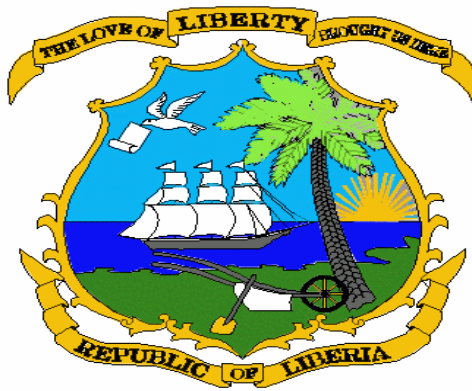




**THE REPUBLIC OF LIBERIA  
PUBLIC PROCUREMENT AND CONCESSIONS  
COMMISSION  
PUBLIC PROCUREMENT AND CONCESSIONS  
ACT, 2005**



**PUBLIC PROCUREMENT AND CONCESSIONS  
REGULATIONS**



**REPUBLIC OF LIBERIA**

**REGULATIONS ACCOMPANYING THE PUBLIC PROCUREMENT  
AND CONCESSIONS COMMISSION ACT OF 2005 OF THE  
REPUBLIC OF LIBERIA**

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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, these Regulations are made the First day of December 2009 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 entity that intends to adopt an alternative procurement procedure pursuant to section 1(4) of the Act shall in addition to complying with the Act ensure that:

- (1) the quality of the goods, services or works procured meet minimum technical specifications established by that entity in its invitation to bidders;
- (2) the cost of the goods, services or works are within the limits of the approved budget of the entity.

### **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 shall have the meaning ascribed to them under this Regulation:

- (1) **“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.
- (2) **“Technical expert”** mean an expert, a team of experts or advisors with the skills and knowledge related to concessions who are engaged pursuant to the Act and may advise on the technical, legal, financial and/or any other aspect of the concession or a concession processes.
- (3) **“Value for money”** refers to an assessment of the maximum net benefit to the Government of Liberia in terms of the use of the government’s resources and assessment of risk or any combination of factors used in the assessment of net benefit.
- (4) **“Conflict of Interest”** means a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.
- (5) **“Force Account”** refers to the use of a Procurement Entity’s own in-house staff to carry out works or perform the private sector party’s obligations required under a procurement contract.
- (6) **“Interest”** as used in Regulation 5, Regulation 52(1) and Section 13(1) and (2) and 84 of the Act shall be construed to mean interest that may result in a benefit or potential benefit to the member or “close relatives” as defined under Section 2(4) of the Act.

## PART II - PUBLIC PROCUREMENT AND CONCESSIONS COMMISSION

### **Regulation 3 – 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 Part VIII of the Act.

### **Regulation 4 - 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 not more than twenty-one (21) 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.
- (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 Sections 11(4) 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 5 - Disclosure of Interest (Section 13 of the Act)**

- (1) The disclosure required under Section 13(1) under the Act shall be made prior to the sitting of the Commission 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 not take 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(6) of these Regulations.

### **Regulation 6 - 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 be limited to minimal sums that are enough to

cover the cost of reproduction and photocopying of the Commission's application forms and such amounts shall be determined from time to time by the Commission and made known to the public by means of general notice on fees applicable to the lodging of complaints.

#### **Regulation 7 - 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 Commission's accounting system has been approved by the Accountant General or any other appropriate government authority.
- (3) Secure 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 within the time specified under the applicable law, the annual account of the Commission in the form prescribed by the Accountant General or 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 8 - Use of Private Sector Practices by Entities (Section 24 of the Act)**

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

- (a) State 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) Follow any provisions related to such private sector as may be applicable under any detailed step by step procedures or manual issued by the Commission.

**Regulation 9 - 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.

**Regulation 10 - Procurement Unit (Section 29 of the Act)**

- (1) For the purposes of constituting a Procurement Unit under section 29(3) of the Act, the Procuring Entity shall interpret “officials” to mean any staff of the Procuring Entity, whether junior or senior officer competent enough to be appointed by the Head of the Entity as a member of the Procurement Unit.
- (2) The Procurement Unit shall report to the Head of Entity, who is also the Chairperson of the Procurement Committee. The Procurement Committee may request clarification and/or information from the Procurement Unit during its sittings.

**Regulation 11- Bid Evaluation Panel (Section 30 of the Act)**

- (1) In the establishment of a Bid Evaluation Panel by the Procurement Committee under section 30 of the Act, the Procurement Committee shall ensure that:
  - (a) Persons who are qualified and required to serve on a Panel for the evaluation of bids are invited formally by a letter of invitation to serve on the Bid Evaluation Panel for the specific purpose.
  - (b) A person who accepts to serve on the Bid Evaluation Panel shall give a written undertaking indicating that no conflict of interest exists or would arise in the performance of his/her responsibilities as a member of the Panel.
- (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 Panel.

- (3) The Procurement Committee shall ensure that in the selection of qualified persons or experts for the composition of the Bid Evaluation Panel due regard is given to the subject matter of the bid or the expertise required for the evaluation of the bid.

**Meaning of Conflict of Interest**

- (4) Conflict of Interest shall have the meaning ascribed to it in Regulation 2(4) of these Regulations.

**Performance of the Evaluation**

- (5) In the evaluation of the bids, the Bid Evaluation Panel shall ensure that they stay within the confines of the predetermined and published evaluation criteria outlined to the bidders in the bid documents.
- (6) Where the Procurement Committee does not specify the Chairman of the Panel, the members of the Bid Evaluation Panel shall elect one of their numbers to serve as chairperson of the Panel.
- (7) The decision of the Bid Evaluation Panel shall be unanimous provided that where the panel cannot decide unanimously on an issue, their decisions may be taken by vote of the majority of panel members.
- (8) Where there is a tie in votes regarding the decision of the panel, the chairperson shall have a casting vote to determine the matter.
- (9) The Bid Evaluation Panel shall submit an evaluation report to the Procurement Committee in accordance with Section 30(2) of the Act.
- (10) Unless otherwise determined by the Procurement Committee, the Bid Evaluation Panel shall be deemed dissolved immediately after the submission of the evaluation report to the Procurement Committee.

**Regulation 12 - 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 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 Procurement Entity may enter into a procurement contract after the expiration of the fourteen (14) day waiting period if no notice is received from the Commission.

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

### **Regulation 13 - 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.

### **Regulation 14 - 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(1) 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 a copy of the request and its response available to all bidders.
- (4) No pre-bid meeting shall be scheduled at a date which is later than fourteen (14) days before the date specified in the bid submission date.
- (5) Minutes of the pre-bid meeting shall be issued 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 15 - Cancellation of Proceedings for Rejection of Bids (Section 36 of the Act)**

- (1) Pursuant to section 36 of the Act, the Procuring Entity shall not cancel any procurement proceedings or reject all bids prior to the time stated for acceptance of

bids unless the decision to reject all bids or cancel the procurement proceedings is made strictly in accordance with the provision of section 36 of the Act.

- (2) 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 written report to the Procurement Committee that detail 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 the Procuring Entity; and
  - (c) Communication of the rejection or cancellation to the bidders within seven (7) days after the decision has been made.
- (3) 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 signing of the procurement contract.

**Regulation 16 - 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.

**Regulation 17 - 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) The proposed procurement plan may, if the entity requires, be submitted to the Commission for review and comment.

- (4) The proposed 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.
- (5) 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.
- (6) 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.

**Regulation 18 - 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) Where the context requires the Entity shall:
  - (a) Develop a contract administration mechanism that at least spell out the obligations under the contract, the responsible party and expected or contractual compliance or completion date of the obligation as a means of facilitating contract administration.
  - (b) Cause to be prepared written periodic updates on compliance with obligations under the contract.
- (4) In the event 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 19 - 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 permits:

- (a) the price adjustment
  - (b) states the circumstance for the adjustment and
  - (c) provides for the formula or method for the determination of the adjustment.
- (2) Where provision is made for price adjustment, an adequate contingency amount shall be provided in each contract to cater for 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 20 - Margin of Preference (Section 45 of the Act)**

- (1) Pursuant to section 45 of the Act, the Procuring Entity may grant Margin of Preference to Domestic Businesses and/or Liberian Businesses under International Competitive Bidding provided the Procuring Entity has indicated in the bidding documents that a Margin of Preference shall be applicable.
- (2) The Margin of Preference shall, pursuant to section 45(4) of the Act, be subject to the following:
  - (a) In respect of procurement of goods, 15% margin of preference shall be provided for goods if it is established that local input in the form of raw materials, labour or plant constitutes a minimum of 30% of the Ex-Works price.
  - (b) In respect of procurement of works, 10% margin of preference shall be provided for works contracts.
  - (c) In respect of procurement of services, a margin of preference shall be applied to consultancy or service contracts only when cost is a factor in the selection process in which case the provision of Sub-Regulation (3) of this Regulation shall apply.
- (3) If and when a margin of preference is to be applied to procurement of services the Entity must:
  - (a) confirm that cost is a factor in respect of the criteria for evaluation of services
  - (b) a margin of preference has been stipulated in the bid document as applicable,
  - (c) Apply 30% during the evaluation of costs for firms with a minimum of 30% of total man month input being Liberian nationals.

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

### **Regulation 21 - Engagement of End User Communities (Section 46 (4) of the Act)**

- (1) Pursuant to section 46(4) 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(4) 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) For the avoidance of doubt, the provisions of this Regulation and Section 46(4) of the Act shall not be interpreted as authority to carry out any procurement by means of a force account as defined under Regulation 2(5) of these Regulations.

### **Regulation 22 - National Competitive Bidding (NCB) (Section 48 of the Act)**

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

- (1) 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
- (4) The minimum period of four (4) weeks required under section 48(4) of the Act is counted as four (4) or more weeks between the date of the first advertisement of the NCB in a newspaper of national circulation to the date of submission of bids.

### **Regulation 23 - International 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. Foreign Firms / Entities
- (c) The bidding documents and conditions of contract are of internationally accepted standard.

### **Regulation 24 - 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) The attention of the Commission should be drawn to the fact that the Entity intends to use Restrictive Bidding Method per the procurement plan
- (2) Approval of the procurement plan by the Commission shall be deemed as approval for the use of the Restricted Bidding method of procurement.
- (3) Where circumstances require that a Procuring Entity adopts Restricted Bidding for any procurement but there were no provisions for Restricted Bidding 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 provided that where no response is received from the Commission within fourteen (14) days, it shall be deemed as approval of the use of Restricted Method.
- (4) The Procuring Entity shall comply with all requirements of the Act for the use of Restricted Bidding methods.

### **Regulation 25 - Basic Procedures for Request for Quotations (Section 54 of the Act)**

- (1) Request 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.
- (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.
- (6) The bids shall be evaluated by a Bid Evaluation Panel constituted in conformity with Section 30 of the Act.
- (7) The Procuring Entity shall refer the recommendation for award to the appropriate approving authority in accordance with the corresponding threshold set out in the schedule to the Act or Regulations made by the Commission.

**Regulation 26 - 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) The Procuring Entity shall indicate the use of sole source method of procurement in the procurement plan of the Entity.
- (3) Approval of procurement plan of the Entity by the Commission shall be deemed to cover any sole source procurement contained therein.
- (4) In the case of emergency 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 27 - 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 28 - 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) 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 NCB and two publications for ICB shall be made in at least two newspapers of wide circulation in Liberia and on the Commission's Website shall be sufficient.
- (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) 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.

### **Regulation 29 - Bidding Documents (Section 58 of the Act)**

- (1) No bidding document other than the 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.

### **Regulation 30 - 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 10, or 100, or 1000, or 10,000 etc, as the case may be.
- (3) When the Procuring Entity adopts two-stage bidding, it shall observe the provision of Sub-Regulation 36(2) of these Regulations in respect of bid security.

**Regulation 31 - 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 shall prevent 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 so 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 32 - 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) Where the bids satisfy the requirements of subsections (1) and (2) of section 62 of the Act, the bids shall be evaluated 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 examination, evaluation and comparison of bids shall be carried out by an evaluation panel constituted by the Procurement Committee in accordance with Section 30 of the Act and Regulation 11 of these Regulations.
  - (b) Membership of the evaluation panel shall not be disclosed directly or indirectly to bidders.
  - (c) During the evaluation, if it is necessary to communicate with any bidder, it shall be done in writing and shall be signed by the head of entity.
  - (d) After all responsive bids have been subjected to detailed evaluation the "lowest evaluated bid" shall therefore be deemed to be the "lowest evaluated responsive bid".

### **Regulation 33 - 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 contract sum prior to signature of the contract.
- (3) During the price negotiations pursuant to this Regulation 33, the total contract price may be revised downward to be commensurate with the revised scope of works of the bid but the rates or prices of the bidder shall not be a subject of negotiations.
- (4) 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.

### **Regulation 34 - 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.

### **Regulation 35 - Acceptance of bid and signature of contract (Section 66 of the Act)**

For the purposes of section 66(3) 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 36 - 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 37 - 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) Invitation 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 38 - 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) or Least Cost Selection (LCS).
- (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) A Procuring Entity shall use LCS where the Entity intends to award the contract to the most technically competent bidder or the bidder with the best quality goods at the least cost.
- (5) Where the QCBS method is used, the entity shall:
  - (a) Request bidders to submit both technical and financial proposals
  - (b) Specify minimum technical score required as a condition for consideration of financial proposal
  - (c) Specify the percentage of total score to be allocated to technical considerations and financial considerations
  - (d) Indicate formula for combining technical and financial score to arrive at total score.
  - (e) Award contract to the bidder who meets the minimum technical score, and ultimately obtains the highest combined technical and financial score.

- (6) When the FBS method is used, the entity shall:
  - (a) Request firms to submit both technical and financial proposals.
  - (b) Specify minimum technical score required as a condition for consideration of financial proposal
  - (c) Award the contract to the bidder who:
    - i. Has submitted a financial proposal within the predetermined specified budget.
    - ii. Attains the highest technical score provided that that technical score is above the specified minimum technical score.
  
- (7) When LCS method is used, the entity shall:
  - (a) Request firms to submit both technical and financial proposals.
  - (b) Specify minimum technical score required as a condition for consideration of financial proposals.
  - (c) Award contract to firm meeting the minimum technical score, and submitting the least cost proposal.

**Regulation 39 - 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.
  - (b) Specify minimum technical score that must be attained before a financial proposal is requested.
  - (c) Invite firm with highest technical score to negotiate a contract provided that technical score is above the minimum required technical score specified by the entity in the bidding document.

**Regulation 40 - 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 41- Objectives of Concession (Section 74 of the Act)**

- (1) In addition to the general objectives of concession 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 complex nature then the specific objectives required under Sub-Regulation (1) of this Regulation 41 may, also be determined after the conclusion of the pre-feasibility study required under Section 103 (1) and (2) of the Act.
- (3) Irrespective of whether a prefeasibility study is carried out or not, the determination of the specific objectives of a concession shall be arrived in consultation with all key stakeholder entities including but not limited to:
  - (a) The Ministry of Finance
  - (b) The Ministry for Economic Affairs
  - (c) The National Investment Commission
  - (d) 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 42 - Scope and Application (Section 75 of the Act)**

Pursuant to section 75(2) of the Act, the Commission shall have the oversight responsibility to ensure that any Regulation that may be made specifically for concessions in specific sectors of the economy are made in conformity with the Act and do not derogate from the principles of transparency, accountability and value for money in the grant of the concessions in that sector.

### **Regulation 43 - 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 44 - Project Steering Committee**

- (1) In order to facilitate the smooth implementation of any concession, the Head of the Concession Entity may constitute a Project Steering Committee to assist in that regard.
- (2) If a Project Steering Committee is constituted, it shall only assist the head of entity and any appropriate persons as are necessary to meet the objectives of the Concession.
- (3) A Project Steering Committee may only assist and shall not have the power to take over any of the functions assigned to various persons under the Act or these Regulations.
- (4) If a Project Steering Committee is set up, it shall be chaired by the head of the Procurement Unit of the Concession Entity and may comprise such persons who possess the competencies relevant to the concession including finance, legal, risk management and applicable technical issues.

### **Regulation 45 - The Role of the Procurement Unit in Processing Concession Agreements (Section 77 of the Act)**

- (1) In addition to its functions under section 77 of the Act, the Procurement Unit 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 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.

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

**Regulation 46 – 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 update to the Concession Procurement Plan after the Invitation To Bid or the Request for Proposals has been issued:
- (3) No update to the Concession Procurement Plan shall be made if responses to an Expression of Interest (EOI) have been received.
- (4) 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 Commission 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.
- (5) For the avoidance of doubt, no update shall be made after the bids or responses to the invitation are received.

**Regulation 47 - 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(s), expert(s) in accordance with the provisions of section 78 of the Act, it may only do so after the Concession Procurement Plan has been approved by the Commission.
- (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 Procurement Unit, the Project Steering Committee if one has been constituted and/or the IMCC as the context requires.

**Regulation 48 - Preparation of Concession Procurement Plan (Section 79 of the Act)**

- (1) The Concession Procurement Plan required under section 79 of the Act shall be submitted to the Commission only after the Certificate of Concession has been issued by the Minister responsible for Economic Affairs.
- (2) The Concession Procurement Plan shall be prepared in accordance with any template or standard guidelines or manual that may be issued by the Commission.
- (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-submit 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 46 shall be complied with.

**Regulation 49 - Composition of Inter-Ministerial Concession Committee (IMCC) (Section 81 of the Act)**

Pursuant to Sections 81(2) of the Act:

- (1) The IMCC shall following its review of the Concession Bid Evaluation Report and the Due Diligence Report, do one of the following:
  - (a) approve the report
  - (b) reject the report
  - (c) request for clarification on how the Bid Evaluation Panel arrived at specific decisions if such clarification is necessary
  - (d) request for minor amendments where there are obvious errors such as typographical or arithmetical if the context requires.

- (2) If the IMCC rejects the report, then the IMCC shall give reasons for its rejection.
- (3) The IMCC shall not:
  - (a) alter the report of the Bid Evaluation Panel, including, in particular recommendations for award; or
  - (b) reject the report of the Bid Evaluation Panel without assigning any justifiable reasons.

**Regulation 50 - 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 a Bid Evaluation Panel constituted by the IMCC.

**Regulation 51 - Meetings of the Inter-Ministerial Concession Committee (Section 83 of the Act)**

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 82 (2).

**Regulation 52 - 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(6) 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) The requirement to disclose shall apply to members of any Project Steering Committee that may be constituted for the purposes of the concession.

**Regulation 53 - 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 54 - 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.

#### **Regulation 55 - Certificate for Concession (Section 88 of the Act)**

- (1) To enable the Minister responsible for 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 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.

#### **Regulation 56 - 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 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 Economic Affairs shall complete all the applicable processes within twenty-eight (28) days on receipt of a request by an Entity.

#### **Regulation 57 - 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 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 or expert engaged for the purposes of any of the concession processes may be authorised to inspect any part of the records for the purposes of carrying out the task of the consultancy assignment.

**Regulation 58 - Mode of Publication (Section 107)**

Pursuant to Section 107 of the Act, publications required in respect of concessions under the Act shall be made in accordance with Regulation 65 of these Regulations.

**Regulation 59 - National Competitive Bidding (Section 96 of the Act)**

- (1) 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 in the National Investment incentive code that reserves specified areas of the economy to Liberians and Domestic Businesses are complied with.
- (2) 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.
- (3) Joint venture firms in which domestic firms have the majority share holding may participate in National Competitive bidding.

**Regulation 60 - 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) The provisions of Sub-Regulation 60 (3), 60 (4) and 60(5) of these Regulations shall apply to the Margin of Preference in respect of concessions.

- (3) Eligibility for Margin of Preference
- (a) 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
  - (b) 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
  - (c) 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 51% or more of the joint venture as evidenced by the agreed profit and loss sharing provisions clearly spelt out in the joint venture agreement
    - iii. The joint venture shall not sublet more than 10% of the concession to a foreign company.
- (4) 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**

- (5) The applicable Margin of Preference for bidders who meet the criteria set out in Regulation 60 of these Regulations shall be as follows:
- (a) In respect of Liberian Businesses 12.5%
  - (b) In respect of Domestic Business 10 %
  - (c) In respect of Joint Ventures 7.5 %
  - (d) In respect of foreign firms 5 %

**Regulation 61 - Restricted Competitive Bidding (Section 100 of the Act)**

- (1) A decision to use Restricted Competitive Bidding by a Concession Entity shall be based on the following:
  - (a) The area of concession is specialized and the expertise is available in only a limited number of firms.
  - (b) There is time constraint in commencing 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.
- (2) The shortlist for a Restricted Competitive Bidding process shall be a minimum of three firms/consortia.
- (3) 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.
- (4) The Concession Entity shall submit its request only after the receipt of the Certificate of Concession.
- (5) The Commission shall respond to the request within fourteen (14) days of the receipt of the request.
- (6) The decision of the Commission shall be final and the Concession Entity shall comply with the decision forthwith.
- (7) Where the Commission does not respond to the request within the fourteen (14) days spelt out in Sub-Regulation 61(5) of these Regulations, the request shall be deemed approved and the Concession Entity shall proceed with the procurement of the concession.

**Regulation 62 - 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 62 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 respond to the request within fourteen (14) days of the receipt of the request.
- (4) The decision of the Commission 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.

### **Unsolicited Proposal**

- (5) An Unsolicited proposal may be considered only in accordance with provisions of section 101 of the Act and Regulation 62 of these Regulations.
- (6) 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:
  - (a) 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.
  - (b) The concession is of a specialized character and is not likely to attract other bidders.
  - (c) The product, service or works to be procured pursuant to the unsolicited proposal is unique or innovative concept and not generally available from other known sources.
  - (d) The proposed outcome will be exceptionally beneficial to or have exceptional cost advantages for the Government of Liberia.
  - (e) There are no substantial financial contributions to be made by Government of Liberia.
  - (f) 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.
  - (g) 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.
- (7) 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 Economic Affairs in accordance with Section 87(3) of the Act.
- (8) The Commission shall respond to the request within fourteen (14) days of the receipt of the request.
- (9) The decision of the Commission shall be final and the Concession Entity shall comply with the decision forthwith.
- (10) The Commission shall consult the Minister responsible for Economic Affairs on the importance or otherwise of the particular concession in respect of which the unsolicited proposal has been received.
- (11) If the Minister responsible for 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**

- (12) In assessing the unsolicited bid, the Concession Entity 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
- (13) After complying with all the requisite processes the Concession Entity shall then proceed with the:
- a) Stakeholder consultations,
  - b) Value for money assessment,
  - c) Development of draft agreement or a review of any draft concession agreement that might have been included in the unsolicited proposal
- (14) 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.

### **Regulation 63 - Prior Approval of Commission (Section 102 of the Act)**

- (1) The Concession Entity shall obtain the approval of the Commission prior to adopting the Restricted Competitive bidding procedure in accordance with Regulations 61.
- (1) The Concession Entity shall obtain the approval of the Commission prior to adopting the procedure to sole source in accordance with Regulations 62.
- (2) Whenever the context require prior approval of the Commission in respect of the use of a concession procurement method, the Commission shall give its approval or otherwise request within fourteen (14) days of receipt of the request for the use of the method.
- (3) Where the Commission does not give any indication within fourteen (14) days after the receipt of the request, the method of procurement of the concession shall be deemed to be approved by the Commission.

**Regulation 64 - 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 Procurement Unit may work with an advisor/expert and/or the Project Steering Committee 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) If the IMCC approves the use of draft bidding documents, the Concession Entity shall issue out the documents as the Concession Bid Documents.
- (6) Upon approval, the draft concession bidding documents shall be considered as the “concession bidding documents” for the purposes of inviting bids, or proposals for the concession.
- (7) If the draft concession bidding documents are rejected, the Concession Entity shall revise the documents taking into consideration the comments of the IMCC and re-submit the documents for reconsideration within fourteen (14) days.
- (8) In undertaking its review of the draft bidding documents, the IMCC shall constitute a technical team for the purpose. The technical team shall include representation from the Ministries of Finance and Justice, the National Investment Commission (NIC) and the Concession Entity.

**Regulation 65 – Guidelines For Publication (Section 107 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.
    - (ii) The publication shall be in a print media with national circulation, the Newsletter of the Commission 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.
  - (b) For the purposes of a Request for Expression of Interest.
    - (i) The publication shall be in a print media with national circulation, the Newsletter of the Commission 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.
- (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, DB Market, Development Business of the UN, the Newsletter of the Commission 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.
  - (b) In respect of a Request for Expression of Interest for all concessions to be procured by International Competitive Bidding the following shall apply.
    - (i) The publication shall be in a print media with national circulation, international publications of repute such as; The Economist, DB Market, Development Business of the UN, the Newsletter of the Commission and the website of the Commission.
    - (ii) A minimum of two notices shall be placed in the print media within a period of fourteen (14) days.
- (3) Request for Proposals
  - (a) In respect of a Request for Proposals/Invitation to Bid, the invitation/request shall be issued to all entities pre-qualified to participate in the bidding process.
  - (b) Except in cases where the invitation to bid/request for proposals has been made to bidders already qualified, 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 a print media with national circulation, the Newsletter of the Commission and the website of the Commission.
  - (ii) A minimum of two notices shall be placed in the print media within a period of fourteen (14) days.
- (4) For the avoidance of doubt no publication in the media prescribed shall be used in respect of sole source procurement, unsolicited proposals and where an Expression of Interest has been used as a basis for arriving at a pre-qualified list of bidders.

#### ***SUB-PART 4 – PRE-BID MEETING, BID SUBMISSION AND OPENING***

##### **Regulation 66 – Time for Submission and Opening of Bids In Respect of Concessions (Section 110 of the Act)**

- (1) In respect of National Competitive Bids, a minimum period of twenty-eight (28) days 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 forty-two (42) days 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 67 - Evaluation (Section 111 of the Act)**

- (1) The IMCC shall constitute the Concession Bid Evaluation Panel for the evaluation of the concession within fourteen (14) days of opening of the bids.
- (2) The Concession Bid Evaluation panel shall include members with skills, knowledge and experience relevant to the subject matter of the concession.
- (3) No member of the Commission shall be a member of any concession Bid Evaluation Panel.

- (4) The Evaluation Panel shall complete its report before the expiry of the sixty (60) day time limit set out in Section 115(1) of the Act.
- (5) The IMCC shall adjudicate and give its approval or otherwise of the evaluation report 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 68 - Evaluation Criteria and Evaluation**

- (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 assess credit to undertake the concession
    - (v) Firm/Consortium's technical capacity to undertake the concession
  - (b) In Respect of a Request for Proposals/Invitation to Bid
    - (i) Information on corporate structure
    - (ii) Operational and managerial capacity to undertake the concession
    - (iii) Effectiveness of methods and procedures proposed to undertake the concession
    - (iv) Financial proposal
    - (v) Soundness of financial layout over concession period
    - (vi) Application of margin of preference, where applicable
    - (vii) 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.

## ***SUB-PART 5 – POST EVALUATION***

### **Regulation 69 - Evaluation Report and Decision of the IMCC (Section 115 of the Act)**

- (1) Pursuant to section 115 of the Act the evaluation report shall indicate following:
  - (a) Whether the Evaluation Panel obtained all material information required to make a recommendation to the IMCC.
  - (b) A clear recommendation indicating the result of the technical and financial components of the evaluation.
  - (c) Details of any clarification of the proposals/bids that was sought, if any by the Evaluation Panel and the responses received in response to the clarifications.
- (2) 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.
- (3) If the IMCC requires further information on the evaluation in order to arrive at its decision, the IMCC may extend the time for its decision provided always that the IMCC shall make its decision not later than twenty-eight (28) days after the receipt of the evaluation report.
- (4) Subject to the IMCC's view of the findings of the 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 70 - Due Diligence (Section 116 of the Act)**

- (1) The Concession Entity shall conduct due diligence on the bidders. The due diligence may be conducted concurrently with the evaluation provided but no finding on the due diligence shall be communicated to the Evaluation Panel.
- (2) The due diligence shall cover the areas specified under Section 116 of the Act and any other areas recommended by the Concession Entity to the IMCC to be examined pursuant to Section 116 of the Act.

**Regulation 71 - Form of Contract (Section 117 of the Act)**

- (1) For the purposes of compliance with Section 117 of the Act, the Concession Entity shall ensure that the draft concession agreement designed for the concession and included in the concession bidding document shall include specific provisions pertinent to the specific concession.
- (2) The Concession Entity shall submit the draft concession agreement contract to the Ministry of Justice for review and advice at the same time that it is submitted as part of the draft Concession Bid Document to the IMCC.

**Regulation 72- Negotiations and Entry into Contract (Section 118 of the Act)**

- (1) In the event an advisor has been engaged to assist the Negotiation Team, the advisor shall assist in the preparation of issues for negotiations to be submitted to the IMCC prior to the commencement of the negotiations but the advisor shall not be part of the Negotiating Team.
- (2) The IMCC shall inform the Concession Entity, the Office of the President and the Commission of the final outcome of the negotiations with the recommended bidder or bidders as the context require under Section 118 (5) of the Act.

**Signing of Contract**

- (3) The person authorized to sign the concession agreement shall sign the agreement only after a fourteen (14) days waiting period following the completion of negotiations and decision on the award of the concession.
- (4) After the signing of the concession agreement the Concession Entity shall forward copies of the Agreement to:
  - i. The Commission
  - ii. The Ministry of Finance
  - iii. The Ministry of Justice
  - iv. The Ministry Economic Affairs
  - v. The National Investment Commission
  - vi. The Environmental Protection Council
  - vii. The Ministry of Labor

**Regulation 73 - 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 Commission.
  - (c) conduct periodic assessment of the project performance to ensure that project objectives are met.
  - (d) set up a system for communication with the public and stakeholders to get feedback on the Project.
- (2) The functions of the Concession Entity may be performed on its behalf by the Project Steering Committee or an advisor but the Head of the Entity shall be responsible for all actions.

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

### **Regulation 74 - 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.
- (4) Subject to approval of the head of entity, the disposal shall be carried out in accordance with the recommendation of the disposal committee.

### **Regulation 75 - 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
  - (c) Items determined by the Minister of Finance to be surplus items.
- (2) Where the disposal is through public tender or auction as provided under section 124(1) (b) and (c) the following shall be followed:
  - (a) The disposal committee shall fix the reserved price subject to approval of the Head of Entity and the Minister responsible for Finance.
  - (b) The Entity shall advertise the invitation for tender or auction in a print media of wide circulation.

- (c) The Entity shall allow enough time for the public to submit tender or attend the auction.
  - (d) 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 as the context requires.
- (3) For the avoidance of doubt, it is hereby provided that disposal pursuant to section 124 (1) (b) and (c) of the Act shall be to the highest bidder in terms of price offer and no other form of evaluation or criteria other than the highest price shall be used to select the eventual buyer of the item or items to be disposed of.

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

### **Regulation 76 – 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). 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.
- (2) 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.
- (3) The reference to “Interference” with the functions of the CARP as stipulated under Section 10(7) of the Act 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 Directors to influence the determination of the CARP in respect of any complaint;
  - (b) The 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.
- (4) For purposes of enforcing the rights under section 25 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.
- (5) 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 not require the permission of any person to do so and such a person shall exercise that right subject only to the provisions of the Act and these Regulations.

- (6) The exercise of the right to complaint 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**

- (7) Complaints shall be lodged no later than twenty-one (21) days after the decision complained against has been made or the act complained against took place.
- (8) Procuring and Concession Entities shall keep records of all complaints received, including the date and time of receipt.
- (9) No complaint shall be entertained unless it complies with the requirement stated in subsection (2) of Section 125 of the Act.
- (10) 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 entertained unless the complaint was lodged within fourteen (14) days after notification of the decision of the Entity or, 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.
- (11) The Complaints, Appeals and Review Panel shall keep records of applications for review and its decision in accordance with Section 43 of the Act.

**Regulation 77 – Complaints to the Commission (Section 126 of the Act)**

All complaints to the Commission shall be forwarded by the Commission to the Complaints, Appeals and Review Panel (CARP) for further review.

**Regulation 78 - Rules Applicable to the Review Proceedings (Section 128 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.
- (3) Where a complaint has been reviewed by the Complaints, Appeals and Review Panel, the Commission shall notify all bidders of complaints received and the decision on the complaint.

**Regulation 79 - 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 inform 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 Proceeding Act

## **PART IX – GENERAL PROVISIONS**

### **Regulation 80 - 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.

In its regular meeting held on December 1, 2009, the Commissioners approved Regulation No. 003 and Manual of the Public Procurement and Concessions Act as Regulation No. 003. Those present at the meeting were as follows:

- |                                 |                                |
|---------------------------------|--------------------------------|
| 1. Hon. Esther W. Paegar        | Acting Chairperson             |
| 2. Amb. Timothy E. Thomas       | Commissioner                   |
| 3. Hon. Jenkins G.W. Wongbe     | Commissioner                   |
| 4. Hon. Clarence Momolu, Sr.    | Commissioner                   |
| 5. Hon. Charles E. Collins, Sr. | Commissioner                   |
| 6. Mrs. Peggy Varfley Meres     | Executive Director & Secretary |

**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 1<sup>ST</sup> DAY OF DECEMBER A.D, 2009 BY  
AUTHORITY OF THE PUBLIC PROCUREMENT AND CONCESSIONS  
COMMISSION.**

**SIGNED BY:** \_\_\_\_\_

**Esther W. Paegar  
Acting Chairperson  
PUBLIC PROCUREMENT & CONCESSIONS COMMISSION**