following procedures in the preparation of procurement plans: (1)

The Head of the Procuring Entity shall constitute a procurement planning Committee comprising members of the budget committee and the head of Procurement Unit to develop the annual procurement plan.

(2) The Procuring Entity shall as part of the budget preparation process prepare a proposed procurement plan.

(3) Items in the procurement plan may be referenced to Items in the approved budget, but should not be a replication of the budget items in its entirety. The description of each planned procurement contract shall fit the classification of contracts either as goods, works or consultancy services.

(4) The draft procurement plan shall be prepared in accordance with the requirement set out in the Schedule of Thresholds.

(5) The draft procurement plan may be modified by the Procuring Entity based on the approved budget and the modified procurement plan shall be deemed the final procurement plan and

shall be submitted to the Commission for approval within four (4) weeks of budget approval.

(6) The final procurement plan shall be deemed to have been approved if no response is received from the Commission within twenty-one (21) days after submission to the Commission.

(7) Where the Commission does not approve the procurement plan, the Commission shall notify the Procuring Entity in writing of the reason for the non-approval and the Entity shall review or modify the procurement plan as required and re-submit to the Commission for consideration and approval.

(8) In reviewing the procurement plan, the Commission may comment on the appropriate procurement method proposed for a particular procurement or on other aspects of the procurement process or contract terms in order to assure compliance with the Act and protect the interests of the Republic of Liberia.

(9) The Commission shall require revision of a plan to the extent necessary to correct failures of compliance with the Act.

**Regulation 19 - Contract Administration (Section 41 of the Act)**

(1) The head of the Procuring Entity shall have oversight responsibility for the administration of the procurement contract.

(2) Pursuant to section 41 of the Act, the Procuring Entity may set up a team for the administration and monitoring of the performance of procurement contracts entered into by the Entity.

(3) The Procuring Entity shall:

(a) develop a contract administration mechanism that prescribes:

(i) obligations of the Procuring Entity and the successful bidder under the contract,

(ii) expected or contractual compliance

(iii) completion date of the obligations under the contract

(iv) Agency / official responsible for the execution of the prescribed obligation .

(b) Prepare written periodic updates on Compliance with obligations under the contract.

(4) In the event that the entity is of the view that the procurement contract requires periodic written update, it shall spell out the period of review leading to the updates in writing and assign the responsibility of preparing the updates to named officials of the entity.

(5) Where the context requires, the head of the Procuring Entity shall ensure that the contract administration and monitoring mechanism takes into account the need to link approval of financial disbursement to the performance of the obligations in accordance with the terms of the contract.

**Regulation 20 - Price Adjustment (Section 42 of the Act)**



(1) Pursuant to section 42 of the Act, the Procuring Entity shall not adjust the price stated in the procurement contract unless the procurement contract:

- (a) prescribes the circumstance for the adjustment and
- (b) prescribes for the formula or method for the determination of the adjustment.
- (c) provides an adequate contingency amount

(2) Where provision is made for price adjustment, an adequate contingency amount shall be provided in each contract to cater for possible upward adjustment.

(3) Pursuant to section 42(3) of the Act, the procurement contract may also stipulate the maximum percentage of the initial price or the remaining price for which an upward adjustment may be permitted.

(4) In any procurement contract where a maximum percentage of upward adjustment is stipulated there shall be a statement that where a price adjustment leads to an increase exceeding the stipulated percentage, the Procuring Entity may terminate the contract.

#### **Regulation 21 - Margin of Preference (Section 45 of the Act)**

(1) The general objective of the Margin of Preference is to provide opportunity for Liberian and Domestic Businesses to have competitive edge in procurement (works, services, and goods), investment loan and other business activities.

(2) The specific objectives are :

- (a) To ensure greater and enhanced participation of Liberian Businesses in the national economy
- (b) To facilitate a sustained process of capacitating by encouraging the development of genuine partnerships between local and foreign businesses
- (c) To encourage Domestic and Liberian businesses to engage in manufacturing and production of essential goods locally, thereby reducing procurement/ importation of foreign manufactured goods
- (d) To encourage Liberians to engage in works, services or consultancy in Liberia
- (e) To encourage foreign direct investment and
- (f) To promote the generation of international partnership.

(3) A MOP may be applied to International Competitive Bidding for (a) Expressions of Interest (b) Prequalification for goods and works where applicable (c) Proposals for Consultancy Services and (d) bidding for goods and works

(4) Consultancy Services -Expressions of Interest: Domestic businesses may be granted a Margin of Preference of 10%. Liberian businesses may be granted a further 10% or total of 20%

(5) Consultancy and Non Consultancy Services - Financial Evaluation: Domestic businesses may be granted a margin of preference of 10% in the financial evaluation of Consultancy Services where foreign firms are included on the shortlist. Liberian businesses may be granted a further 10% or total of 20%

(6) Goods manufactured and/or produced locally with less than 30% of inputs imported: Domestic business may be granted a Margin of Preference of 10% Liberian businesses may be granted a further 40% or total of 50%.

(7) Goods manufactured and/or produced locally with 30% or more of inputs imported Domestic Business may be granted a Margin of Preference of 10% Liberian businesses may be granted a further 20% or total of 30%

(8) Works: Domestic Businesses may be granted a Margin of Preference of 2% for ICB works. Liberian businesses may be granted a further 8% or total 10%.

## **PART V – METHODS OF PROCUREMENT**

### **Regulation 22 - Engagement of End User Communities (Section 46(5) of the Act)**

(1) Pursuant to section 46(5) of the Act, a Procuring Entity may engage end users or beneficiary communities for delivery of services subject to the following procedures:

(a) The Procuring Entity determines that the conditions stated in section 46(5) of the Act applies

(b) The Procuring Entity determines that the end user or beneficiary communities possess the technical competence to provide the requisite services;

(c) The approved procurement plan specifies single source or restricted tendering procedures to promote involvement of the end- user or beneficiary communities in service delivery;

(d) The Procuring Entity shall follow the procedure provided for single source or restricted tendering as the case may be for the engagement of the end-user or beneficiary community; and

(e) An agreement is signed with authorized representatives of the end-user or beneficiary community and the Procuring Entity which clearly states the conditions and obligations of each party to the agreement.

(2) The participation of the procurement end-user or beneficiary community referred to under the Regulations 22 (1) (d) may take two forms.

(a) The bidding documents may require an offer or (other than the end user or beneficiary community) to incorporate a reasonable amount of participation by the end-user or beneficiary community in the bid and resulting contract. In determining a reasonable amount, the Procuring Entity shall balance the benefits to the objectives in Section 46(5) of the Act with the need to obtain competition among bidders.

(b) Alternatively, the Procuring Entity may determine that the contract should be performed primarily or totally by the procurement end-user or a beneficiary community, subject to compliance of the Procuring Entity with the requirements for sole source procurement contained in the Act and these Regulations, and the procurement of any required approval from the Commission.

(3) Where a Procuring Entity decides to procure services using the Force Account method, the cost shall not include labour charges, which is deemed to be covered by the Entity's budget.

### **Regulation 23 - National Open Competitive Bidding (NCB) (Section 48 of the Act)**

Where the Procuring Entity employs National open Competitive Bidding pursuant to section 48 of the Act, the Procuring Entity shall ensure that:

(1) Only domestic bidders are likely to be interested in submitting bids, and the contract amount is within the threshold specified by the Commission for the use of NCB.

(2) The procedure for the bidding complies with the Act and these Regulations. (3) The bidding is restricted to only Domestic Businesses

(3) The Commission may consider reduction in the time frame for submission of bids upon receipt of written justification for reduction in time frame, together with the procurement plan.

### **Regulation 24 – International Open Competitive Bidding (ICB) (Section 49 of the Act)**

Where the Procuring Entity employs International Competitive Bidding pursuant to section 49 of the Act, the Procuring Entity shall ensure that:

(a) The contract amount falls within the threshold value for ICB specified by the Commission and that all the processes set out in section 49 of the Act are complied with.

(b) Submission of bids shall be open to all firms including:

- (i) Domestic Businesses
- (ii) Liberian Businesses
- (iii) Solely- owned Liberian Business
- (iv) Foreign Firms / Entities

(c) The bidding documents and conditions of contract are of internationally accepted standard. The procuring entity may undertake due diligence to confirm qualification information provided by any bidder.

### **Regulation 25 - Restricted Bidding (Section 50 of the Act)**

(1) Where a Procuring Entity determines that the requirements of section 50 of the Act have been met and that a restricted bidding method of procurement should be employed, the Entity shall:

- (a) Indicate the use of restricted bidding method of procurement in the Procurement Plan
  - (b) Draw the attention of the Commission to the fact that the Entity intends to use a Restricted Bidding method as per the procurement plan
- (2) Where a Procuring Entity indicates Restricted Bidding for any procurement in the Procurement Plan, the Entity shall submit a specific request for approval to the Commission and the Commission shall indicate its approval or otherwise within fourteen (14) day period of receipt of request.
- (3) Where no response is received from the Commission within fourteen (14) days, it shall be deemed as approval of the use of a restricted bidding method.
- (4) The Procuring Entity shall comply with all requirements of the Act for the use of a restricted bidding method.

**Regulation 26 – Request for Quotations: Alternative for Small Scale Purchases (Section 53 of the Act)**

- (1) Procuring Entities may adopt the framework contract model for small scale purchases. The following procedure shall apply:
- (a) After a competitive bidding process using the Request for Quotations, method, procuring entities may award framework contracts, under which frequently bought items would be consolidated into contracts for supply at an agreed price over a defined contract term not exceeding twelve (12) calendar months.
  - (b) An agreement shall be signed with the selected supplier, contractor or provider of non-consulting services covering an established period of time which sets out terms and conditions under which specific procurements (framework contract purchase order-FCPO) can be made throughout the term of the agreement.
  - (c) The term of the agreement shall not exceed twelve (12) calendar months
  - (d) Orders shall be placed at the contract price when required

**Regulation 27 - Basic Procedures for Request for Quotations (Section 54 of the Act)**

- (1) Requests for quotation shall be employed by a Procuring Entity only where the conditions of section 53 of the Act have been met.
- (2) Where the requirements of Section 53 of the Act have been met the Procuring Entity shall strictly comply with the procedures under section 54 of the Act, in addition to these Regulations.
- (3) The Procuring Entities shall use the standard bidding document for “Request for Quotations” approved by the Commission and the timelines provided in the standard procurement planning template.
- (4) Quotations shall be sealed and deposited in a tender box as in other methods of competitive

bidding.

- (5) Quotations shall be opened in public in the presence of bidders' representatives who choose to attend. Minimum lead time for submission of quotations is 5 working days.
- (6) The quotations shall be evaluated by a Bid Evaluation Panel constituted in conformity with Section 30 of the Act.

### **Regulation 28 - Sole Source (Section 55 of the Act)**

- (1) The Procuring Entity shall employ the sole source method of procurement only where conditions under section 55 of the Act have been met and the approval of the Commission has been given.
- (2) Where applicable, the Procuring Entity shall indicate the use of sole source method of procurement in the procurement plan of the Entity
- (3) Where a Procuring Entity indicates sole source for any procurement in the Procurement Plan, the Entity shall submit a justification for approval to the Commission and the Commission shall indicate its approval or otherwise within fourteen (14) day period of receipt of request.
- (4) In the case of extreme urgency procurement not indicated in the procurement plan, the Commission shall respond in writing within 3 days of receipt of the request for sole source procurement.

### **Regulation 29- Basic Procedures for Sole Source (Section 56 of the Act)**

- (1) Where the Procuring Entity seeks to employ sole source as the method of procurement, the Procuring Entity shall follow the procedure stated in section 56 of the Act.
- (2) Where the cost of goods, works or services is not known at the time a decision is taken to procure by means of a Sole Source method, the Commission may conduct a value for money assessment on the basis of the draft contract, before authorizing the signing of the contract.

### **Regulation 30 - Invitation to Bid (Section 57 of the Act)**

Where a Procuring Entity issues an invitation to bid in accordance with section 57 of the Act, the following procedures shall, where the context requires, apply in addition to section 57:

- (1) An Invitation to bid shall not be issued or published unless bidding documents are ready for issuance to interested bidders.
- (2) A minimum of two publications for National Competitive Bidding and two publications for International Competitive Bidding shall be made in at least two newspapers of wide circulation in Liberia and on the Commission's Website or other recognized international website shall be sufficient.. The first publication should be made during the first week, and the second during the second or third week.
- (3) In addition to the provision of Sub-Regulation (2) of this Regulation, invitations to bid in respect of ICB procurement may also be made through circulation to foreign Embassies with missions in Liberia.
- (4) An invitation to bid may be issued before budget approval has been given, as a means of

minimizing delays in completing the procurement process but no contract shall be entered into prior to the approval of the budget.

(5) The Commission may request suspension of the procurement process if it identifies potential non compliance to the PPC Act 2010 in a published invitation for bids or proposals.

### **Regulation 31 - Bidding Documents (Section 58 of the Act)**

(1) No bidding document other than standard bidding documents approved by the Commission shall be issued by a Procuring Entity.

(2) Notwithstanding Sub-Regulation(1) of this Regulation, in any event when it becomes necessary for any entity to use bidding documents other than those provided by the Commission or in the event the Commission has not approved the requisite bidding document, the entity shall first submit copies of the proposed bidding documents for review and approval by the Commission.

(3) If the Commission has not provided standard documents appropriate for a particular procurement, the Procuring Entity shall first submit copies of the proposed bidding documents for review and approval by the Commission before using them in the procurement process.

### **Regulation 32- Bid Security (Section 60 of the Act)**

(1) The amount of bid security shall be expressed in absolute terms, and not as a percentage of the bid price.

(2) Notwithstanding the requirement to fix bid security in absolute terms, the amount stipulated by the Procuring Entity as bid security shall not in any event exceed five percent (5%) of the estimated value of the proposed contract rounded up to the nearest ten, or hundred or one thousand or ten thousand etc, as the case may be. Where contracts may be awarded by lots, bid security shall be specified per lot.

(3) When the Procuring Entity adopts two-stage bidding, it shall observe the provision of Sub- Regulation 32(2) of these Regulations in respect of bid security.

### **Regulation 33 - Bid Opening (Section 61 of the Act)**

(1) Pursuant to section 61 of the Act, bids shall be opened within one hour after the deadline for submission of bids and the provision of section 61(2) of the Act shall be complied with at all times.

(2) If any circumstance prevents the bids from being opened within the one (1) hour period stipulated in Sub-Regulation (1) of this Regulation, then the Entity shall take steps to ensure the bids are opened soon thereafter in the presence of bidders' representatives.

(3) Bidders' representatives present to witness the proceedings in accordance with section 61(2), may take records of the proceedings.

(4) Any member of the general public who wishes to attend shall be allowed to do so but only as an observer.

### **Regulation 34 - Examination, Evaluation and Comparison of Bids (Section 62 of the**

## **Act)**

- (1) The Procuring Entity shall examine the bids submitted to ensure that the bids satisfy the requirements of subsections (1) and (2) of section 62 of the Act.
- (2) Bids that satisfy the requirements of subsections (1) and (2) of section 62 of the Act, shall be evaluated by the Bid Evaluation Panel in accordance with the procedure stated in the Act.
- (3) In addition to the procedure stated under section 62 of the Act, the following shall also apply:
  - a) The evaluation and comparison of bids shall be carried out by the Bid valuation Panel constituted by the Procurement Committee in accordance with Section 30 of the Act and Regulation 12 of these Regulations.
  - b) Membership of the Bid Evaluation Panel shall not be disclosed directly or indirectly to bidders.
  - c) Any communication with any bidder, during the evaluation process, shall be in writing signed by the Chairman of the Procurement Committee or his representative.
  - d) All correspondence or communications from bidders during the evaluation process shall be addressed to the Head of the Procuring Entity. All correspondence or communications to bidders shall be signed by the Head of the Procuring Entity or his representative.
  - e) The Bid Evaluation Panel may identify issues requiring clarification, arithmetical errors, discrepancies, and minor deviations but communications on the subject with bidders must be conducted by the head of the Procuring Entity or his representative.
  - f) After all responsive bids have been subjected to detailed evaluation the “lowest evaluated bid” shall be deemed to be the “lowest evaluated responsive bid”.

## **Regulation 35 - Prohibition of Negotiations (Section 64 of the Act)**

- (1) Where the bid price of the lowest evaluated bid exceed the approved budget for the specific procurement, the Procuring Entity may consider negotiation with the lowest evaluated bidder subject to approval from the Minister of Finance and subject to the provisions of Sub- Regulation (2) and (3) of this Regulation 33.
- (2) The price negotiations shall only relate to a review of scope of work, services or quantity of goods as a means of adjusting the contract price prior to signing of the contract.
- (3) The provision under section 62(6) of the Act for the correction of arithmetical errors shall not be employed to change in the rates in the bid or negotiate the price of the contract.
- (4) If negotiations are elected but the Procuring Entity is unable to negotiate satisfactory terms with the bidder offering the lowest evaluated responsive bid, the Procuring Entity may continue to negotiate under Section 64 (2)(b) of the Act with each succeeding next lowest evaluated bidder

## **Scope of Negotiation**

- (5) Negotiations pursuant to clause (b) of Section 64(2) of the Act based upon reductions in scope shall be based on unit prices contained in the bid. Negotiations shall not permit a bidder to revise rates or prices for a unit of work, except in the case of correcting obvious errors permitted by Section 62(6) of the

Act.

(6) In the case of any negotiation of a contract pursuant to clause (b) of Section 64(2) of the Act, a record of the process and result shall be made a part of the contract.

### **Regulation 36 - Award of Procurement Contract (Section 65 of the Act)**

In the event the context of any procurement requires application of section 65(3) of the Act, the Procuring Entity may proceed to sign the contract after the expiration of the 14 days provided for in section 65(3) unless prior to the expiration of the 14 days the Commission had indicated to the Procuring Entity that the Entity should not proceed to sign the contract.

### **Qualification of Bidder**

No bidder shall be qualified for award whose name appears on the list of debarred bidders maintained by the Commission pursuant to Section 5(m) of the Act.

### **Regulation 37 - Acceptance of bid and signature of contract (Section 66 of the Act)**

For the purposes of section 66(1) of the Act, a notice shall be deemed to have been dispatched to the bidder when there is evidence in writing of receipt of the notice by the bidder or his/her representative.



### **Regulation 38 - Two-Stage Bidding (Section 67 of the Act)**

- (1) Pursuant to section 67 of the Act, two stage bidding may be used for the procurement of goods, works and services.
- (2) Where two stage bidding procedures are adopted in accordance with section 67 of the Act, only firms that respond to the first stage may be invited to participate in the second stage.
- (3) Bids submitted at the second stage shall be evaluated in accordance with criteria stated in the final bidding documents.
- (4) There shall be no requirement for the submission of bid security in the first stage but bid securities may be required at the second stage only.

### **Regulation 39 - Request for Consultancy Services (Section 68 of the Act)**

Pursuant to section 68 of the Act and subject to the applicable threshold indicated in the Schedule to the Act or in Regulations issued by the Commission, a shortlist may be established from any of the following sources:

- (a) Invitations of Expression of Interest in accordance with the Act
- (b) Entity's own records of similar assignments successfully completed by consultants
- (c) Records of other Procuring Entities in Liberia (d)  
Records of donors and development partners (e)  
Other credible information from the internet

### **Regulation 40 - Selection based on Quality and Cost (Section 69 of the Act)**

- (1) Pursuant to section 69 of the Act, selection based on quality and cost considerations may be achieved through Quality and Cost Based Selection (QCBS), Fixed Budget Selection (FBS) Least Cost Selection (LCS) or Consultant's Qualification Selection (CQS).
- (2) The Procuring Entity shall use QCBS where emphasis is on both technical competence or quality and cost.
- (3) A Procuring Entity shall employ FBS where the Entity has a fixed budget for the procurement of the goods, works or services and the Entity does not intend to procure outside the predetermined fixed budget.
- (4) Where the QCBS method is used, the Entity shall:
  - (a) Request bidders to submit both technical and financial proposals
  - (b) Specify a minimum technical score required as a condition for consideration of financial proposal

- (c) Specify the percentage of the total score to be allocated to technical considerations and financial considerations
- (d) Indicate formula for combining technical and financial score to arrive at total score.
- (e) Award the contract to the bidder who meets the minimum technical score, and ultimately obtains the highest combined technical and financial score.

(5) Where the FBS method is used, the Entity shall:

- (a) Request firms to submit both technical and financial proposals.
- (b) Specify a minimum technical score required as a condition for consideration of financial proposal
- (c) Award the contract to the bidder who:
  - (i) Has submitted a financial proposal within the predetermined specified budget.
  - (ii) Attains the highest technical score provided that that technical score is above the specified minimum technical score.

(6) Where LCS method is used, the Entity shall:

- (a) Request firms to submit both technical and financial proposals.
- (b) Specify the minimum technical score required as a condition for consideration of financial proposals.
- (c) Award the contract to the bidder meeting the minimum technical score, and submitting the least cost proposal.

(7) Selection based on Consultant's Qualifications (CQS)

This method may be used for small assignments or situations for which the need for issuing an RFP, and preparing and evaluating competitive proposals is not justified. In such cases, the Procuring Entity shall:

- (a) Prepare the TOR
- (b) Advertise and obtain expressions of interest that include information on firms experience and qualifications, from as many firms as possible.
- (c) Firms having the required experience and competence relevant to the assignment shall be assessed and compared, and the best qualified and experienced firm shall be selected.
- (d) Only the selected firm shall be asked to submit a combined technical and financial proposal and, if such proposal is responsive and acceptable, be invited to negotiate a contract.

### **Regulation 41- Selection based on Quality (Section 70 of the Act)**

- (1) A Procuring Entity shall employ a quality based selection method of procurement in accordance with section 70 of the Act only where the method is approved both by the Procurement Committee of the Entity and the Commission.
- (2) When the quality based selection method is used, the Entity shall:
  - (a) Request bidders to submit only technical proposals or both Technical and Financial proposals, but indicate that financial will be considered for the highest ranked bidder only.
  - (b) Specify the minimum technical score that must be attained before a financial proposal is requested or considered.
  - (c) Invite the bidder with highest technical score to negotiate a contract provided that technical score is above the minimum required technical score specified by the entity in the bidding document.
- (3) Selection of Individual Consultants (IC)

The selection of Individual Consultants shall follow the following procedure:

- (a) Prepare the TOR
- (b) Advertise and obtain expressions of interest that include information on individual's experience and qualifications, from as many individuals as possible.
- (c) A shortlist of individuals (minimum 3) having the required experience and competence relevant to the assignment shall be invited for interview and the highest ranked individual be invited to negotiate a contract.

### **Regulation 42 - Award of Consultancy Contract (Section 71of the Act)**

- (1) (Where the consultancy contract exceeds a sum specified by the Commission in a notice to all Entities, the Procuring Entity shall give notice to the Commission at anytime it seeks to award a consultancy contract above the sum specified. In such an event all unsuccessful consultants shall be notified of the successful consultant and the Entity shall not sign the contract until the fourteen (14) days have elapsed from the date of the notice.
- (2) The Procuring Entity shall proceed to sign the contract after the expiration of the fourteen (14) days provided for in Sub-Regulation (1) of this Regulation above, unless the Commission indicates otherwise to the Procuring Entity, within the fourteen (14) day period.

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

### **Sub –Part 1 – Definition And Objectives Of Concession Agreements**

#### **Regulation 43 - Definition (Section 73 of the Act)**

- (1) The definition of Concessions set out under Section 73 of the Act shall be deemed to cover and shall also be applicable to all variants of Public Private Partnerships.
- (2) Concession agreements shall ensure that risks are allocated between the public sector and the private entity in accordance with the principle of the party best positioned to bear the risk
- (3) Other variants of Concessions which are applicable under this Act include:
  - (i) Management Contract/Service Contract- where the private entity is engaged as an agent of the Government/public entity to perform a public function on behalf of the Government/public entity for a fee in whatever form with or without performance incentives regardless of whether the public entity retains responsibility for the acts of the private entity agent or not.
  - (ii) Annuity – where the transactions obligate the Government/public entity to make regular, periodic or defined payments to a private entity in support of the construction and/or operation of a facility to perform a public function where such payments by the Government to the private entity represent the primary source of income to the private entity with respect to such activity or the operation of such facility.

#### **Regulation 44- Objectives of Concession (Section 74 of the Act)**

- (1) In addition to the general objectives of Concessions under section 74 of the Act, the specific objectives of every concession shall be determined at the identification stage of the concession process and spelt out prior to the issue of the Certificate for Concession.
- (2) If the Concession is of a complex nature then the specific objectives required under Sub-Regulation (1) of this Regulation 44 may also be determined after the conclusion of the pre-feasibility study required under Section 103 of the Act.
- (3) Irrespective of whether a pre-feasibility study is carried out or not, the determination of the specific objectives of a Concession shall be arrived at in consultation with all key stakeholder entities including but not limited to:

- (b) The Ministry for Planning and Economic Affairs
- (c) The National Investment Commission
- (d) The Ministry of Justice
- (e) The Ministry of Labor
- (f) The Ministry of Internal Affairs
- (g) Agencies with direct relevance to the proposed concession

(4) In making their input, the key stakeholder agencies shall be guided by:

- (a) the overall national development framework of the Government of Liberia
- (b) the capacity of the concession project to create wealth and to reduce poverty
- (c) the current priorities of the National Investment Commission
- (d) the existing legislation of Public Financial Management
- (e) the Strategic Plan of the Concession Entity if available
- (f) other relevant policy objectives of the Government of Liberia

## **Sub-Part 2 - Scope Applications And Disqualified Private Sector Entities**

### **Regulation 45 – Scope, Application and General Principles (Section 75 of the Act)**

(1) The Commission shall have the oversight responsibility to ensure that any Regulation made specifically for concessions in specific sectors of the economy are in conformity with the Act and do not derogate from the principles of transparency, accountability and value for money in the grant of the concessions in that sector.

### **Inclusion of Definitive Agreements in Concession Bidding Documents (Section 75)**

- (a) A Concession Entity shall include the principal terms of a draft concession agreement in its Concession bidding documents. All such terms shall be approved prior to the release of the bidding documents as provided in Section 104 of the Act and the Regulations thereunder.
  - (b) A Concession Entity shall obtain the prior written consent of the relevant Inter-Ministerial Concessions Committee as constituted in Section 83(1) of the Act, if it wishes to issue bidding documents not complying with the requirements of clause 1 (a) of this Regulation 45.
- (2) Bidder Non-compliance with Bid Documents and Post-Bid Modification of Bid Terms
- (a) Subsection (5) of Section 75 of the Act is applicable to bidder- proposed changes to the terms and conditions of the bid documents that would change the transaction to the advantage

of the bidder and the detriment of the Government.

- (b) Suggestions for changes in the wording of a form of agreement included in the bid documents that correct manifest errors, eliminate inconsistencies, or otherwise clarify the operation of the agreement are not in violation of subsection (5) of Section 75 of the Act.

#### **Regulation 46 - Concession Entities (Section 76 of the Act)**

For the purposes of section 76 of the Act and for all purposes of Part VI of the Act, the Head of Entity shall at all times be the Head of the Concession Entity.

#### **Regulation 47 – The Entity Concession Committee (Section 77 of the Act)**

##### **Concession Certificates**

A request for a Concession Certificate under Section 77(1) (a) of the Act shall be made in writing by the Head of the Entity in compliance with Section 87(3) of the Act and shall contain information demonstrating compliance with the requirements of Section 89(1) of the Act.

##### **Further Functions of the Entity Concession Committee**

- (1) In addition to its functions under section 77 of the Act, the Entity Concession Committee shall also perform the following functions:
  - (a) Effect any changes to the Concession Procurement Plan required by the Commission or the Inter Ministerial Concessions Committee (IMCC)
  - (b) Subject to the approved Concession Procurement Plan, prepare and publish the following as the context may require:
    - (i) General Notice of Investment Opportunity
    - (ii) Expression of Interest
    - (iii) Request for Proposals
  - (c) Act as the secretariat of the IMCC for the purposes of the specific concession relating to a particular Concession Entity.
  - (d) Implement the concession procurement plans
  - (e) Keep all records of the procurement process for the specific concession

##### **Notification of Formation of Concession Committee; Qualification of members**

- (f) Not later than fourteen (14) days after the formation of any Entity Concession Committee, the Head of the Concession Entity shall notify the President, the statutory members of each Inter-Ministerial Concession Committee and the Commission of the appointment and membership of such Entity Concession Committee,

- (i) identifying the member appointed by the Minister of Finance pursuant to Section 77(3) of the Act
- (ii) setting forth in a summary form the Concession or Concessions proposed to be awarded through such Entity Concession Committee and the qualifications of the members of such Entity Concession Committee as they relate to such Concession.

(g) The Head of the Concession Entity shall in the notification to the President, formally request the President to constitute an Inter-Ministerial Concession Committee for the procurement of the Concession pursuant to Section 83(1) of the Act.

- (2) In order to facilitate the performance of the functions of the Entity Concession Committee in respect of a concession, the Concession Entity may temporarily, engage advisor(s) or persons trained and knowledgeable in concessions and to assist the Concession Committee in the performance of the functions relating to the procurement of concessions.

#### **Regulation 48 – Updates to the Concession Procurement Plan**

- (1) The Commission shall be notified of any updates required to be made to the Concession Procurement Plan if and when such updates become necessary.
- (2) No further approval shall be required of any changes in the timelines of the Concession Procurement Plan after the Invitation to Bid or the Request for Proposals has been issued:
- (4) No update to the Concession Procurement Plan shall be made if responses to an Expression of Interest (EOI) has been received.
- (5) If a General Notice of Investment Opportunity (GNIO) or EOI has been issued prior to the occurrence of the need for an update to the Concession Procurement Plan, then after the written approval of the Inter-Ministerial Concession Committee has been received the update shall be brought to the attention of the general public and all potential bidders by means of publication in the same media and manner as was used for the publication of the GNIO or EOI.
- (6) For the avoidance of doubt, no update shall be made after the bids or responses to the invitation are received

#### **Regulation 49 - Engagement of Advisors (Section 78 of the Act)**

Pursuant to Section 78 of the Act:

- (1) Where a Concession Entity seeks to engage an Advisor in accordance with the provisions of section 78 of the Act, it may only do so after the Certificate of Concession has been issued by the Minister responsible for Planning and Economic Affairs for the specific concession.
- (2) The Advisor(s) may advise the negotiating team but an advisor shall not be a member of the negotiating

team.

- (3) An Advisor may be engaged to advice on various aspects of the concession including but not limited to providing guidance on:
  - (a) the formulation of the evaluation criteria for various stages of the Concession Procurement Process
  - (b) the setting out of key issues of concession negotiations for the consideration of the IMCC
  - (c) relevant technical issues related to the work of the IMCC and the concession process
  - (d) the preparation of the documents relating to all stages of the Concession Procurement Process
  - (e) the conduct of stakeholder consultations
- (4) Subject to the scope of services assigned, the Advisor shall work closely with the Concession Entity, Concession Committee, a Concession Bid Evaluation Panel and/or the IMCC as the context requires.

#### **Regulation 50 - Preparation of Concession Procurement Plan (Section 79 of the Act)**

- (1) The Concession Procurement Plan shall be prepared in accordance with any template or standard guidelines or manual that may be issued by the Commission
- (2) The Concession Procurement Plan required under section 79 of the Act shall be submitted to the Commission by the Head of Entity only after the Certificate of Concession has been issued by the Minister responsible for Planning and Economic Affairs. The Certificate of Concession shall be submitted to the Commission together with the Concession Procurement Plan.
- (3) After the submission of the Concession Procurement Plan, a Concession Entity may proceed with the concession process if it does not receive a request for changes from the Commission within twenty-one (21) days after the submission of the Concession Procurement Plan to the Commission.
- (4) Where the Commission requests for changes to the Concession Procurement Plan, the Concession Entity shall effect the necessary changes as requested by the Commission and re-submits the plan to the Commission. The Concession Entity shall thereafter proceed to comply with the plan unless:
  - (a) it receives a notice to the contrary from the Commission within seven (7) days of its re-submission
  - (b) the Concession Entity itself seeks to make further updates in which case Regulation 49 shall be complied with.

#### **Review of Concession Procurement Plans**

- (5) In reviewing a Concession Procurement Plan, the Commission shall determine whether the plan addresses



the formal requirements of the Act and the plan is consistent and achievable with the resources indicated in the plan.

- (6) The Commission will review the following areas of the plan; type of concession and procurement option endorsed in the Certificate of Concession, timetable and key milestones including but not limited to approvals and stakeholder consultations, roles and responsibilities of persons/institutions and any other area that the Commission may deem relevant.
- (7) Upon approval of the Concession Procurement Plan by the Commission, the Concession Entity shall submit the approved Concession Procurement Plan to the Inter-Ministerial Concession Committee

### **Substance of Concession Procurement Plan**

In order to ensure that a Concession is developed in accordance with the requirements of Sections 90 and 91 of the Act, a Concession Procurement Plan shall demonstrate that the Concession Entity has recognized the need to, and has the capacity to, identify relevant stakeholders, obtain their views and concerns, and integrate those views and concerns into the proposed Concession structure and terms.

## **Regulation 51 - Composition of Inter-Ministerial Concession Committee (IMCC) (Section 81 of the Act)**

### **(1) Notification of Formation and Membership of an Inter-Ministerial Concessions Committee**

The Chairperson of the National Investment Commission shall promptly notify the Commission of the formation of an IMCC, the Concession Entity involved, and the identity of the Ministers appointed by the President.

### **(2) When Head of Concession Entity is a Statutory Member of the Inter-Ministerial Concessions Committee**

If the Head of the Concession Entity is already a member of the IMCC by virtue of clauses (a) through (f) of subsection (3) of Section 81 of the Act, the President shall appoint three (3) other Ministers in lieu of the two Ministers to be appointed by the President under clause (g) of such subsection (3)

### **(3) Role of the Non-Member Secretary**

- (a) The non-member secretary for each Inter-Ministerial Concessions Committee shall represent the Secretariat of the IMCC. The Secretariat shall;
  - (i) keep IMCC members informed of the time and place of scheduled meetings,
  - (ii) keep a record of decisions taken at IMCC meetings,
  - (iii) keep the IMCC members informed of actions taken at meetings at which

they were not present, and

- (iv) take such other actions in furtherance of the purposes of such IMCC as the IMCC may request.

### **Regulation 52 - Functions of the Inter-Ministerial Concessions Committee (Section 82 of the Act)**

Pursuant to section 82 of the Act no member of the IMCC shall be a member of Bid Evaluation Panel constituted by the IMCC.

#### **Notifications and Information**

The IMCC shall upon approval, notify and provide copies of the following to the Concession Entity and the Commission:

- (i) Updated Concession Procurement Plan
- (ii) Approved concession bid documents
- (iii) Approved report of the evaluation Bid Evaluation Panel including the Due Diligence report
- (iv) Award of the concession
- (v) Minutes of the bid opening

### **Regulation 53 – Formation and Meetings of the Inter-Ministerial Concession Committee (Section 83 of the Act)**

The membership of the IMCC shall consist of nine (9) persons comprising representatives of the National Investment Commission (NIC), the Ministries set out in section 81(3) of the Act, two other Ministers appointed by the President and the Head of the Concession Entity pursuant to Section 83.

In the event of a merger of the functions and responsibilities of any of the Ministries set out in section 81(3) of the Act, the highest ranked public officials within the new Ministry responsible for the specific functions of the erstwhile Ministries shall be members of the IMCC.

Subject to the provisions of section 83 of the Act, the Chairperson of the IMCC shall convene a meeting of the IMCC within fourteen (14) days of receipt of the notice of the President’s nominees pursuant to Section 83 (2).

### **Regulation 54 - Disclosure of Interest (Section 84 of the Act)**

- (1) The reference to “interest” of a person or member of the IMCC under Section 84 (1) and (2) of the Act shall be construed to mean interest as defined under Regulation 2(5) of these Regulations.

- (2) The disclosure required under Section 84 (1) under the Act shall be made prior to the sitting of the IMCC or the commencement of the performance of the persons functions
- (3) Where the member or person becomes aware of the interest during the sitting of the IMCC or after the commencement of the performance of the assigned function, the member or person shall immediately disclose the interest and shall not take part in further proceedings of the IMCC on that matter and shall discontinue the performance of the particular function.
- (4) The failure of any person to comply with the requirement for disclosure under Section 84 of the Act and or to disclose any conflict of interest shall constitute an improper conduct in accordance with section 84(2) of the Act.
- (5) Each member of any Inter-Ministerial Concessions Committee, Entity Concession Committee, Concession Bid Evaluation Panel or Negotiation Team, and each Advisor, consultant or other person appointed or co-opted to assist in the Concession process shall deliver to the Minister of Justice and the Commission a signed statement to the effect set forth in this Regulation 54(6) prior to the earlier of twenty-one (21) days after his or her appointment or co-opting and any participation of such person in any deliberation, decision or provision of advice to the Government relating to the relevant Concession.
- (6) The written statement referred to in the preceding paragraph shall be as set out below:

“The undersigned hereby certifies that:

(a) The undersigned has no interest, direct or indirect, in (x) any person participating in a bid for such Concession or Concessions or (y) the outcome of the Concession process relating to such Concession or Concessions, and is not disqualified by Section 78(3) of the Act.

(b) The undersigned understands that an “interest” for the purposes of Section 84 of the Act includes any relationship, investment, benefit (pecuniary or non-pecuniary) or any direct or indirect involvement or engagement of a person or a Close Relative of that person in any business transaction or arrangement for profit., and that a “Close Relative” as used in the definition of “interest,” means persons who are related to the public officer by birth, marriage, common-law partnerships, adoption or affinity.

*Name* \_\_\_\_\_

*Date*” \_\_\_\_\_

(c) The undersigned has been designated as a member of the [*insert correct name of committee, Bid Evaluation Panel or team*] relating to the following Concession or Concessions: [*insert name or description of the Concession or Concessions proposed to be dealt with*].

(7) All such certifications, or true copies thereof, shall be open to inspection at the principal office of the Commission during normal business hours, where they shall be indexed under ~~of~~ the

Concession or Concessions to which they relate.

### **Regulation 55 - Quorum (Section 85 of the Act)**

In accordance with Section 85 of the Act, a meeting of the IMCC shall be deemed to be properly constituted where a duly authorized deputy of the substantive person required under Section 85 of the Act is present at the meeting of the IMCC.

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

#### **Regulation 56 - Inclusion in Economic Development Plan (Section 87 of the Act)**

Pursuant to Section 87 of the Act, the Annual Concession Plan shall be derived from the Government of Liberia's overall national development framework and the Annual Concession Plan may indicate the expected impact of proposed concessions on the overall national development framework.

A copy of the Annual Concession Plan shall be provided to the Commission, the Inter-Ministerial Concession Committee and all Concession Entities.

#### **Preliminary Concession Planning**

For the purposes of Section 87(3) of the Act, studies made or commissioned by an Entity to determine whether it might be appropriate to proceed with a proposed Concession, including any preliminary feasibility studies deemed appropriate by the Concession Entity and similar internal or third party studies prepared by or for the Concession Entity, are not activities "for the purpose of implementing a Concession," and may occur prior to the issuance of a Concession Certificate.

#### **Regulation 57 - No Concession without Certificate (Section 88 of the Act)**

- (1) To enable the Minister responsible for Planning and Economic Affairs make a decision on the request for a Certificate of Concession, the Head of the Concession Entity may submit the request together with a pre-feasibility report of the proposed concession.
- (2) The Minister of Planning and Economic Affairs shall make a decision on the request and if approved issue the certificate not later than twenty-eight (28) days of the request by the Concession Entity. A copy of the certificate for Concession shall be submitted to the Commission.
- (3) The Certificate of Concession shall constitute the written approval of the Minister responsible for Economic Affairs for the concession.
- (4) Any Concession Entity which proceeds to procure a Concession without a Certificate of Concession duly issued by the Minister responsible for Planning and Economic Affairs in accordance with Sections 88 and 89 of the Act, shall be deemed to be in violation of this Act and the Head of Entity and any other Institution or body involved in the process of

procurement and approval of the said concession shall be subject to the penalty prescribed under Section 138 of the Act and the Concession shall be void.

**Regulation 58 - Criteria for the issue of the Certificate of Concession (Section 89 of the Act)**

- (1) In assessing a request by an entity for a Certificate of Concession, the Minister responsible for Planning and Economic Affairs shall, in addition to taking the steps in Section 89 (1) of the Act, consult relevant stakeholders and consider such other factors as may be necessary to enhance the smooth implementation of the concession.
- (2) The Minister responsible for Planning and Economic Affairs shall complete all the applicable processes within twenty-eight (28) days of receipt of a request by an Entity.
- (3) The Minister shall either:
  - (a) issue a written approval as the Certificate of Concession for the procurement of the project as a concession; or
  - (b) issue a conditional approval, if additional information is required to make a decision; or
  - (c) reject the request for the issue of a Certificate of Concession.

The Certificate of Concession shall be issued to the Concession Entity with a copy to the Commission.

**Sub-Part 4– The Concession Process**

**Regulation 59 – Presentation of Concession Option to the Public (Section 90 of the Act)**

- (1) Stakeholder Identification and Stakeholder Consultation

- (a) Stakeholder identification must begin at the time Concession planning begins. A stakeholder is a person whose day-to-day life will be significantly affected, affirmatively or negatively by the implementation of the proposed Concession or who has an economic, professional interest or cultural interest that will be enhanced or disadvantaged by the implementation of the proposed Concession. Stakeholders will include, but are not necessarily limited to:
  - (i) residents of the area(s) in which the Concession will operate
  - (ii) businesses serving the area(s) in which the Concession will operate,
  - (iii) political institutions having jurisdiction over the area(s) in which the Concession will operate, and
  - (iv) civic, cultural and social groups and institutions based in or serving the area(s) in which the Concession will operate.
  - (v) Any member of the general public
- (b) Concession Entities shall, in addition to holding public stakeholder forums as contemplated by Section 91 of the Act, engage in broader consultations with potential stakeholders by, but not necessarily limited to;
  - (i) visiting potentially affected areas to identify stakeholders,
  - (ii) publicizing in an appropriate manner the nature of the proposed Concession and the need for comment from those affected by it, and
  - (iii) providing opportunities for comment to those who may be unwilling to speak out in or to attend a public forum.
- (c) The Concession Entity shall notify the target stakeholder groups through existing communication channels, giving at least fourteen (14) days' notice for the meeting.
- (d) Where the context requires, Concession Entities shall consult with stakeholders, through persons who can speak the local dialect and verifiable records of such consultation shall be kept in accordance with the requirement for record keeping under this Act.
- (e) Regulation 60 sets forth the kinds of information that should be furnished to stakeholders.

- (a) In accordance with Section 90(2) of the Act, Entity Concession Committee shall provide in the proposed bidding documents a summary of the information, positions or concerns of those attending the forum and a description of actions taken by the Entity Concession Committee. This summary must include:
  - (i) a summary of the information or positions presented in any written submission received pursuant to clause (e) of Regulation 60 and;
  - (ii) a description of actions taken by the Entity Concession Committee to reflect in the proposed bid documents the concerns expressed in such written submissions.
- (b) If more than one stakeholder forum is held, the summary required by Section 90(2) of the Act shall cover separately the information and positions presented at each forum and the description of actions taken by the Concession Entity.

## **Regulation 60 – Information at the Stakeholder Forum (Section 91 of the Act)**

### **Stakeholder Forums**

- (1) public stakeholder forum shall be held in the county seat of each county in which a proposed Concession is expected to conduct significant operations, and in the capital city of Liberia.
  - (a) The Head of the relevant Concession Entity is responsible for ensuring that each stakeholder forum is conducted in an open and fair manner, and that the views of all stakeholders can be expressed.
  - (b) The Head of the relevant Concession Entity is responsible for ensuring that each stakeholder forum is chaired by a responsible individual who has no direct stake in the relevant Concession. For this purpose, Government officials based in a county in which the Concession will conduct operations are deemed to have a direct stake in the relevant Concession.
  - (c) The chairperson of a stakeholder forum may reasonably ration the time allowed to persons wishing to speak at a stakeholder forum, but may not do so in a manner that favors any particular point of view.
  - (d) Each speaker at a stakeholder forum claiming to speak for or to represent a group of stakeholders must identify the group, indicate how the group may be contacted, and state his or her relationship to the group.
  - (e) (No person shall be excluded from a stakeholder forum other than on the grounds that the person is preventing stakeholders or their representatives from being heard at the forum.

## **Information to be made Available to Stakeholders**

(2) Prior to Publication of notice of a stakeholder forum, the Concession Entity shall prepare a document presenting in clear and understandable terms the following information, to the extent reasonably available at the pre-bid stage of the Concession, and shall make copies of that information available in the manner required by clause (c) of this regulation.

- (a) The strategic importance of the proposed Concession to the nation's economic development plans;
- (b) The costs that the Government may be required to incur in order to facilitate the construction or implementation of the Concession,
- (c) The long-term socio-economic benefits and the financial return to the Government expected to accrue from the Concession, including both up front and continuing payments.
- (d) The extent of investment of private resources proposed to be required from bidders to meet the needs of the affected community or communities;
- (e) Any Government resources proposed to be provided to meet the needs of the affected community or communities;
- (f) Other measures to be instituted to address any environmental challenges, social costs and other adverse externalities for those living or working in or adjacent to the areas in which the processed Concession will be conducting operations;
- (g) The technical and financial feasibility of the proposed Concession;
- (h) Any other reasons that may justify choosing the Concession option, such as investment in infrastructure facilities that will serve the wider community; and
- (i) Classes of persons, institutions, and organizations who may be particularly affected, positively or negatively, by the proposed Concession.

## **Notices of Stakeholder Meetings**

(3) The notice of stakeholder forum referred to in Section 91 of the Act shall be published in the manner provided under the Act and shall be posted conspicuously in multiple locations including public buildings and shall be announced on the local radio stations in the English language and the local dialect in the county seat of each county in which the proposed Concession is likely to have material operations, in each case no later than fourteen (14) days as required by Section 91 of the Act.

- (a) Each notice shall contain a short description of the expected location, nature, size, scope, projected timing and duration of the proposed Concession, and shall identify the office in the capital city and in the county seat of each county in which the proposed Concession is likely to have material operations, where the information required by clause (d) of Regulation 60 can be obtained. Each notice



shall also identify a location on the internet where such information may be obtained.

- (b) Each notice shall also state that the Concession Entity will receive and consider all written stakeholder submissions if such submissions are made within 14 days of the date of the final stakeholder forum held with respect to the relevant concession.
- (c) Prior to distribution of the notice of stakeholder forum, the Inter-Ministerial Concessions Committee shall approve the information as to both content and presentation.
- (d) Compliance with the notice and information requirements set forth in this Regulation 60 does not necessarily establish compliance with the requirements of clauses 1(c) and 1(d) of Regulation 59.

#### **Regulation 61 – Records of the Concession Bidding Process (Section 92 of the Act)**

Pursuant to section 92(1) (c) of the Act, the records to be provided to the National Bureau of

Concessions shall be;

- (a) (the copy of the notice of the stakeholder forum published,
- (b) the list of attendees
- (c) the information provided to stakeholders at the forum and
- (d) the actions taken by the Concession Entity and how they are reflected in the proposed bid documents

#### **Regulation 62 - Inspection of the Records (Section 93 of the Act)**

- (1) Pursuant to section 93 of the Act, the Commission and/or Auditor-General may at anytime request the Head of the Concession Entity to make available the records of the concession process for inspection.
- (2) The Head of the Concession Entity shall be responsible for making the records available for inspection to the requesting authority within fourteen (14) days of the receipt of such request.
- (3) Failure of the Concession Entity to submit the records within the stated period shall constitute an offence under Section 138 of the Act.
- (4) The requesting authority shall inspect the records and may make available a written copy of its observations to the Concession Entity.
- (5) The written report shall cover issues relating to compliance with the Act and these Regulations and may contain any other relevant recommendations.

- (6) An Advisor engaged for the purposes of any of the concession processes may be authorized to inspect any part of the records for the purposes of carrying out the task of the consultancy assignment.

**Regulation 63 – Specific Records to be in Writing (Section 94 of the Act)**

- (1) Clause (c) of the definition of “Publish” contained in the Act is applicable to all requests for expressions of interest and invitations to bid in connection with any proposed Concession that is required under Section 97 of the Act to be awarded through international competitive bidding.
- (2) A general notice of investment opportunity or a request for an expression of interest related to a proposed Concession may make reference to additional information that is available on the website of the Concession Entity or the Commission, as the case may be, so long as the Published information
  - (i) contains at least the information required by the Act and these Regulations, and
  - (ii) states that the additional information may also be obtained from the Concession Entity at no cost other than the reasonable cost of duplicating such materials.
- (3) A Published invitation to bid need not include the entire bid document package approved by the Inter-Ministerial Concessions Committee under Section 104(3) of the Act, but must set forth the following information and indicate how the bid documents can be obtained.
  - (i) the subject of the Concession,
  - (ii) the proposed location of the Concession,
  - (iii) the scope of the Concession,
  - (iv) sufficient information about the nature of the Concession to give a general indication of the physical and/or financial magnitude of the commitment required from the successful bidder,
  - (v) the proposed bid submission schedule and bid evaluation schedule, and also the proposed Concession implementation schedule, to the extent that such schedule has been established,
  - (vi) a summary description of the Concession agreement and each other agreement to be entered into by or on behalf of the successful bidder,
  - (vii) any minimum technical or financial requirements for bidders

- (viii) a summary of any requirements as to local content,
  - (ix) the documents contained in the full bidding package, and
  - (x) the fee, if any, payable for the bidding documents and/or to accompany the submission of a bid.
- (4) A printed copy of each Published general notice of investment opportunity or request for expressions of interest, and of with any additional information made available through the website of the Commission or the Concession Entity, must be furnished to the Bureau of Concessions and the Commission promptly after its Publication. A printed copy of each Published invitation to bid and all bid documents must be furnished to the Bureau of Concessions and the Commission promptly after the Publication of the invitation to bid.
- (5) Each person responding to a request for expressions of interest or an invitation to bid shall submit at least one printed copy of its submission and at least two electronic copies of its submission, in PDF format on a CD-ROM disc. The request or the invitation may require submission of a greater number of copies in either printed or electronic format. Submission of the electronic copy shall be deemed a certification by the bidder that the electronic copy is a true and correct copy of the printed submission.
- (6) Payments in connection with the obtaining of bid documents or the submission of bids shall be in US dollars or equivalent Liberian dollars in the form of checks certified by a reputable bank in Liberia.
- (7) References to a “printed” document refer to any means of producing a paper copy of a document that results in a water and smear resistant and fade resistant document.

**Regulation 64 – Competitive Bidding (Section 95 of the Act)**

The IMCC shall make a decision to use a post-qualification procedure only after a market survey conducted by or on behalf of the Concession Entity indicates that there is a low interest in the Concession. The market survey shall be conducted by a reputable firm procured in accordance with the Section 68 to 71 of the Act. The market survey report shall indicate the companies contacted, their experience and capacity in relation to the proposed concession, their responses and the summary of the results of the survey.

**Regulation 65 - National Competitive Bidding (Section 96 of the Act)**

- (1) (Concession Entities shall ensure that whenever National Competitive Bidding is used the invitation shall state that only Domestic Businesses as defined under Section 2 of the Act shall be eligible to participate in National Competitive bidding for Concessions.

- (2) In addition to the grounds stated in Section 96 of the Act, Concession Entities shall ensure that whenever National Competitive Bidding is used, the provisions of the Applicable law that reserves specified areas of the economy to Liberians and Domestic Businesses are complied with.
- (3) Concession Entities shall ensure that whenever National Competitive Bidding is used the invitation shall state that only Liberian Businesses as defined under Section 2 of the Act shall be eligible to participate in National Competitive bidding for concessions.
- (4) Joint venture firms in which Liberian Businesses have the majority shareholding may participate in National Competitive bidding.

**Regulation 66– Domestic and Liberian Businesses May Participate in International Competitive Bidding (Section 98 of the Act)**

A Domestic Business or a Liberian business may compete in an international competitive bidding process:

- (a) as a single bidder if it meets the prequalification standards generally applicable to prospective bidders, or
- (b) as a member of a bidding group if the bidding group collectively meets the prequalification standards generally applicable to prospective bidders.

**Regulation 67 - Criteria for the Application of Margin of Preference (Section 99 of the Act)**

- (1) Where a Concession Entity intends to apply Margin of Preference in an International Competitive Bidding, it shall be ensured that:
  - (a) The concession bidding documents shall state that a Margin of Preference shall be applicable to the concession and the specific requirements for the application of the Margin of Preference shall be indicated.
  - (b) The application of the Margin of Preference shall conform to the provisions under Section 99 of the Act and to these Regulations.
- (2) Where a Concession Entity intends to apply a Margin of Preference in national Competitive Bidding, it shall be ensured that:
  - (a) The concession bidding documents shall state that a Margin of Preference shall be applicable to the concession and the specific requirements for the application of the Margin of preference shall be indicated.

(b) The application of the Margin of preference shall conform to the provisions under Section 99 of the Act and to these Regulation

(3) The provisions of Sub-Regulation 67 (4), 67 (5), 67(6) and 67(7) of these Regulations shall apply to the Margin of Preference in respect of concessions.

(4) Eligibility for Margin of Preference

(a) In respect of solely-owned Liberian Businesses a bidder shall qualify if:

- (i) The bidder meets the requirements of the bidding documents
- (ii) The bidder has not and does not intend to sub-contract more than 50% of the Concession to a company owned by a non-Liberian

(b) In respect of Liberian Businesses a bidder shall qualify if:

- (i) The bidder meets the requirements of the bidding documents
- (ii) The bidder has not and does not intend to sub-contract more than 50% of the concession to a company owned by a non-Liberian

(c) In respect of Domestic Businesses with a minimum Liberian ownership of 25% a bidder shall qualify if:

- (i) The bidder meets the requirements of the bidding documents
- (ii) The bidder has not and does not intend to sub-contract more than 50% of the Concession to non-domestic foreign companies

(d) In respect of Domestic Businesses a bidder shall qualify if:

- (i) The bidder meets the requirements of the bidding documents
- (ii) The bidder has not and does not intend to sub-contract more than 50% of the concession to non-domestic foreign companies

(e) In the case of a Joint Venture of a Liberian Business and foreign companies it shall be ensured that:

- (i) Both the Liberian and the foreign company meet all the eligibility requirements to participate in the concession process
- (ii) the Liberian business demonstrates that it has beneficiary interest of 20% or more of the joint venture as evidenced by the agreed profit and loss sharing provisions clearly spelt out in the joint venture agreement between the joint venture parties.

(iii) The joint venture shall not sublet more than 10% of the concession to a foreign company.

(5) Foreign firms shall be eligible for the Margin of Preference where:

- (a) The foreign firm demonstrates in a valid agreement that it will sub- contract at least 40% of the value of the concession to Liberian or Domestic businesses under an agreement contingent upon the award of the concession contract.
- (b) The agreement is duly registered under the laws of the Republic of Liberia and contains a provision that if the Sub-contract of the Liberian or Domestic Business is revoked by the foreign entity it may lead to a termination of the concession contract by the Concession Entity

### **Applicable Margins**

(6) The applicable Margin of Preference for bidders who meet the criteria set out in Regulation 66 of these Regulations shall be as follows:

- (a) In respect of a solely Liberian Businesses 4%
- (b) In respect of a Liberian business 12%
- (c) In respect of a Domestic business with a minimum of 25% Liberian ownership 10%
- (d) In respect of other Domestic business 8%
- (e) In respect of a Joint venture 6.5%
- (f) In respect of a Foreign business 5%

(7) In respect of National Competitive Bidding, the applicable Margin of Preference for bidders who meet the criteria set out in Regulation 66 of these Regulations shall be as follows:

- (a) In respect of solely Liberian Businesses 14%
- (b) In respect of a Liberian business 12%
- (c) In respect of a Domestic business with a minimum of 25% Liberian ownership 10%
- (d) In respect of other Domestic Businesses 8%

- (e) In respect of a Joint Venture 6.5%
- (8) The Commission may publish under a separate Regulation establish a Margin of Preference for Concessions in accordance with Sections 99(2) and 99(3). The Regulation when so established shall supersede sub Regulation 67(4), 67(5), 67(6) and 67(7) of these Regulations.
- (9) The affirmative vote of at least five of the six statutory members of the Inter-Ministerial Concessions Committee shall be required to approve the regulations establishing a Margin of Preference for Concessions or particular types of Concessions.

### **Regulation 68 - Restricted Competitive Bidding (Section 100 of the Act)**

- (1) Restricted Competitive Bidding involves the express invitation to predetermined firms rather than an open invitation.
- (2) The invited firms must be qualified firms, selected in a non-discriminatory manner, including eligible foreign firms, when available. A sufficient number of firms must be invited to ensure competitive prices/proposals are submitted. The same principles and policies as applied to competitive bidding will thereafter apply.
- (3) The rules for margins of preference will not be applicable to Restricted Competitive Bidding Processes.
- (4) Restricted Competitive Bidding does not include where the selection of bidders or a shortlist of bidders is determined following through the due process of an open and competitive pre-qualification procedure.
- (5) A decision to use Restricted Competitive Bidding by a Concession Entity shall be based on the following:
  - (a) The subject matter of the concession is specialized and the expertise is available in only a limited number of firms.
  - (b) There is time constraint for the commencement of the concession process and the time constraint is in respect of the expected date of realization of the benefit of the concession to the Republic of Liberia.
- (6) The shortlist for a Restricted Competitive Bidding process shall be a minimum of three (3) Firms/consortia.
- (7) The Concession Entity shall submit its request and justification to adopt a Restricted Competitive Bidding process to the Commission for prior approval before commencement of the process. The Concession Procurement Plan must reflect this option when approved by the Commission.
- (8) The Concession Entity shall submit its request only after the receipt of the Certificate of Concession.
- (9) The Commission shall respond to the request within fourteen (14) days of the receipt

of the request.

- (10) The decision of the Commission shall be final and the Concession Entity shall comply with the decision forthwith.
- (11) Where the Commission does not respond to the request within the fourteen (14) days spelt out in Sub-Regulation 67(5) of these Regulations, the request shall be deemed approved and the Concession Entity shall proceed with the procurement of the concession.

### **Regulation 69 - Sole Source and Unsolicited Bids (Section 101 of the Act)**

#### **Sole Source**

- (1) A Concession Entity may adopt a sole source procurement procedure only under the conditions provided under Section 101 of the Act and this Regulation 63 of these Regulations.
- (2) The proposed concession to be procured by means of sole source method must meet all the requirements necessary for undertaking a concession as provided in Part VI of the Act and in these Regulations.
- (3) The Commission shall submit the request of the Concession Entity to the Cabinet. The Cabinet shall make its decision in consultation with the Commission.
- (4) The decision of the Cabinet to grant or reject the request to adopt the sole source method shall be final and the Concession Entity shall comply with the decision forthwith.
- (5) The decision shall be published on the website of the Commission as required under the Act.

#### **Unsolicited Proposal**

- (6) An unsolicited proposal may be considered only in accordance with provisions of section 101 of the Act and Regulation 68 of these Regulations.
  - (a) For the purposes of Section 101(3) of the Act, any unsolicited proposal for Concession shall be deemed an “unsolicited bid” even if it lacks the financial or technical precision that would normally be associated with a formal bid. The term “unsolicited bid” as used in Section 101(3) of the Act includes a proposal or bid for a Concession submitted to a Ministry or agency of the Government without any prior suggestion by any officer, employee, representative or agent of the Government.
  - (b) A mere expression of interest in developing a Concession is not an unsolicited bid, although it may lead to an unsolicited bid or to a decision by the Government to develop a Concession based on competitive bidding. An unsolicited bid must define the project scope and proposed economic terms in such detail as is reasonably necessary for the Government to understand the nature of the benefit to Liberia’s economy and economic development and the payments to the Government that can be expected to flow from the project and the person making such unsolicited bid must indicate in writing that the bid sets forth all material actions or inducements that the bidder expects to be taken or given by the Government to facilitate the



development of the project.

- (7) No Ministry or agency of the Government has any obligation to accept an unsolicited bid, or to keep confidential any information related to an unsolicited bid.
- (8) A Ministry or agency of the Government shall not agree that the existence or terms of an unsolicited bid are entitled to confidential status without the prior written consent of the Minister of Justice and the Minister of Finance.
- (9) When a Concession Entity receives an unsolicited proposal for a concession it shall only be considered for further discussion if all the following conditions exist:
  - (i) There are no previous unsolicited bids for the same concession submitted to that Entity or to another agency of the government directly connected with the implementation of the concession.
  - (ii) The concession is of a specialized character and is not likely to attract other bidders.
  - (iii) The product, services or works to be procured pursuant to the unsolicited proposal is unique or innovative concept and not generally available from other known sources.
  - (iv) The proposed outcome will be exceptionally beneficial to or have exceptional cost advantages for the Government of Liberia.
  - (v) There are no substantial financial contributions to be made by Government of Liberia.
  - (vi) The proposal is deemed to fall under one of the areas prescribed by the Government of Liberia as a priority sector included in the overall development framework of the Government.
  - (vii) The specific concession has not already been earmarked under the Annual Concession Plan and no Concession Procurement Plan is in place for that particular concession.
- (10) If the conditions are satisfied, then the Concession Entity shall submit a request with justification to proceed to consider an unsolicited proposal to the Commission with a simultaneous request to the Minister responsible for Planning and Economic Affairs in accordance with Section 87(3) of the Act.
- (11) The Commission shall respond to the request within fourteen (14) days of the receipt of the request.
- (12) The decision of the Commission shall be final and the Concession Entity shall comply with the decision forthwith.
- (13) The Commission shall consult the Minister responsible for Planning and Economic Affairs on the importance or otherwise of the particular concession in respect of which

the unsolicited proposal has been received.

- (14) Where the Minister responsible for Planning and Economic Affairs is of the view that the proposal is beneficial to the economy of Liberia then a certificate shall be issued in accordance with Section 87(3). The Concession Entity shall undertake a study of the proposal and ensure that it meets the objectives for a concession as required in Section 74 of the Act.

### **Evaluation of Unsolicited Proposal**

- (15) In assessing the unsolicited bid, the Concession Bid Evaluation Panel shall in addition to other requirements for assessing a concession as the context requires, also consider the following:

- (a) The sound business case for the unsolicited concession proposal
- (b) The expected duration of the implementation as per the proposal on other sectors of the economy
- (c) The fairness of the risk allocation
- (d) Financial benefits to the state and the concessionaire
- (e) Financial and other obligations of the state.
- (f) Environmental and social impacts g) Value for money assessment the technical and financial capacity of the proponent

- (16) If the Concession Bid Evaluation Panel recommends to the IMCC and the IMCC affirms that:

- (i) the proponent does not have the technical and financial capacity to deliver the project
- (ii) the terms offered could be substantially improved by a competitive process
- (iii) the award of the concession to the proponent would not lead to a competitive operational environment.

- (17) the IMCC shall determine and shall duly inform the Cabinet and the Commission that the project be subject to the competitive bidding process in accordance with the Act and these Regulations.

- (18) If at any time prior to the approval of the Commission for the use of the unsolicited method, the Concession Entity receives one other or more unsolicited proposals, in respect of the same concession and the Concession Entity intends to proceed with the particular concession, then the Entity shall subject the concession to the competitive bidding process in accordance with the Act and these Regulations and the concession shall not be processed by an unsolicited method.

- (19) The preceding paragraph does not apply to a natural resource Concession proposal pursuant to which the Concession would be awarded to a bidder who already holds, by virtue of an exploration license or otherwise, the right to convert an interest in a natural resource

into a Concession.

- (20) If an unsolicited bid is required to be converted into a competitive bid, the IMCC may with the consent of the original bidder require that the winning bidder, if not the original bidder submitting the unsolicited bid, agree to reimburse the original bidder an amount equal to its direct out-of-pocket costs incurred in preparing its original bid proposal up to the time that the decision to utilize competitive bidding is made (such amount to be disclosed, subjected to quasi-audit due diligence prior to the circulation of the bid documents, and set forth in the bid proposal) if:
- (i) the unsolicited bidder has furnished to the Government in electronic format the unsolicited bidder's work product created in connection with its original bid proposal (excluding the original bidder's own cost computations) and
  - (ii) the Government has made such work product available to the other bidders substantially concurrently with the bid documents.

#### **Regulation 70 – Prequalification or Qualification of Bidders (Section 102 of the Act)**

- (1) Concession Bid Evaluation Panels should take such steps and make such investigations (including due diligence as contemplated by Section 116 of the Act) as are sufficient to satisfy themselves of the sufficiency and accuracy of the statement of qualifications of a bidder or a prospective bidder.  
Statements of financial qualification must be supported by delivery of audited financial statements of the entity whose financial condition is submitted as the basis for financial qualification, covering at least the two most recent fiscal years of the entity for which such statements are available and including all notes to the financial statements. Notwithstanding the preceding sentence, if the most recent fiscal year of such entity ended more than 180 days prior to the date of the bid submission, the audited financial statements must cover that fiscal year and the immediately prior fiscal year.
- (2) A bidder's statement of its qualifications must include a certification by a senior officer of the bidder that all the information set forth in the bidder's submission with respect to its qualifications is true and correct in all material respects.
- (3) A Concession Bid Evaluation Panel may request a prospective bidder to provide additional information to clarify/support any component of its qualifications set forth in its original qualification submission. If it does so, each other prospective bidder shall be informed of the request and shall be afforded the same amount of time to supply additional information in respect of such component. The opportunity to submit additional information may not be used as a means of changing the identity of the prospective bidder or any member of the bidding group or of reallocating responsibilities within a bidding group.
- (4) This Regulation 70 applies whether the bidder's qualifications are submitted in prequalification proceedings or as part of the actual bid process. Section 115 and the Regulations thereunder are applicable to all other situations in which a Concession Bid Evaluation Panel may seek additional information in evaluating bids submitted in response to an invitation to bid.
- (5) An agreement provided pursuant to clause (c) of Section 102(6) of the Act may be conditioned upon the consent of the other entity to the terms of the Concession agreement (to the extent the final terms of

the Concession agreement are not fixed in the bid documents).

- (6) In any such case, the other entity must independently agree with the Government that the consent of the bidder to the terms of the Concession Agreement consents is in addition to the consent of such other entity.
- (7) Refusal by a member of a joint venture or consortium to consent to the terms of the Concession agreement, when negotiated, shall cause forfeiture of any bid security.
- (8) The Agreement under reference in Section 102(8) is the agreement to which the Bidder and other entities forming a joint venture or consortium for the purposes of submitting a bid shall agree to abide by the terms and conditions of the Concession bid document

## **Sub-Part 5 – Concession Documents Preparation**

### **Regulation 71 - Concession Bid Documents (Section 104 of the Act)**

- (1) Until the approval of the IMCC, the full set of the concession bidding documents shall be considered as “draft bidding documents”.
- (2) The Entity Concession Committee may work with an Advisor where applicable to prepare the full set of the draft concession bidding documents which shall, at a minimum, include information required under section 105 of the Act.
- (3) The draft concession bidding documents shall be submitted to the IMCC by the Head of the Concession Entity.
- (4) The IMCC shall upon receipt of the draft concession bidding documents review and give its advise on the suitability of the documents for the procurement of the concession within fourteen (14) days of receipt of the draft bidding documents
- (5) Upon approval, the draft concession bidding documents shall be considered as the “concession bidding documents” for the purposes of inviting bids, or proposals for the concession.
- (6) If the draft concession bidding documents requires revision, the Concession Entity shall revise the documents taking into consideration the comments of the IMCC and re- submit the documents for reconsideration within fourteen (14) days.
- (7) In undertaking its review of the draft bidding documents, the IMCC shall constitute a technical team for the purpose. The technical team shall include representation from the Ministries of Finance, Labor and Justice, the National Investment Commission (NIC) and the Concession Entity and may include such advisors or experts as deemed necessary by the IMCC.

### **Regulation 72 – Publication of General Notice of Investment Opportunity, Expression of Interest and Invitation to Bid (Section 106 of the Act)**

The following shall be observed in respect of publication:

(1) In Respect of National Competitive Bidding

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

- (i) The Concession Entity shall publish the General Notice for Investment Opportunity after it has received approval of the Concession Procurement Plan and approval of the Notice by the Inter-Ministerial Concession Committee.
- (ii) The publication shall be in at least two (2) print media with national circulation, the Newsletter of the Commission, the website of the Concession Entity and the website of the Commission.
- (iii) A minimum of two (2) notices shall be placed in the print media within a period of fourteen (14) days from the date of first publication. The first publication should be made during the first week and the second and subsequent publications during the second week.
- (iv) The General Notice of Investment Opportunity shall be published at least three(3) weeks prior to the Publication of the request for Expressions of Interest.

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

- (i) The publication shall be in at least two (2) print media with national circulation, the Newsletter of the Commission, the website of the Concession Entity and the website of the Commission.
- (ii) A minimum of two (2) notices shall be placed in the print media within a period of fourteen (14) days from the of first publication. The first publication should be made during the first week and the second and subsequent publications during the second week.
- (iii) Bidders shall be allowed at least three (3) weeks to respond to the request for expressions of interest

(2) In Respect of International Competitive Bidding

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

- (i) The Concession Entity shall publish the General Notice for Investment Opportunity after it has received approval of the Concession Procurement Plan.
- (ii) The publication shall be in a print media with national circulation, international publications of repute such as; The Economist, DG Market, Development Business of the UN, the Newsletter of the Commission, the website of the Concession Entity and the website of the Commission.
- (iii) A minimum of two notices shall be placed in the print media within a period of

fourteen (14) days from the date of first publication. The first publication should be made during the first week and the second and subsequent publications during the second week.

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

(i) The publication shall be in at least two (2) print media with national circulation, international publications of repute such as; The Economist, DB Market, Development Business of the UN, the Newsletter of the Commission, the website of the Concession Entity and the website of the Commission.

(ii) A minimum of two (2) notices shall be placed in the print media within a period of fourteen (14) days from the date of first publication. The first publication should be made during the first week and the second and subsequent publications during the second week.

(iii) Bidders shall be allowed at least four (4) weeks to respond to the request for expressions of interest

### (3) Request for Proposals

(a) In respect of a Request for Proposals/Invitation to Bid, the invitation/request shall be issued to all entities pre-qualified to participate in the bidding process:

(i) For National Competitive Bidding, Bidders shall be allowed at least four (4) weeks to respond to the Request for proposals/ Invitation to bid.

(ii) For International Competitive Bidding, Bidders shall be allowed at least six (6) weeks to respond to the Request for Proposals/Invitation to Bid

(b) Except in cases where the invitation to bid/request for proposals has been made to bidders already qualified, the publication shall be on the websites of the Concession Entity and the Commission, else all Request for Proposals/Invitation to Bid to be procured under a National Competitive Bid shall be published and the following shall apply:

(i) The publication shall be in at least two (2) print media with national circulation, the Newsletter of the Commission, the website of the Concession Entity and the website of the Commission.

(ii) A minimum of two (2) notices shall be placed in the print media within a period of fourteen (14) days from the date of first publication. The first publication should be made during the first week and the second and subsequent publications during the second week.

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

(5) The Act and these Regulations provide for the delivery of notices and certain other communications to Concession bidders by facsimile, telephone or email. All requests for expressions of interest and invitations to bid must inform prospective bidders and bidders of this fact in a conspicuous manner and urge them to provide in their responses two email addresses, telephone number and facsimile number for delivery of notices and other communications.

## **Regulation 73 – Publication Regulations (Section 107 of the Act)**

- (1) No Concession agreement arising from a sole source arrangement or based on an unsolicited bid shall be executed on behalf of the Government unless at least two (2) weeks prior thereto a summary of the principal terms of the proposed agreement is published in the manner required for Publication of invitations to bid for national competitive bidding.
- (2) The summary shall include without limitation the subject matter and term of the agreement, all significant financial terms and conditions, all renewal options exercisable by the concessionaire, a reasonably detailed description of the land and other resources of the state that are to be the subject of the Concession, the name of the concessionaire, and the ultimate controlling person or persons with respect to the concessionaire.

## **Sub-Part 4 – Pre-Bid Meeting, Bid Submission And Opening**

### **Regulation 74– Submission and Opening of Bids (Section 110 of the Act)**

- (1) In respect of National Competitive Bids, a minimum period of four (4) weeks shall be allowed between the period of first publication of the request and the date for the submission of proposals/bids provided that the Entity may consider a longer period if the concession is of a complex nature.
- (2) Under International Competitive Bidding, a minimum period of six (6) weeks shall be allowed between the period of first publication of the request and the date for the submission of proposals/bids provided that the Entity may give a longer period if the concession requires substantial amount of capital or is of a complex nature.
- (3) Bidders and/or their representatives shall have the right to attend the bid opening if they so desire.
- (4) Members of the Commission may, if they so desire, also attend to observe the proceedings of the bid opening but shall not participate in the proceedings.

## **Sub-Part 5 – Evaluation**

### **Regulation 75 – Concession Bid Evaluation Panels and Evaluation (Section 111 of the Act)**

- (1) The IMCC shall constitute the Concession Bid Evaluation Panel for the evaluation of the ‘Expression of Interest’ for the concession within fourteen (14) days of opening of the bids.
- (2) The IMCC shall constitute the Concession Bid Evaluation Panel for the evaluation of the Request for Proposals’ for the concession within three (3) days of the opening of the Concession Bidding documents.

- (3) The Concession Bid Evaluation panel shall include members with skills, knowledge and experience relevant to the subject matter of the concession.
- (4) The Evaluation Panel shall complete its report before the expiry of the time limit set forth in the Bid documents.
- (5) The IMCC shall adjudicate and give its approval or otherwise of the evaluation report as follows, always ensuring that the decisions are made within the bid validity periods as follows:
  - (a) In the case of Expression of Interest within seven (7) days of receipt of the report.
  - (b) In the case of an Invitation to Bid or Request for Proposals within fourteen (14) days of the receipt of the report.

#### **Regulation 76 - Appointment of Concession Bid Evaluation Panel; membership of panel**

- (1) Within fourteen (14) days after the formation of any Concession Bid Evaluation Panel, the chairperson of the Inter-Ministerial Concessions Committee shall notify the Commission of the membership of that Concession Bid Evaluation Panel.
- (2) No member or employee of the Commission shall be a member of any Concession Bid Evaluation Panel.
- (3) The minimum membership of the Concession Bid Evaluation Panel shall be seven (7).

#### **Regulation 77 - Commission Consent to Absence of Non-Governmental Members on a Concession Bid Evaluation Panel**

The relevant Inter-Ministerial Concessions Committee shall obtain the prior consent of the Commission to the appointment of a Concession Bid Evaluation Panel that exclusively consists of officials or employees of the Government.

#### **Regulation 78 - Responsibilities of Concession Bid Evaluation Panel Members**

- (1) Procedures established by the Concession Bid Evaluation Panel shall ensure that all members of the Concession Bid Evaluation Panel are informed of all deliberations and that the Concession Bid Evaluation Panel participates in all material decisions.
- (2) No such procedures shall excuse a member of the Concession Bid Evaluation Panel from responsibility for the conclusions of the Concession Bid Evaluation Panel unless the member dissents in writing submitted to the relevant Inter-Ministerial Concessions Committee substantially concurrently with the submission of the bid evaluation report to the relevant Inter Ministerial Concessions Committee.

#### **Regulation 79 - Disclosure of Membership of Concession Bid Evaluation Panel**

The Membership of a Concession Bid Evaluation Panel shall not be disclosed directly or indirectly to bidders at any time prior to the submission of the panel's bid evaluation report to the relevant Inter-Ministerial Concessions Committee.



## **Regulation 80 – Minimum Contents of the Evaluation Criteria (Section 113 of the Act)**

- (1) Pursuant to section 113 of the Act, the evaluation criteria shall, in addition to the provisions of section 113 of the Act include the following:
  - (a) In Respect of an Expression of Interest
    - (i) Experience in the specific area of the concession
    - (ii) List of projects of similar nature and complexity undertaken by the bidder or its personnel
    - (iii) Firm/Consortium's financial capacity and/or its
    - (iv) Ability to access credit to undertake the concession
    - (v) Firm/Consortium's technical capacity to undertake the concession
    - (vi) (Firm/Consortium's experience in sub Saharan Africa)
  - (b) In respect of a Request for Proposals/Invitation to Bid
    - (i) Information on corporate structure
    - (ii) Operational and managerial capacity to undertake the concession
    - (iii) Financial proposal
    - (iv) Soundness of financial layout over concession period
    - (v) Overall business concept as per the bidder business plan
- (2) The following shall also be observed in respect of the evaluation criteria in bidding documents.
  - (a) The evaluation shall be in strict accordance with the criteria set out in the concession bidding documents.
  - (b) The Concession Bidding Documents in respect of Request for Proposal/Invitation to Bid documents shall state the broad criteria in terms of the minimum requirements for the concession and the weight to be placed on the specified requirements during the evaluation.

## **Sample Criteria and Supporting Documents**

- (3) The Commission may publish a sample of the criteria for evaluation to guide Concession Entities and the evaluation panel.
- (4) The Evaluation Panel shall ensure that as the context requires all mandatory information submitted by bidders are supported with documentary evidence.

## **Requesting Clarifications or Additional Information from Bidders**

- (5) Requests for clarification or for additional information may not be used to enable a bidder to make substantive changes to the structure or terms of its bid, to change the identity of the bidder or any member of the bidding group, or to improve the responsiveness of the bid to required components of the bid submission.
- (6) A Concession Bid Evaluation Panel must inform the relevant Inter-Ministerial Concessions Committee before seeking additional information from any bidder.

## **Consequences of Insufficient Information**

- (7) If the bid documents require a bidder to provide information about its qualifications in a specific area, whether financial, technical or otherwise, and the bidder provides no or limited information, the Concession Bid Evaluation Panel may not use external information to conclude that the bidder has better qualifications than those disclosed.
- (8) There is no limitation on the use of external information to conclude that a bidder lacks adequate qualifications or does not have the qualifications claimed in a bidder's statement of qualifications.

## **Sub-Part 5 – Post Evaluation**

### **Regulation 81 - Evaluation Report (Section 115 of the Act)**

- (1) Pursuant to section 115 of the Act the evaluation report shall indicate the following:
  - (a) Whether the Evaluation Panel obtained all material information required to make a recommendation to the IMCC.
  - (b) A clear recommendation of the results of the technical and financial components of the evaluation.

### **Recommendation of Rejection of all Bids**

A Concessions Bid Evaluation Panel may determine, after its evaluation of the bid submissions and the due diligence performed pursuant to the requirements of Section 116 of the Act, that no bid adequately responds to the needs of the Government in respect of the particular Concession involved or is sufficient to assure the Government that the bidder can successfully carry out the project. In any such case, the Concessions Bid Evaluation Panel shall recommend to the Inter-Ministerial Concessions Committee that it reject all bids, setting forth the reasons for its conclusion.

- (2) Details of any clarification of the proposals/bids that was sought, if any by the Evaluation Panel and the responses received in response to the clarifications.
- (3) The IMCC shall make a decision on the evaluation report within fourteen (14) days of receipt of the report, provided there is no further information required to validate the recommendations of the evaluation report.
- (4) If the IMCC requires further information on the evaluation in order to arrive at its decision, the IMCC

may extend the time for its decision provided always that the IMCC shall make its decision not later than twenty-eight (28) days after the receipt of the evaluation report and where appropriate extend the bid validity period

- (5) Subject to the IMCC's view of the findings of any additional due diligence report, the IMCC shall inform the Concession Entity, the Office of the President and the Commission of its final decision on the recommendation of the evaluation report.

### **Regulation 82 - Due Diligence (Section 116 of the Act)**

- (1) The Concession Entity shall be responsible for the procurement process to engage competent persons to conduct the due diligence on the bidders in accordance with Sections 68 to 71 of the Act.
- (2) The due diligence shall cover the areas specified under Section 116 of the Act and any other areas recommended by the Concession Bid Evaluation Panel to be examined pursuant to Section 116 of the Act.
- (3) The due diligence shall be conducted concurrently with the bid evaluation process and the findings submitted to the Concession Bid Evaluation Panel prior to the preparation of the Bid Evaluation report.

### **Computations of Revenue Impact**

- (4) Where the bid documents require that bidders estimate the revenue impact of tax and other fiscal incentives proposed in the bid documents or proposed by the bidder, the bid documents should specify the methodology to be used in making such estimate.
- 5) Where the bid documents do not do so, but the bidder decide on his own to include the methodology used for the computation as part of its submission, the bidder must deliver to the Concession Entity, two copies of a CD-Rom setting forth the Computations.

### **Regulation 83 Review of Evaluation Report; Negotiations (Section 118 of the Act)**

Pursuant to Sections 118(1) of the Act:

- (1) A bidder shall be disqualified where the Inter-Ministerial Concession Committee finds from the Evaluation and Due diligence report conducted on behalf of the Concession Entity or the additional reports conducted on behalf of the IMCC that:
  - (i) The bidder lacks the of legal, technical and/or financial capability to carry out the project

- (ii) The information provided in its proposal is materially false or misleading
- (2) The IMCC shall consult with the Minister of Justice before taking any action on the disqualification of a bidder. If the Minister of Justice confirms the position of the IMCC, the IMCC shall approve the report after giving effect to the disqualification.

### **Time for Filing Notice of Dissent**

A notice of dissent referred to in Section 10(7) (b) of the Act is not effective unless it is delivered to the Office of the President prior to the execution of the agreement on behalf of the Government by the relevant minister or ministers, even if the effectiveness of the executed Agreement is conditioned on the occurrence of further actions such as Presidential and/or Legislative approval.

### **Negotiation Reports**

The Negotiations Team shall promptly report to the relevant Inter-Ministerial Concessions Committee, the Commission and the Office of the President any effort by a bidder to renegotiate terms stated in its bid or terms that were set forth in the bid documents as non-negotiable. The Office of the President shall make a decision on the report and guidance to the Negotiations Team on further action to be taken.

### **Publication of Signed Agreement; Distribution of Approved Agreement**

- (1) A Concession Agreement, once signed by the required officials and the President, shall be posted on the website of the Commission or the Concession Entity. If the Agreement is not considered binding until approved by the Legislature, a legend to that effect shall appear on the signature pages, and the agreement shall contain an express statement to such effect.
- (2) When as the agreement becomes binding on all parties, the Concession Entity shall cause it to be posted on the website of the Commission or the Concession Entity, and shall cause complete copies in PDF format on CD-ROM discs to be distributed to
  - (i) each ministry or agency represented on the relevant Inter-Ministerial Concessions Committee and the Negotiating Team;
  - (ii) the Environmental Protection Agency
  - (iii) the Commission, and
  - (iv) the Liberia Extractive Industries Transparency Initiative
  - (v) The National Bureau of Concessions

### **Regulation 84 - Post-Contract Management (Section 121 of the Act)**

- (1) Pursuant to section 121 of the Act and for the purposes of efficient management of the concession and protection of public interest after the award, the Concession Entity shall:
  - (a) work with other Government agencies to ensure contract compliance, monitor performance standards and the attainment of output timelines

- (b) be responsible for submitting reports on periodic basis as required by statutory agencies and to the National Bureau of Concessions.
  - (c) conduct periodic assessment of the project performance to ensure that project objectives are met
  - (d) sets up a system for regular communication with the public and stakeholders to determine the extent to which the Concession holder and the Government are perceived to be complying with their obligations under the Concession agreement and to determine whether there is a correspondence between perceived non-compliance and actual non-compliance.
- (2) The functions of the Concession Entity may be performed on its behalf by the National Bureau of Concession but the Head of the Entity shall be responsible for all actions.

## **PART VII – RULES ON DISPOSAL OF STORES, PLANTS AND EQUIPMENT**

### **Regulation 85 - Authority to Dispose (Section 123 of the Act)**

- (1) No department, agency, ministry of Government or local authority shall dispose of obsolete stores or unserviceable equipment and plant without an express approval from the Minister of Finance.
- (2) The disposal committee envisaged under section 123(2) of the Act shall comprise a total of five (5) persons being representatives of the entity and a person with relevant expertise to carry out disposal according to the procedure specified in section 124 of the Act.

### **Regulation 86 - Disposal Procedure (Section 124 of the Act)**

- (1) For the purposes of section 124 of the Act, surplus items shall refer to:
  - (a) Items supplied in excess of the required quantity
  - (b) Items that are no longer required by the Procuring Entity
- (2) the following steps shall be taken to complete the disposal process:
  - (a) the head of entity shall see approval from the Ministry of finance to dispose of the stores, plants and equipment.
  - (b) Upon receipt of approval from the Ministry of Finance, the Head of Entity shall convene a Disposal Committee in accordance with Section 123 of the Act.
  - (c) The Disposal Committee shall submit a report to the Head of Entity, with recommendations on the procedure for disposal.
  - (d) The Head of Entity shall submit the report to the General Services Agency for implementation.

The General Services Agency shall proceed to implement the recommendations of the

Disposal Committee.

- (3) Where the disposal is through public tender or auction as provided under section 124(1) (b) and (c) the following procedure shall be followed:
  - (a) The General Services Agency shall fix the reserved
  - (b) The General Services Agency, shall advertise the invitation for tender or auction in a print media of wide circulation.
  - (c) The General Services Agency shall allow a minimum of four (4) weeks for the public to submit tender or attend the auction.
  - (f) The examination of the tender shall be done by the disposal committee, with assistance from the Procurement Unit, and the item shall be sold to the highest tender or to the highest bidder at the auction subject to the reserve price as the context requires.
- (4) The General Services Agency shall submit a copy of the final recommendation for disposal to the Head of Entity and seek the approval of the Commission for the award.
- (5) Upon award of the contract the General Services Agency shall show evidence of payment received in respect of the disposal, and deposit of such payment into the Consolidated accounts to the Commission
- (6) For the avoidance of doubt, a disposal pursuant to section 124(i) (ii) and (iii) of the Act shall be to the highest bidder in terms of price and no criteria other than the highest price shall be used to select the eventual purchaser of the item or items to be disposed of.
  - (a) The Entity shall allow enough time for the public to submit tender or attend the auction.
  - (b) The examination of the tender shall be done by the disposal committee and the item shall be sold to the highest tender or to the highest bidder at the auction subject to the reserve price.

## **PART VIII – COMPLAINTS AND REVIEW PROCESSES**

### **Regulation 87 – Complaints, Review and Decisions of Complaints Process (Sections 10, 125, 126, 127, 128 and 129 of the Act)**

- (1) All complaints received by the Commission pursuant to Section 126 of the Act shall be submitted under the cover letter of the Executive Director directly to the Chairman of the Complaints Appeals and Review Panel (CARP).
- (2) For the avoidance of doubt, the Commission shall not reject any complaint from a complainant unless such rejection is pursuant to a formal decision of the CARP.
- (3) Findings and recommendations of the CARP shall be communicated in writing to the Commission and the Commission shall forward the decision of the CARP to the complainant with a

copy to the Procuring/Concession Entity.

- (4) The reference to “Interference” with the functions of the CARP as stipulated under Section 10(7) of the Act shall include any act that is intended to or has the effect of preventing the CARP from carrying out its legitimate functions or impeding its operations including, but not limited to, the following:
  - (a) Any action or inaction of the Commissioners or Executive Director to influence the determination of the CARP in respect of any complaint;
  - (b) Any action or inaction of any government agency or entity to influence the Determination of the CARP in respect of any complaint;
  - (c) Any change or modification of the decision of the CARP by the Commission.
- (5) For purposes of enforcing the rights under Section 125 the “right” shall be construed to mean a right in law and shall include the right of a bidder or any other individual to take the step allowed under Section 125 of the Act or to challenge a decision made pursuant to the Act.
- (6) Pursuant to Section 125 (1) (a), (b) & (c) of the Act, a person who qualifies to lodge a complaint under Section 125(1) (a), (b) and (c) shall do so as of right and such a person shall exercise that right subject only to the provisions of the Act and these Regulations.
- (7) The exercise of the right to complain shall be subject only to restrictions placed under the Act including but not limited to Section 125 (3) of the Act.

#### **Time for Lodging Complaints**

- (8) Complaints shall be lodged no later than forty – five (45) days after the decision for which the complaints have been lodged was made.
- (9) Procuring and Concession Entities shall keep records of all complaints received, including the date and time of receipt.
- (10) No complaint shall be allowed unless it complies with the requirement stated in subsection (2) of Section 125 of the Act.
- (11) If a complaint is lodged with the Commission pursuant to the provision for further review under section 126 of the Act, it shall not be allowed unless the complaint was lodged within fourteen (14) days after notification of the decision of the Entity.
- (12) In the event the Entity fails to resolve the complaint, within fourteen (14) days of the expiration of the period within which the Entity was to make a decision.
- (13) The Complaints, Appeals and Review Panel shall keep records of applications for review and its decisions in accordance with Section 43 of the Act.

- (1) The Head of Entity shall notify all bidders of any complaint received and the decision on the complaint with a copy to the Commission.
- (2) Where a bidder lodges a complaint to the Procuring or Concession Entity and the Entity decides on the complaint a copy of the decision, shall be brought to the notice of the Commission.

### **Regulation 89 - Suspension of Procurement Proceedings (Section 129 of the Act)**

- (1) The instances of “emergency” referred to under Section 129 of the Act include situations which, in the view of the Entity a suspension of the procurement proceedings may result in:
  - (a) inordinate economic loss to the state.
  - (b) threat to public health, welfare, safety or security; or
  - (c) disruption of critical services or program of the government.
- (2) In such instances of emergency, the Entity shall promptly consult the Commission of its decision not to suspend procurement proceedings and the reason for the decision.
- (3) For the purposes of adjudication or review of the complaints, the Complaints, Appeals and Review Panel shall comply with the Administrative Procedures Act

## **PART IX – GENERAL PROVISIONS**

### **Regulation 90 - Review of Threshold Levels (Section 139 of the Act)**

The Procuring or Concession Entity shall comply with the threshold set out in the Schedule to the Regulation in accordance with the provisions of the Act and these Regulations.

#### **Review of Thresholds**

Thresholds specified in regulations promulgated by the Commission may be amended from time to time. Regulations may establish different thresholds for different Procuring Entities based on their procurement requirements and experience.

#### **Applicable Thresholds under the Act.**

**The Schedule of Threshold applicable under the Act is the Schedule set forth below in this Regulation 90:**



## SCHEDULE OF THRESHOLDS

In this Schedule “Act” refers to the Amended and Restated Public Procurement and Concessions Act, 2010, as from time to time amended, and the regulations from time to time issued and outstanding hereunder.

Users of this Schedule should note the following:

- A. Some thresholds set forth below represent ceilings and others represent floors.
- B. The Act sets forth restrictions, limitations and prohibitions on the use of particular procurement methods that are not expressly set forth in this Schedule. The fact that a procurement method fits within the thresholds under this Schedule is not sufficient to establish that it is permitted under the Act.
- C. There is no minimum contract size below which the use of international competitive bidding or national competitive bidding is prohibited. Thus, for example, a Procuring Entity may use international or national competitive bidding even if the use of a request for quotations is permitted if, in the discretion of the Procuring Entity, such use of international or national competitive bidding is consistent with conducting an efficient and effective procurement.

1. International open competitive bidding for Goods and Works

The Thresholds above which international open competitive bidding shall be used are the ceiling Thresholds for national open competitive bidding

2. National open competitive bidding for Goods and Works

The ceiling Thresholds for national open competitive bidding shall be the following estimated contract prices. Above these ceilings international open competitive bidding shall be used.

In the case of contracts for the procurement of goods, US\$500,000

In the case of contracts for the procurement of works, US\$1,000,000

3. Thresholds for use of requests for quotations for Goods and Works.

The Thresholds for requests for quotations shall be the following estimated contract prices. The Thresholds are ceiling threshold amounts for determining the applicability of requests for quotations:

In the case of contracts for the procurement of goods, US\$10,000

In the case of contracts for the procurement of works, US\$30,000

4. Thresholds for use of restricted bidding for Goods and Works

The use of restricted bidding pursuant to Section 50(4) to seek bids and award contracts must be approved by the Commission where the estimated price of the procurement exceeds:

In the case of contracts for the procurement of goods, US\$50,000

In the case of contracts for the procurement of works, US\$100,000

In an appropriate case, the Commission may give blanket approvals for the use of restricted bidding.

5. Thresholds for publication of planned sole source procurement

Publication prior to award is required under the first sentence of Section 56(2) for sole source contracts where the estimated price exceeds US\$100,000.

6. Contracts for the procurement of Consultant Non-Consulting Services

The solicitation of expressions of interest is required for contracts for the procurement of consultant services when the estimated contract price of the services exceeds US\$100,000.

The Threshold for least cost selection shall be US\$ 100,000

Threshold for use of Quality Based Selection	Not Applicable
Threshold for Quality and Cost Based Selection	Not Applicable
Threshold for Consultant's Qualification Selection	Not Applicable
Threshold for Fixed Budget Selection	Not Applicable
Threshold for Least Cost Selection	below US\$ 100,000
Threshold for Single Source Selection	Not Applicable

7. Authority to Reject and Signing Authority for Procurement Contract Awards at the Entity level

<b>Type of Contract</b>	<b>Contract Value (Threshold)</b>	<b>Authority to Reject Proposed Contract Award per Section 27(f)</b>	<b>Signing Authority for Contract Award per Section 66(3)</b>
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Goods and Services	Less than US\$10,000	Head of Procuring Entity	May be delegated
	Over US\$10,000	Procurement Committee	Head of Procuring Entity
Consulting Services	Less than US\$10,000	Head of Procuring Entity	May be delegated
	Over US\$10,000	Procurement Committee	Head of Procuring Entity
Works	Less than US\$30,000	Head of Procuring Entity	May be delegated
	Over US\$30,000	Procurement Committee	Head of Procuring Entity

8. Prior notice to the Commission of proposed contract awards (14 day waiting period)

Pursuant to Section 31(1), Procuring Entities shall give at least fourteen (14) days prior notice to the Commission of proposed awards of procurement contracts when the estimated price of the procurement contract exceeds the amount set forth below:

In the case of contracts for the procurement of goods, US\$200,000

In the case of contracts for the procurement of services, US\$100,000

In the case of contracts for the procurement of works, US\$400,000

Pursuant to Section 71(2) Procuring Entities shall give at least fourteen (14) days prior notice to the Commission of proposed awards of consulting contracts when the estimated price of the consulting contract exceeds US\$100,000.

9. Notice and publication of contract awards

Pursuant to Section 37, Procuring Entities shall give prompt notice of contract awards to the Commission for publication when the contract price of the procurement exceeds:

In the case of contracts for the procurement of goods, US\$20,000

In the case of contracts for the procurement of services, US\$10,000

In the case of contracts for the procurement of works, US\$30,000

10. Contracts over US\$250,000

The Ministry of Finance shall approval contracts over US\$250,000 and the contracts shall be attested to by the Ministry of Justice.

The Procuring or Concession Entity shall comply with the thresholds set out in this Schedule in accordance with the provisions of the Act.

**This Regulation and Manual shall take effect as of the date it is signed.**

**DONE IN THE CITY OF MONROVIA, COUNTY OF MONTERRADO, REPUBLIC OF LIBERIA THIS ..... DAY OF ..... A.D, 2014 BY AUTHORITY OF THE PUBLIC PROCUREMENT AND CONCESSIONS COMMISSION.**

**SIGNED BY:**

**Chairperson  
PUBLIC PROCUREMENT & CONCESSIONS COMMISSION**