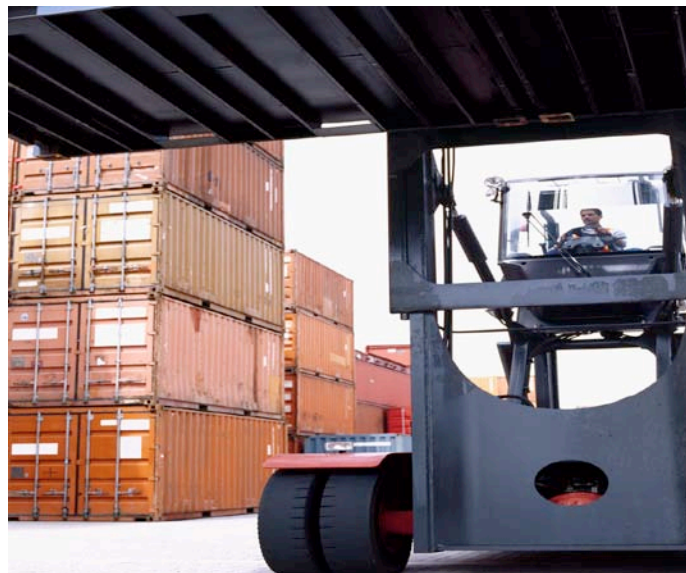




GOVERNMENT OF THE REPUBLIC OF LIBERIA
PUBLIC PROCUREMENT AND CONCESSIONS COMMISSION

PUBLIC PROCUREMENT AND CONCESSIONS ACT, 2005



IMPLEMENTATION MANUAL

APRIL, 2009

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ABBREVIATIONS AND ACRONYMS

BOQ	Bill of Quantities
CFR	Cost and Freight
CIF	Carriage Insurance and Freight
CIP	Carriage and Insurance Paid
CPT	Carriage Paid to
EOI	Expression of Interest
EXW	Ex-Works
FBS	Fixed Budget Selection
FOB	Free on Board
GCC	General Conditions of Contract
ISO	International Standards Organization
ITB	Instructions to Bidders
LC or L/C	Letter of Credit
LCS	Least Cost Selection
LOI	Letter of Invitation
MOF	Ministry of Finance
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
PIU	Project Implementation Unit
PPCC	Public Procurement and Concessions Commission
RFP	Request for Proposals
RFQ	Request for Quotations
STD	Standard Tender Document
SCC	Special Conditions of Contract
SPF	Standard Procurement Form
TOR	Terms of Reference

1.0 INTRODUCTION

1.1 Background

The Public Procurement and Concessions Commission Act, 2005 was enacted to regulate all forms of Public Procurement and Concessions, provides for institutional structures for public procurement and concessions, and stipulates methods and procedures for public procurement and concessions. A set of Regulations have been provided to further detail out the object of the Act

This manual has been developed to provide further guidance to Procuring and Concession Entities to facilitate compliance with the object of the public procurement and concessions Act, 2005. It provides a practical guide to the processes and procedures to be followed in carrying out procurement and granting concessions in accordance with the Act. The Manual is structured as follows:

- i. Background
- ii. Use of Manual
- iii. Procurement and Concessions Commission (Part II of the ACT)
- iv. Entities (Part III of the ACT)
- v. General Provisions on Procurement Proceedings (Part IV of the ACT)
- vi. Methods of Procurement (Part V of the ACT)
- vii. The Procurement Process – Step by Step
 - a. Goods Procurement
 - b. Works Procurement
 - c. Consultancy Services
 - d. Checklist for Compliance with Requirements
- viii. The Concession Process – Step by Step
 - a. Identification and Justification
 - b. Certification and Feasibility
 - c. Procurement Planning
 - d. Bidding documents
 - e. Procurement Structures
 - f. Bidding Process
 - g. Post contract management
 - h. Unsolicited Proposals
- ix. Complaints and Review Process (Part VIII of the ACT)
- x. General Provisions (Part IX of the ACT)

1.2 Use of the Manual

This Manual applies to public procurement and concession operations in Liberia, as defined in section 1 and section 73 of the Act. It is to be read in conjunction with

 The Public Procurement and Concessions Act, 2005,

 The Procurement and Concessions Regulations issued in 2009.

The provisions and procedures contained in the manual should enable procurement and concession entities achieve the requisite efficiency, transparency, uniformity of documents and decisions, and value for money in procurement as well as the granting of concessions.

2.0 PART II – PROCUREMENT AND CONCESSIONS COMMISSION

2.1 Meetings of the Commission and Election of Vice Chairperson (section 8 of the Act)

The Commission shall, as far as practicable, prepare an annual schedule of monthly meetings, taking into account (a) the work plan of the secretariat (b) upcoming national and international functions/commitments, (c) statutory holidays etc. Members of the commission shall be given notice accordingly. The schedule may be reviewed and updated at each meeting. The agenda for each meeting shall be circulated to all members at least 3 days prior to the meeting. Each meeting shall be conducted in the following order:

- ☞ Confirmation of quorum.
- ☞ Meeting is adjourned if no quorum is formed.
- ☞ In case of adjournment, a new date should be agreed and confirmed in the minutes of the adjourned meeting.
- ☞ Confirmation of minutes of previous meeting by a member moving for adoption of the minutes and another duly seconding for its adoption
- ☞ Announcement of Agenda for the day
- ☞ Invitation to members to declare direct or indirect conflict of interest in any item on the agenda. Members who declare direct or indirect conflict of interest should not be allowed to contribute to discussions, and will not participate in the final decision on the specific matter (see Section 2.3 of Manual).
- ☞ Deliberations on matters listed on agenda.
- ☞ Closing

2.1.1 Preparation of the Minutes

Minutes of meetings should be prepared by the Executive Director and distributed within seven (7) working days, and shall contain

- ☞ Issues discussed, actions agreed and person responsible for taking the action agreed
- ☞ Date for subsequent meeting, with a tentative agenda

2.1.2 Action List

The Executive Director may also circulate a list of actions, showing persons responsible, in a separate circular to facilitate action on decisions made.

2.2 Complaints, Appeals and Review Panel (Section 10 of the Act)

The following steps shall be followed in constituting the panel

- ☞ Eligibility criteria established by the Act
- ☞ A short list of eligible members, ranked in order of preference, shall be proposed by a 3 member subcommittee of the Commission through Invitations for expression of Interest or Recommendations from members of Senate, Executive or the Commission
- ☞ The Commission shall review the subcommittee's recommendation and approve of a final list of the 7 member Panel.

Notices issued by the Commission will be in the following format

PUBLIC PROCUREMENT AND CONCESSIONS COMMISSION
COMPLAINTS AND APPEALS REVIEW PANEL
DATED.....

PROCUREMENT OF (OR CONCESSION FOR)
REQUEST FOR INFORMATION

In exercise of the powers conferred on it under section 11(1) of the Act, the Complaints and Appeals Panel hereby requests you to submit the following information to it

1.
2.
3.

The information is required to enable the Panel adjudicate a complaint filed by Messrs..... in respect of

2.3 Disclosure of Interest (section 13 of the Act)

Every meeting of the Commission will include an item on the agenda requiring members to declare any direct or indirect interest that they may have in any of the items on the agenda as follows:

- ☞ “Invitation to members to declare direct or indirect conflict of interest in any item on the agenda.”

Members who declare direct or indirect conflict of interest shall not be allowed to contribute to discussions on the matter, and shall not participate in the final decision making on the specific matter.

2.4 Accounts and Audit (section 18 of the Act)

The books and Accounts of the Commission shall be audited annually by the Auditor-General or by an Auditor appointed or authorized by the Auditor-General. .

3.0 PART III – ENTITIES

3.1 *Use of Private Sector Practices by Entities (section 24 of the Act)*

Private sector Practices involve 4 key steps, viz

- Identification of Preliminary list of potential suppliers
- Collecting information for assessment of supplier's ability and reliability
- Refine and narrow down the list for directing enquiry
- Evaluate performance

The search or source identification process begins with development of a list of potential suppliers. The list is generated through basic market research like checking:

- Vendor representative;
- Introductory letters;
- Information data bases, including the internet;
- Trade journals or local directories
- Catalogues;
- Exhibitions;
- Chamber of Commerce
- Trade and industrial bodies and association
- Professional bodies
- Local shops and factories
- Commercial Banks
- Telephone ‘‘Yellow Pages’’
- Government ministries responsible for commercial affairs
- Embassies
- Print and Electronic media
- Referral from organization

The Next Step is to develop a profile of suppliers from the list of potential suppliers through

- The **identification** of all potential sources, which will seem to be in a position to supply the required goods or services.
- **Survey of Potential suppliers:** This consist of developing a preliminary supplier profile or list of all potential suppliers, through (i) **Internal Records Survey** or (ii) **Intention surveys:** Suppliers are invited through advertisement to register.

The final step is the Sourcing Decision. The traditional approach to source decision making involves the organization

- establishing which suppliers made the product required (*often by referring to a buyer's guide or industrial directory*)
- Selecting a short list of those available (*Three normally*)
- Sending an enquiry to each of those three setting out the requirements;
- Selecting the best supplier from those who quoted by comparing the offers and
- Placing the purchase order specifying volume, schedule, price and quality required.
- Augment this procedure by visiting suppliers.

3.2 Functions of Procurement Committee (section 27 of the Act)

The key functions, frequency of performance of the functions and detailed activities required to achieve the stated functions are summarized below:

FUNCTION	FREQUENCY	DETAILED ACTIVITIES
Review of Procurement Plans	Quarterly	<input type="checkbox"/> Confirm availability of budget for each procurement package, and/or review scope to reflect available budget <input type="checkbox"/> Update TORs/Specifications/Tender Documents as necessary <input type="checkbox"/> Update processing time for each procurement package
Supervision of Procurement Activities	Monthly	<input type="checkbox"/> Constitute evaluation panel for bids scheduled for submission during the month <input type="checkbox"/> Review evaluation reports prepared by evaluation panels during the past month, and make recommendation for contract award <input type="checkbox"/> Review implementation progress reports submitted by head of procurement unit for contracts being executed by contractors/suppliers/consultants. <input type="checkbox"/> Carry out physical inspection of ongoing contracts as necessary, to ascertain status of
Reporting	Quarterly	<input type="checkbox"/> Review and approve quarterly procurement reports prepared by head of procurement unit, and submit copies to the Commission.

3.3 Meetings of Procurement Committees (section 28 of the Act)

Meetings of Procurement Committees shall be conducted in the following order

- ☞ Confirmation of quorum. Meeting is adjourned if no quorum is formed. In case of adjournment, a new date should be agreed and confirmed in the minutes of the adjourned meeting.
- ☞ Confirmation of minutes of previous meeting
- ☞ Announcement of Agenda for the day (review of procurement plans, progress of procurement activities, review of progress reports)
- ☞ Invitation to members to declare direct or indirect conflict of interest in any item on the agenda. Members who declare direct or indirect conflict of interest should not be allowed to contribute to discussions, and will not participate in the final decision on the specific matter.
- ☞ Deliberations on matters listed on agenda.
- ☞ Closing

3.4 Bid Evaluation Panel (Section 30 of the Act)

Separate evaluation panels will be established for each procurement or contract package, with a minimum of 3 and maximum 5 members. Each panel shall comprise

- ☞ At least one person with technical knowledge of the subject matter – Terms of Reference/Technical Specifications.
- ☞ At least one person knowledgeable in procurement
- ☞ At least one person from the User department of the Entity

Entities may seek assistance from other public or private entities to constitute the evaluation panel. Members appointed to the Panel may be staff of the Procurement Unit, but no member of the Procurement Committee shall participate in the evaluation of bids.

The Procurement Unit will maintain a list of potential members of the evaluation panel for each procurement package listed in the Annual Procurement Plan, and make specific recommendations to the head of entity for the composition of the panel before bid opening.

The head of entity shall issue an internal memorandum, specifying the persons nominated to constitute each panel.

4.0 PART IV – GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS

4.1 *Qualification of Bidders (section 32 of the Act)*

Bidding documents should specify which of the criteria indicated in the Act will be applied in determining the qualification of bidders, and clearly define the minimum requirements. Where applicable, the bid documents should specify:

- a) Number of key staff required, minimum academic qualification for each staff, minimum length of experience of each staff
- b) Types of basic equipment required, and minimum number for each equipment
- c) Number of similar assignments executed in the past, including scope and financial value of each assignment
- d) Specific types of spare parts, and minimum quantities required within a specified period
- e) Evidence of Company registration, Tax Clearance Certificate and payment of Social Security with period of validity clearly specified.
- f) Annual turnover in specified number of years, supported by audited accounts

4.2 *Description of Goods, Works and Services (section 34 of the Act)*

The Act stipulates that any specifications, plans, drawings, designs and requirements or descriptions of goods, works or services shall be based on relevant objective technical and quality characteristics, and performance of the goods, works or services to be procured, but there shall be no reference to a particular brand, patent, design, type, specific origin or producer unless there is no other sufficiently intelligible way of describing the characteristics of the goods, works or services to be procured and provided that words such as “or equivalent” are included.

Description of requirements may include a combination of

- ☞ Technical requirements
- ☞ Functional requirements and/or
- ☞ Performance requirements

The description should include a statement that “equipment offered should be from the manufacturers own standard range of production in current supply and conforming as near as possible to the following minimum specifications...”

The following questionnaire may serve as a guide in the description of goods

1. Standard Basic Data, e.g.
 - a. Overall length, width, height
 - b. Weight
 - c.
2. Engine or Power Systems, e.g.
 - a. Number of cylinders
 - b. Cooling system
 - c. Fuel system
3. Other Accessories
 - a. Safety locks
 - b. Fuel tank capacity
 - c.
4. Performance

- a. Fuel consumption
- b. Operating cost
- c. Maintenance requirements
- d. Equipment to be a current standard model in production, and successfully operated for a specified period (say 1year)

The Terms of Reference for consultancy services should provide for a background to the assignment, objectives of the assignment, scope of the assignment, and reporting requirements.

PURPOSE OF TERMS OF REFERENCE	BASIC CONTENT			
	BACKGROUND (WHY THE ASSIGNMENT)	OBJECTIVES (WHAT IS THE PURPOSE)	SCOPE (HOW TO ACHIEVE OBJECTIVES)	REPORTING, CLIENT CONTRIBUTION, COST ESTIMATE
<input type="checkbox"/> Intended to assist consultants submit technical and financial proposals or carry out an assignment <input type="checkbox"/> This is best achieved by indicating at least the background, objectives, and scope of services	For whom is assignment required?	Expected results at the end of the assignment, i.e. the feasibility of a project or a development plan or policy recommendation of structural design	Brief listing of tasks to be performed.	Reporting requirements, time schedules for reporting, duration of assignment
	How does the assignment fit into the sector?		Scheduling of tasks and role of client	Allow time for review of reports by client
	Where is the assignment located?		Details of tasks (not methodologies)	Provide initial cost estimate based on similar assignment in the past, including reimbursable (report printing, accommodation, equipment, communication, taxes, contingencies etc)
	Brief project history		Phasing of assignment where necessary	
	General type of activity to be carried out		Level of detail required (design standards, accuracy, units of measurement)	
	Source of funding		Projections (ten year, project cycle etc)	
			Preferred methodology	
Alternative proposals				
	Reporting requirements			

4.3 Public Notice of Contract Awards (section 37 of the Act)

Information on contracts awarded shall include, at the minimum, the following information:

AWARDING AGENCY
DESCRIPTION OF BID REQUIREMENTS
BID NUMBER
NAME OF SUCCESSFUL BIDDER
ADDRESS OF SUCCESSFUL BIDDER
CONTRACT AMOUNT
CONTRACT CURRENCY
CONTRACT SIGNATURE DATE
CONTRACT COMPLETION DATE

4.4 Procurement Planning (section 40 of the Act)

The objective of procurement planning is to set out the framework within which procurement will be undertaken. Like all plans, it is a dynamic process rather than a static one, and should be reviewed periodically.

With the exception of salary payments, the specific tasks involved in the implementation of the budgeted activities require the procurement of goods, works, and/or services. The plan serves as a tool for monitoring funds utilization and overall implementation performance, whether for a specific investment project, or for a more programmatic type of operation.

The procurement plan indicates

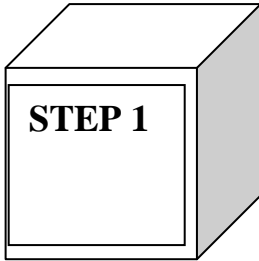
- ☞ Contract packages
- ☞ Estimated cost for each package
- ☞ The procurement method, and
- ☞ The processing steps and times

In view of the multidisciplinary nature of the procurement plan, it should not be left to any single department or officer. The plan should be integrated with the budgeting process, and prepared by a committee comprising

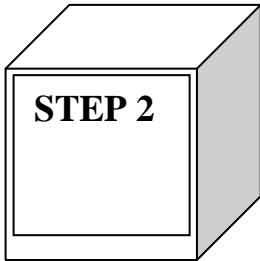
- ☞ The head of entity, or an authorized representative
- ☞ The director of the procurement unit
- ☞ The head of budget or finance
- ☞ The head of planning department

The plan preparation process may be carried out through a focused, off-site committee meeting spanning between 1-3 days, depending on the number of procurement packages involved.

Seven (7) Basic Steps are involved in plan preparation, viz:

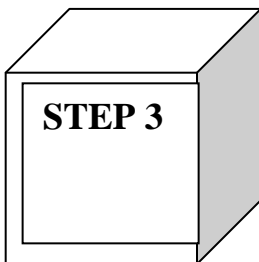


Identify Budget Items requiring application of procurement processes (Remember: with the exception of salary payments, the Specific Tasks involved in the implementation of the budgeted activities require the procurement of goods, works, or services.)

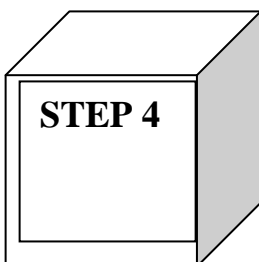


Separate Items into procurement types, viz

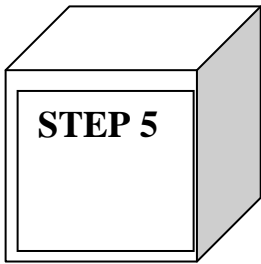
- ☞ CONSULTING SERVICES (Service of intellectual or advisory nature provided by individuals or firms using their professional skills to study, design, advise, conduct training or transfer knowledge)
- ☞ WORKS (Structures constructed through a series of activities including demolition, site preparation, excavation, filling, molding of materials in different forms, erection and installation of equipment etc)
- ☞ GOODS (Objects of every kind and description including raw materials, finished products and equipment. Examples include vehicles, computers, cooking oil, furniture, paper, school uniforms)



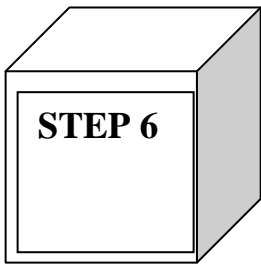
Decide contract Packages: What to include in a single package (Like Items, large, small values, slice and package)



Decide Procurement Method: How to Procure (International Competitive Bidding, National competitive bidding, Price Quotations, other)

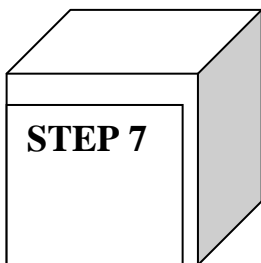


Decide Authority for contract Award: Who to approve award decision (EH, Procurement Committee, Other)



Determine Lead Time: When each step is to be accomplished

- ☞ DOCUMENT PREPARATION AND APPROVALS
- ☞ TAKE ACCOUNT OF TECHNICAL, STAFFING, LEGAL AND OTHER CONSTRAINTS
- ☞ ADMINISTRATIVE
- ☞ MANUFACTURE
- ☞ DELIVERY
- ☞ CONSTRUCTION PERIOD



Monitor and update plan: At least quarterly to take account of Budget variances or delays, and produce a status report.

The procurement plan may be summarized as shown below.

Summary Procurement Plan

	What to Procure (STEP 3)		How to Procure (STEP 4)	Who to approve Decision (STEP 5)	When to Procure (Estimated Lead Times)				
	a	b	c	d	STEP 6				
Ref No	Description	Estimated cost	Procurement Method	Awarding Authority	Tender invitation date	Tender Closing date	Contract Signing Date	Contract Start Date	Contract Finish Date

A full procurement plan may be developed by expanding step 6 to include other milestones like preparation of tender documents, completion of evaluation report etc. .

4.5 Price Adjustment (section 42 of the Act)

The objectives of providing for Price Adjustment in contracts are to

- ☞ Reduce risk for bidders
- ☞ Protect employer from speculative bidding
- ☞ Provide contractor reasonable compensation for price fluctuation

It is appropriate for

- ☞ large plant and equipment contracts
- ☞ most civil works
- ☞ contracts generally over 18 months, or shorter if inflation is high

For goods/equipment contracts, as well as relatively small works contracts, prices may be fixed, and not subject to adjustment

Prices may be adjusted using one of two options

- ☞ Formula taking into account cost of inputs (Labour, Materials, Equipment), or
- ☞ Documentary proof/invoice method, which captures directly quantifiable inputs (labour and materials) only.

Option 1(Formula method) is preferred, and comes in two forms

- ☞ BASIC: $P_c = P_o \times I_c/I_o$
- ☞ POLYNOMIAL: $P_c = P_o (a \cdot L_c/L_o + b \cdot M_c/M_o + c \cdot E_c/E_o)$: Requires Collection / Publication of Indices

The main concerns to be addressed under this option are:

- ☞ HOW MANY INDICES?
 - Works: 6 to 12
 - Buildings: 20 +
 - Proxies / exchange rate correction
- ☞ HOW MANY FORMULAE?
 - Single / small works / inputs indexed in payment currency
 - Multiple/each class work / time phasing / currency

Option 2 (Documentary Proof method)

- ☞ Captures Labour & Materials only
- ☞ Prices adjusted on submission of actual invoice

☞ Simple to apply, but subject to abuse.

4.6 *Records and Reports of Procurement (section 43 of the Act)*

The following information should be easily accessible in procurement files

- 1 Annual budget
- 2 Procurement Plan- original and updated versions
- 3 Specifications/TORs
- 4 Bidding documents/ Request for Proposals
- 5 Copies of actual advertisements published
- 6 Minutes of bid opening
- 7 Memo constituting evaluation panel
- 8 Evaluation report
- 9 Letter/memo requesting approval of Head of Entity/Procurement Committee
- 10 Minutes of meeting of Procurement Committee
- 11 Letter/Memo approving recommendation for award
- 12 Letter of acceptance and other correspondence with selected bidder
- 13 Signed contract
- 14 Correspondence relating to contract execution
- 15 Correspondence relating to complaints

Each Entity may determine the most appropriate means of maintaining records pertaining to the above. Items 3-15 may be maintained jointly for all procurement packages, or maintained separately for each procurement package.

4.7 *Margin of Preference (section 45 of the Act)*

A margin of preference shall be applied for goods, works, and services by adjusting the evaluated prices of non Liberian bidders upward, so as to make the evaluated prices of Liberian bidders more attractive. The applicable percentage of margin of preference shall be provided in regulations issued by the PPCC. The procedure for application of margin of preference is as follows:

1) Goods Contract

- a. During bid evaluation, check that provision was made in the bidding document for the application of a margin of preference
- b. Check that bids have been submitted by a mix of Liberian and non Liberian bidders
- c. Determine Ex works price of each non Liberian bidder
- d. Determine contribution of raw materials, labor and plant in the Ex works price
- e. Determine whether local input of raw materials, labor and plant exceeds the applicable percentage of Ex works price. If so, proceed to adjust evaluated price of each non Liberian bidder upwards by the applicable percentage..
- f. Contract will be awarded to a non Liberian bidder only if the non Liberian bidder's evaluated bid is the lowest even after application of the margin of preference.

(2) Works Contract

- a. During bid evaluation, check that provision was made in the bidding document for the application of a margin of preference
- b. Check that bids have been submitted by a mix of Liberian and non Liberian owned companies. If so, proceed to adjust evaluated price of each non Liberian bidder upwards by the applicable percentage.
- c. Contract will be awarded to a non Liberian bidder only if the non Liberian bidder's evaluated bid is the lowest even after application of the margin of preference.

(3) Consultancy contract

- a. During bid evaluation, check that provision was made in the Request for Proposals for the application of a margin of preference
- b. Check that proposals have been submitted by a mix of Liberian and non Liberian firms
- c. For each non Liberian firm proceed to adjust evaluated price of upwards by the applicable percentage.
- d. Complete evaluation by combining quality and cost scores in accordance with the Quality and Cost Based selection criteria.
- e. Contract will be awarded to a non Liberian bidder only if the non Liberian bidder's evaluated score is the highest even after application of the margin of preference.

5.0 PART V – METHODS OF PROCUREMENT

Procurement Methods differ for Goods, Works and Consultancy Services. Specific methods approved under the Act are

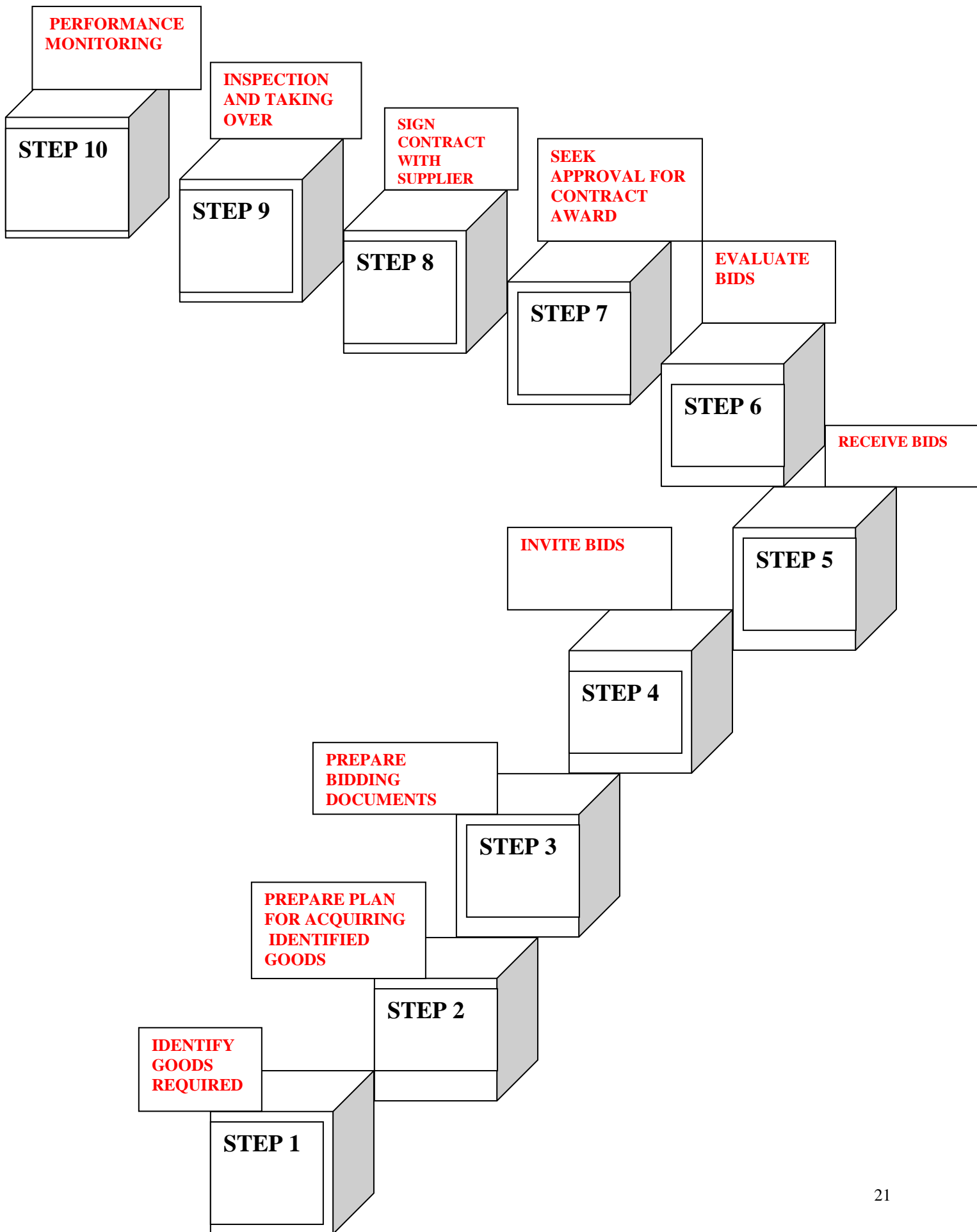
GOODS	WORKS	CONSULTANCY SERVICES
International Competitive Bidding (ICB)	International Competitive Bidding	Quality Based Selection
National Competitive Bidding (NCB)	National Competitive Bidding	Quality and Cost Based Selection
Restricted Bidding	Restricted Bidding	Fixed Budget Selection
Request for Quotations	Request for Quotations	Least Cost Selection
Sole Source	Sole Source	Sole Source Selection
	Force Account	

The Procurement Entity shall decide the appropriate method for each procurement package, indicate the selected method in the Procurement Plan, and apply it in accordance with the procedures outlined in the Act and the Regulations.

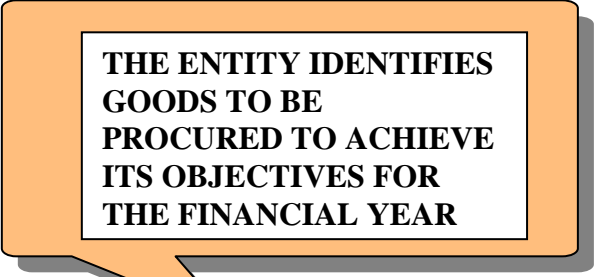
6.0 THE PROCUREMENT PROCESS – STEP BY STEP

The following sections provide guidelines for completing procurement activities for goods, works and consultancy services, in accordance with the procurement plan.

6.1 GOODS PROCUREMENT STEPS



6.1.1 STEP 1: IDENTIFY GOODS REQUIRED



**THE ENTITY IDENTIFIES
GOODS TO BE
PROCURED TO ACHIEVE
ITS OBJECTIVES FOR
THE FINANCIAL YEAR**

Goods required may be identified in one of two ways, either (a) directly or (b) indirectly.

Direct identification occurs when an entity determines that particular “goods” are needed to enable it carry out its functions adequately. In this case the entity shall incorporate the identified need in its annual budget, under the appropriate activity/expected output, for approval.

Indirect identification occurs when an entity decides that a particular activity in its annual budget requires the acquisition of particular goods. In this case, the entity shall identify budget items requiring the procurement of goods (Remember: with the exception of salary payments, the Specific Tasks involved in the implementation of the budgeted activities require the procurement of goods, works, or services.)

Whether goods are identified directly or indirectly, the entity should not proceed to plan for the acquisition of the identified goods unless a budget provision has been made for it, except in an emergency, in which case a special budget allocation will be required.

6.1.2 STEP 2: PREPARE A PLAN FOR ACQUISITION OF IDENTIFIED GOODS

THE PLAN WILL INCLUDE SPECIFICATION, PACKAGING, METHOD AND TIME FRAME FOR ACQUIRING GOODS

Specifications

- ☞ Define requirements
- ☞ Foster competition among eligible qualified bidders by
 - Grouping together lots which are technically similar and can be offered by the same bidders
 - Allowing bidders to offer one or more lots to attract bidders who cannot offer for all lots
- ☞ State clearly and comprehensively
 - Performance requirements
 - Design requirements
 - Standards
 - Environmental constraint
 - Tests and methods to be used to assess conformity
 - Technical factors to be used for evaluation
- ☞ Choose between any of the following types of specifications
 - Technical
 - Functional
 - Performance

An example of specifications for selected goods is in appendix 4

Plan the Procurement Process

- ☞ **How** to Procure (International Competitive Bidding, National competitive bidding, Price Quotations, other)
- ☞ **Who** to approve award decision (EH, Procurement Committee, Other)
- ☞ **When** each step is to be accomplished, taking into account the time required for
 - DOCUMENT PREPARATION AND APPROVALS
 - TECHNICAL, STAFFING, LEGAL AND OTHER CONSTRAINTS
 - ADMINISTRATIVE
 - MANUFACTURE
 - TRANSPORT AND DELIVERY

6.1.3 STEP 3: PREPARE BID DOCUMENTS

BID DOCUMENTS SHALL BE PREPARED USING THE APPROPRIATE STANDARD BIDDING DOCUMENTS PROVIDED UNDER THE ACT

The purpose of bid documents is to

- INSTRUCT BIDDERS ON PROCEDURE FOR PREPARATION AND SUBMISSION OF BIDS
- DESCRIBE GOODS TO BE PROCURED, INCLUDING TECHNICAL SPECIFICATIONS
- INFORM THE BIDDERS OF CRITERIA TO BE USED IN EVALUATION OF BIDS AND
- DEFINE CONDITIONS OF CONTRACT

The following steps shall be followed in preparing the bidding document:

- ☞ Select the appropriate Standard bidding document provided for under the Act. Three options have been provided, namely (a) SBD for ICB (b) SBD for NCB and (c) SBD for Price Quotations.
- ☞ Make the appropriate changes to sections of the document that require changes. The sections that require changes are
 - a) The Invitation to Bid,
 - b) The Bid Data Sheet.
 - c) Technical Specification
 - d) The Schedule of Requirements.
 - e) The Special Conditions of Contract) Sample Forms (to be completed by the Supplier)
- ☞ No changes should be made in the Instruction to bidders and General Conditions of Contract.
- ☞ Bidding documents should be finalized before the Invitation to Bid are issued.

6.1.4 STEP 4: INVITE BIDS

BIDDERS ARE TO BE NOTIFIED OF THE OPPORTUNITY TO BID IN ACCORDANCE WITH THE “INVITATION TO BID” SECTION OF THE BIDDING DOCUMENT.

The Invitation to Bid is a key factor in assuring that the objectives of the law are achieved, viz:

- Maximizing economy and efficiency in procurement, and obtaining best value for public expenditures
- Promoting competition and fostering participation in procurement proceedings
- Providing equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders.

The following steps shall be followed in ensuring that prospective bidders are adequately notified

For Open Competitive Bidding (ICB or NCB):

- Decide on the mode of advertisement to be followed, consistent with the Act and Regulations. The Act requires invitation for bids to be published in the Procurement bulletin, Gazette, national print media of wide circulation, electronic media, and, when feasible, in selected international media.
- Ensure that budget provision has been made for the payment of cost of advertisement.
- Book space for the advertisement in advance, taking into account the time allowed bidders for preparation of bids. The Regulations stipulate a minimum of 6 weeks for ICB, 4 weeks for NCB and 1 week for Quotations.
- Establish the closing date for submission of bids, and transmit completed Invitation for Bid form to the selected media for publication.
- Receive applications for bid documents with payment as required, Issue payment receipts and bid documents to applicants.
- Provide a tender box in secured location for receiving bids. Where samples of goods are to be submitted with the bid, confirm in writing that samples have been delivered or inspected.

For Restricted Bidding or Price Quotations

- For Restricted bidding and Price Quotations, bid documents are made available only to the firms selected to participate in the bidding process. There is no advertisement in this case, however all the other requirements for submission of bids will apply..

6.1.5 STEP 5: RECEIVE BIDS

BIDS SHALL BE RECEIVED THROUGH A TENDER BOX LOCATED IN A SECURED PLACE.

The procedure for receipt of bids shall be clearly specified in the bid data sheet section of the bidding documents, indicating

- Place of submission
- Closing date
- Closing time
- Sealing of Envelopes and
- Whether or not electronic bids are acceptable.

The procuring Entity shall maintain a record of bids submitted, indicating

- Name of bidder
- Date of submission
- Time of submission
- Signature of person submitting the bid

Only bids from bidders who purchased bidding documents from the procuring entity shall be accepted.

Late bids shall be received and recorded as such, but shall be returned unopened after the evaluation process.

6.1.6 STEP 6: EVALUATE BIDS

**BID EVALUATION TO BE
CARRIED OUT IN
ACCORDANCE WITH
CRITERIA INDICATED IN
BIDDING DOCUMENTS**

The purpose of bid evaluation is to secure goods at the most **economical** cost. Price is only one factor. Other factors that may be specified in the bidding documents and applied in evaluation include

- Time of delivery/completion
- Terms of payment
- Terms of guarantee
- Technical merits, capacity, productivity
- Operating cost
- Maintenance cost
- Efficiency
- Resale value

The following steps shall be followed in bid opening

- Identify appropriate location and space for bid opening
- Tender Box to be opened within minutes of tender closing (not hours or days!!!)
- Format for recording results prepared in advance – indicating information requested in the instructions
- Chairperson opening remarks
- One or two other persons to assist with process
- Announce Bidders (and JVs) one at a time, in following order
 - Withdrawals
 - Modifications
 - Prices of the other bidders, including alternative bids if requested and discounts offered, if any
- Clarification permissible during opening without change of substance of tender
- Minutes to be recorded in standard format

The following steps shall be followed in bid evaluation for goods

- ☞ Constitute Evaluation Panel.
- ☞ Compare Original bid with copies to ensure conformity
- ☞ Keep originals in a secure place and use the copies to carry out the evaluation
- ☞ Examine each bid to confirm that it is RESPONSIVE, i.e. meets legal and technical requirements to be considered for detailed evaluation. Legal and technical requirements include ensuring
 - Eligibility of the bidder,
 - signature of the bid by an authorised signatory
 - availability of joint ventureship agreement where the bid is submitted by a joint venture
 - adequacy of bid security
 - bid covers all items indicated in the bidding documents
 - changes made in the bid properly initialled
 - conformity with commercial and technical requirements- for example stipulating price adjustment when fixed price bids were called for , phasing of contract, subcontracting, provisions on taxes and duties, offering different design or product that does not offer substantial equivalence in critical performance requirements.
- ☞ Conduct detailed evaluation on RESPONSIVE bids as follows:
 - Correct each bid for computational errors. In correcting bids, words prevail over figures, whilst Unit Prices prevail in Multiplication and addition, except when error is obvious (eg decimal placement)
 - Convert corrected bids to a common currency on a specified date
 - Compare bids in single currency, after excluding provisional sums and contingency
 - Add monetary cost of quantifiable variations, if so provided in the bidding documents
 - Add value of benefits forgone for longer times of completion, if so provided in the bidding document
 - For ICB, adjust for domestic preference if so provided in the bidding document. Separate domestic bidders from foreign bidders and adjust foreign bid prices upward by the amount of domestic preference percentage.
- ☞ Prepare report with recommendations for award using standard evaluation report format.

6.1.7 STEP 7: SEEK APPROVAL FOR CONTRACT AWARD



**SUBMIT EVALUATION
REPORT TO APPROVING
AUTHORITY**

To ensure Transparency and Economy in the award of contracts, the Act requires that the recommendations for award be reviewed by specified authorities at specified thresholds.

Regulations may be made from time to time to review thresholds originally set for

Head of Procurement Entity and
Procurement Committee

The following procedure shall be followed in seeking approval for contract award:

- ☞ Evaluation Report completed by evaluation committee, with recommendation for award
- ☞ Report submitted to Head of Entity for consideration.
- ☞ Review of Report by Head of Entity, with Assistance of Procurement Unit
- ☞ Check to confirm thresholds indicated in most recent regulation.
- ☞ Acceptance or review of recommendations (with justification), by head of entity If contract is within Head of Entity's threshold, or
- ☞ Submission of evaluation report to appropriate authority, with head of entity's comments on the report if above Head of Entity's threshold
- ☞ The review authority may reject any recommendation that is not consistent with the criteria listed in the bid documents, and request the Head of Entity to review the report accordingly.

6.1.8 STEP 8: SIGN CONTRACT

**CONTRACT TO BE SIGNED
BY AUTHORISED
REPRESENTATIVES OF
BOTH PARTIES TO THE
CONTRACT**

Following approval of the evaluation report by the appropriate authority, the procurement entity shall proceed to sign a contract as follows:

- ☞ Inform the firm adjudged to have submitted the lowest evaluated responsive tender that his offer has been accepted, request him to submit Performance Bond where applicable and to request him to prepare for contract finalization and signature.
- ☞ Until a formal contract is signed, the successful offer together with the notification of award will constitute a binding contract
- ☞ Prepare the final contract document, using the applicable contract form indicated in the tender document. The final contract document should provide for the following sections:
 - CONTRACT AGREEMENT
 - LETTER OF ACCEPTANCE
 - BID AND APPENDICES
 - SPECIAL/PARTICULAR CONDITIONS
 - GENERAL CONDITIONS OF CONTRACT
 - SPECIFICATIONS
 - DRAWINGS
 - PRICED BILL OF QUANTITIES
 - PERFORMANCE BONDS AND OTHER DOCUMENTS
- ☞ Sign contract with successful bidder
- ☞ Notify all unsuccessful bidders once contract has been signed
- ☞ Return all bid securities to unsuccessful bidders.

The time taken from Receipt of Bids to the signing of contract should be within the period allowed for validity of bids. Where necessary, and before the deadline for bid validity expires, the Procuring Entity may request bidders to extend the validity dates for their bids. Bidders may refuse to extend the validity dates without forfeiting their bid securities.

6.1.9 STEP 9: INSPECTION AND TAKING OVER



**PROCUREMENT ENTITY
INSPECTS GOODS PRIOR
TO TAKING OVER**

Goods delivered by supplier (in accordance of INCOTERMS) shall be inspected and checked for conformity with specifications indicated in the signed contract.

Goods may be checked in any of the following ways:

- DIMENSIONAL CHECKING (OVERALL DIMENSIONS, TOLERANCES, SURFACE ALIGNMENT, ETC).
- PERFORMANCE TESTING (Test At The Supplier's Premises On Test-stands Measured Data, Corrected Data And Calculated Performance Values Compared With Specifications)
- VISUAL EQUIPMENT INSPECTION (Verification Of Components Ready For Packing: Conformity, Parts, Quantity, Appearance, Nameplates, Paint And Technical Characteristics)
- PACKING AND MARKING INSPECTION (Verification Of Equipment Before Packing, Checking Of Packing Material, Fixation, Protection, Handling Signs And Documentation
- SUPERVISION OF LOADING (Verification Of Packing Material, Cleanliness Of Container / Truck / Railcar, Loading Operation, Stowing, Fastening, Protection And Transport Documents)

6.1.10 STEP 10: PERFORMANCE MONITORING



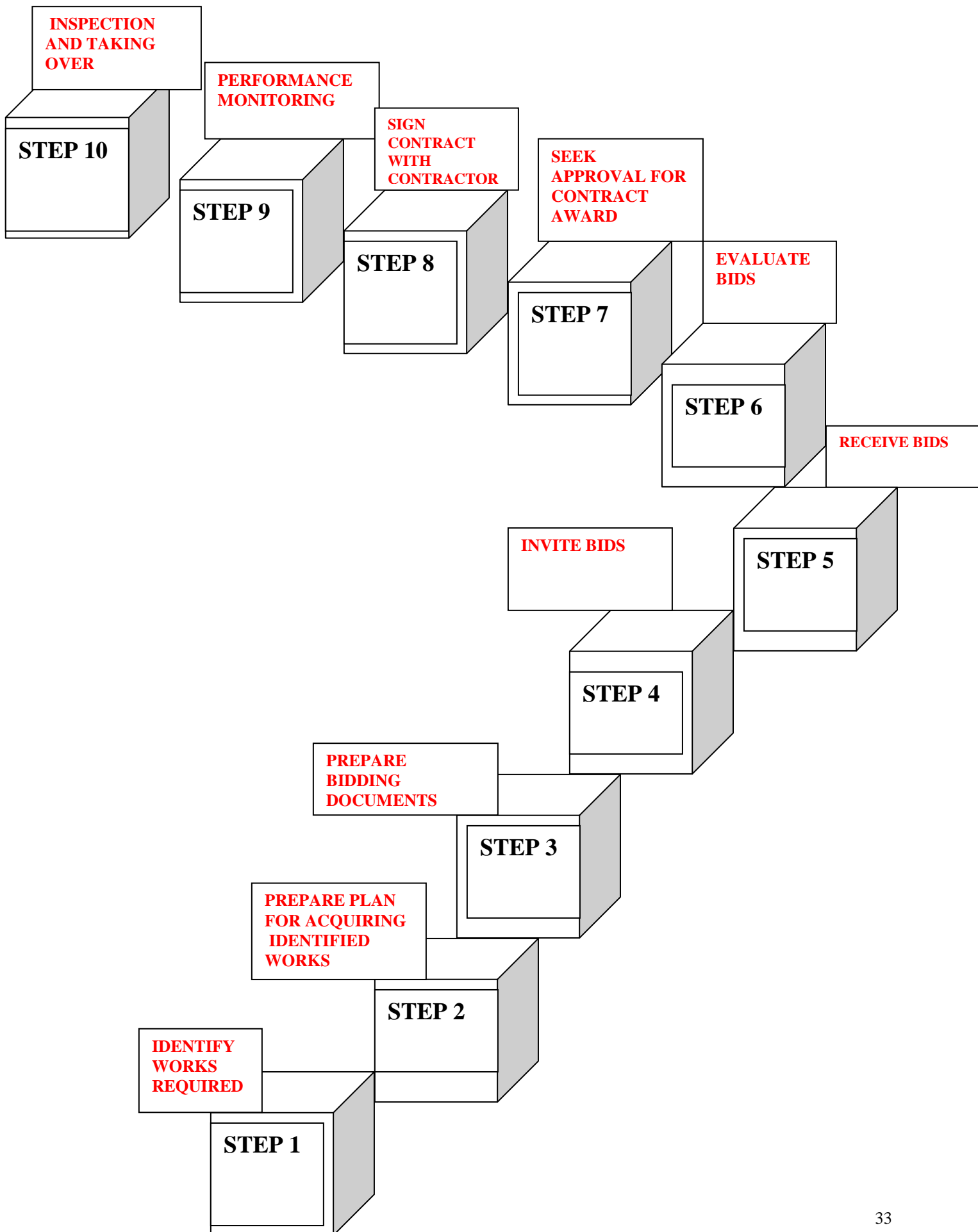
**GOODS RECEIVED TO BE
MONITORED TO ASSURE
PERFORMANCE**

Monitor contract execution to ensure that Contractor/Supplier performs as per Contract. Contract provisions to be applied to ensure that

- Sanctions are applied in case of non-performance
- Payment should be contingent on satisfactory performance

A file shall be established for keeping records of all Warranties, so as to facilitate performance monitoring.

6.2 WORKS PROCUREMENT STEPS



6.2.1 STEP 1: IDENTIFY WORKS REQUIRED

**THE ENTITY IDENTIFIES
WORKS TO BE
PROCURED TO ACHIEVE
ITS OBJECTIVES FOR
THE FINANCIAL YEAR**

“Works” refer to structures that are built or fabricated or constructed through a series of activities including demolition, site preparation, excavation, filling, moulding of materials in different forms, erection and installation of equipment. Examples include roads, buildings, dams, bridges, “Works” are procured by engaging the services of a firm with the requisite skills, tools and resources to deliver the required structure in accordance with agreed specifications.

Works required may be identified in one of two ways, either (a) directly or (b) indirectly.

Direct identification occurs when an entity determines that particular “works” are needed to enable it carry out its functions adequately. In this case the entity shall incorporate the identified need in its annual budget, under the appropriate activity/expected output, for approval.

Indirect identification occurs when an entity decides that a particular activity in its annual budget requires the execution of specific works. In this case, the entity shall identify budget items requiring the procurement of works (Remember: with the exception of salary payments, the Specific Tasks involved in the implementation of the budgeted activities require the procurement of goods, works, or services.)

Whether works are identified directly or indirectly, the entity should not proceed to plan for the procurement of the works unless a budget provision has been made for it, except in an emergency, in which case a special budget allocation will be required.

6.2.2 STEP 2: PREPARE A PLAN FOR ACQUISITION OF IDENTIFIED WORKS

THE PLAN WILL INCLUDE SPECIFICATION, PACKAGING, METHOD AND TIME FRAME FOR ACQUIRING WORKS

Specifications

- ☞ Define requirements – design of the works
- ☞ Foster competition among eligible qualified bidders by
 - Packaging or grouping together works which are technically similar and can be offered by the same bidders
 - Allowing bidders to offer one or more packages or lots to attract bidders who cannot offer for all lots
- ☞ State clearly and comprehensively
 - Performance requirements
 - Design requirements
 - Standards
 - Environmental constraint
 - Technical factors to be used for evaluation
- ☞ Choose between any of the following types of specifications
 - Technical
 - Functional
 - Performance

Plan the Procurement Process

- ☞ **How** to Procure (International Competitive Bidding, National competitive bidding, Price Quotations, other)
- ☞ **Who** to approve award decision (EH, Procurement Committee, Other)
- ☞ **When** each step is to be accomplished, taking into account the time required for
 - DOCUMENT PREPARATION AND APPROVALS
 - TECHNICAL, STAFFING, LEGAL AND OTHER CONSTRAINTS
 - ADMINISTRATIVE
 - CONSTRUCTION PERIOD

6.2.3 STEP 3: PREPARE BID DOCUMENTS

BID DOCUMENTS SHALL BE PREPARED USING THE APPROPRIATE STANDARD BIDDING DOCUMENTS PROVIDED UNDER THE ACT

The purpose of bid documents is to

- INSTRUCT BIDDERS ON PROCEDURE FOR PREPARATION AND SUBMISSION OF BIDS
- DESCRIBE WORKS TO BE PROCURED, INCLUDING TECHNICAL SPECIFICATIONS
- INFORM THE BIDDERS OF CRITERIA TO BE USED IN EVALUATION OF BIDS AND
- DEFINE CONDITIONS OF CONTRACT

The following steps shall be followed in preparing the bidding document:

- ☞ Select the appropriate Standard bidding document provided for under the Act. Three options have been provided, namely (a) SBD for ICB (b) SBD for NCB and (c) SBD for Price Quotations.
- ☞ Make the appropriate changes to sections of the document that require changes. The sections that require changes are
 - a) The Invitation to Bid,
 - b) The Bid Data Sheet.
 - c) Technical Specification
 - d) The Special Conditions of Contract)
 - e) Sample Forms to be completed by bidder
- ☞ No changes should be made in the Instruction to bidders and General Conditions of Contract.
- ☞ Bidding documents should be finalized before the Invitation to Bid is issued.

6.2.4 STEP 4: INVITE BIDS

BIDDERS ARE TO BE NOTIFIED OF THE OPPORTUNITY TO BID IN ACCORDANCE WITH THE “INVITATION TO BID” SECTION OF THE BIDDING DOCUMENT.

The Invitation to Bid process is a key factor in assuring that the objectives of the law are achieved, viz:

- Maximizing economy and efficiency in procurement, and obtaining best value for public expenditures
- Promoting competition and fostering participation in procurement proceedings
- Providing equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders.

A general procurement notice may be used to announce procurement opportunities prior to availability of related procurement documents

Specific procurement notices are used for prequalification or for tenders for contracts when the details of quantities & specifications are known.

The following steps shall be followed in ensuring that prospective bidders are adequately notified

For Open Competitive Bidding (ICB or NCB):

- Decide on the mode of advertisement to be followed, consistent with the Act and Regulations. The Act requires invitation for bids to be published in the Procurement bulletin, Gazette, national print media of wide circulation, electronic media, and, when feasible, in selected international media.
- Ensure that budget provision has been made for the payment of cost of advertisement.
- Book space for the advertisement in advance, taking into account the time allowed bidders for preparation of bids. The Regulations stipulate a minimum of 6 weeks for ICB, 4 weeks for NCB and 1 week for Quotations.
- Establish the closing date for submission of bids, and transmit completed Invitation for Bid form to the selected media for publication.
- Provide a tender box in secured location for receiving bids.
- Issue tender document to bidders who have duly applied for bid documents with payment as required
- Issue payment receipts and bid documents to applicants.

For Restricted Bidding or Price Quotations

- Under these methods, bid documents are made available only to the firms selected to participate in the bidding process. There is no advertisement, however all the other requirements for submission of bids will apply..

6.2.5 STEP 5: RECEIVE BIDS

BIDS SHALL BE RECEIVED THROUGH A TENDER BOX LOCATED IN A SECURED PLACE.

The procedure for receipt of bids shall be clearly specified in the bid data sheet section of the bidding documents, indicating

- Place of submission
- Closing date
- Closing time
- Sealing of Envelopes and
- Whether or not electronic bids are acceptable.

The procuring Entity shall maintain a record of bids submitted, indicating

- Name of bidder
- Date of submission
- Time of submission
- Signature of person submitting the bid

Only bids from bidders who purchased bidding documents from the procuring entity shall be accepted.

Late bids shall be received and recorded as such, but shall be returned unopened after the evaluation process.

6.2.6 STEP 6: BID OPENING AND EVALUATION

**BID EVALUATION TO BE
CARRIED OUT IN
ACCORDANCE WITH
CRITERIA INDICATED IN
BIDDING DOCUMENTS**

The purpose of bid evaluation is to determine the most **economical** offer for the execution of the works. Price is only one factor. Other factors that may be specified in the bidding documents and applied in evaluation include

- Time of completion
- Terms of payment
- Qualification of the bidder (staffing, equipment holding, annual turnover)

Bid Opening

Bid evaluation starts with the Public opening of bids. The following steps shall be followed in bid opening

- Identify appropriate location and space for bid opening
- Appoint one or two other persons to assist with the bid opening process
- Prepare format for recording results in advance – indicating information requested in the instructions
- Tender Box to be opened within minutes of tender closing. Under no circumstance should bids be kept unopened overnight.
- Bid opening process commences with Chairperson's opening/welcome remarks
- Announce Bidders (and JVs) one at a time, in following order
 - Withdrawals
 - Modifications
 - Prices of the other bidders, including alternative bids if requested and discounts offered, if any
- Clarification permissible during opening without change of substance of tender
- Minutes to be recorded in standard format

Bid Evaluation

The following steps shall be followed in bid evaluation for works

- ☞ Constitute Evaluation Panel.
- ☞ Compare Original bid with copies to ensure conformity
- ☞ Keep originals in a secure place and use the copies to carry out the evaluation
- ☞ Examine each bid to confirm that it is **RESPONSIVE**, i.e. meets legal and technical requirements to be considered for detailed evaluation. Legal and technical requirements include ensuring
 - Eligibility of the bidder,
 - signature of the bid by an authorised signatory
 - availability of joint venturership agreement where the bid is submitted by a joint venture
 - adequacy of bid security
 - bid covers all items indicated in the bidding documents
 - changes made in the bid properly initialled
 - conformity with commercial and technical requirements- for example stipulating price adjustment when fixed price bids were called for , phasing of contract, subcontracting, provisions on taxes and duties, offering different design or product that does not offer substantial equivalence in critical performance requirements.
- ☞ For bids determined to be **RESPONSIVE**, conduct detailed evaluation as follows
 - Correct each bid for computational errors. In correcting bids, words prevail over figures, whilst Unit Prices prevail in Multiplication and addition, except when error is obvious (e.g. decimal placement)
 - Convert corrected bids to a common currency on a specified date
 - Compare bids in single currency, after excluding provisional sums and contingency
 - Add monetary cost of quantifiable variations, if so provided in the bidding documents
 - Add value of benefits forgone for longer times of completion, if so provided in the bidding document
 - For ICB, adjust for domestic preference if so provided in the bidding document. Separate domestic bidders from foreign bidders and adjust foreign bid prices upward by the amount of domestic preference percentage.
- ☞ Prepare report with recommendations for award using standard evaluation report format.

SAMPLE BID OPENING RECORDS FOR WORKS

MINISTRY
 TENDER FOR CONSTRUCTION OF
 TENDER OPENING RECORDS

Date

TIME OF OPENING.....

No.	NAME OF TENDERER	TENDER PRICE		DISCOUNT	TENDER SECURITY		TENDER SIGNED	Other requirement	Other requirement
		currency	Amount		SOURCE	AMOUNT			

NAME

SIGNATURE

NAME

SIGNATURE

.....

.....

.....

.....

SAMPLE EVALUATION FORMAT FOR WORKS

EVALUATION CRITERIA		BIDDER					
		AAA (foreign)	BBB(foreign)	CCC (foreign)	DDD (domestic)	EEE (foreign)	FFF (foreign)
		1	2	3	4	5	6
a	BID PRICE AS SUBMITTED						
b	CORRECTED BID PRICE						
c	PRIME COSTS, PROVISIONAL SUMS ETC						
d	CORRECTED BID PRICE LESS PCS, PS, ETC						
e	BENEFITS FOREGONE FOR ADVANCE MOBILIZATION						
f	BENEFITS FOREGONE FOR LONGER TIMES OF COMPLETION						
g	LOADING IN FAVOUR OF DOMESTIC BIDDERS						
h	FINAL EVALUATED BID PRICE						
i	ADD BACK PCS, PS, ETC						
	RANK						

6.2.7 STEP 7: SEEK APPROVAL FOR CONTRACT AWARD

**HEAD OF ENTITY
SUBMITS EVALUATION
REPORT TO APPROVING
AUTHORITY**

To ensure Transparency and Economy in the award of contracts, the Acts requires that the recommendations for award be reviewed by specified authorities within specified thresholds:

Regulations may be made from time to time to review thresholds originally set for :

Head of Procurement Entity and
Procurement Committee

The following procedure shall be followed:

- ☞ Evaluation Report completed by evaluation committee, with recommendation for award
- ☞ Report submitted to Head of Entity for consideration.
- ☞ Review of Report by Head of Entity, with Assistance of Procurement Unit
- ☞ Check to confirm thresholds specified in the most recent regulation.
- ☞ Acceptance or review of recommendations (with justification), by head of entity If contract is within Head of Entity's threshold, or
- ☞ Submission of evaluation report to appropriate authority, with head of entity's comments on the report if above Head of Entity's threshold
- ☞ The review authority may reject any recommendation that is not consistent with the criteria listed in the bid documents, and request the Head of Entity to review the report accordingly.

6.2.8 STEP 8: SIGN CONTRACT

**CONTRACT TO BE SIGNED
BY AUTHORISED
REPRESENTATIVES OF
BOTH PARTIES TO THE
CONTRACT**

Following approval of the evaluation report by the appropriate authority, the procurement entity shall proceed to prepare and sign a contract as follows:

- ☞ Inform the firm adjudged to have submitted the lowest evaluated responsive bid that his offer has been accepted, request him to submit performance bond where applicable and prepare for contract finalization and signature.
- ☞ Until a formal contract is signed, the successful offer together with the notification of award will constitute a binding contract
- ☞ Prepare the final contract document, using the applicable contract form indicated in the tender document. The final contract document should provide for the following sections:
 - CONTRACT AGREEMENT
 - LETTER OF ACCEPTANCE
 - BID AND APPENDICES
 - SPECIAL/PARTICULAR CONDITIONS OF CONTRACT
 - GENERAL CONDITIONS OF CONTRACT
 - SPECIFICATIONS
 - DRAWINGS
 - PRICED BILL OF QUANTITIES
 - PERFORMANCE BONDS AND OTHER DOCUMENTS
- ☞ Sign contract with successful bidder
- ☞ Notify all unsuccessful bidders once contract has been signed
- ☞ Return all bid securities to unsuccessful bidders.

The time taken from Receipt of Bids to the signing of contract should be within the period allowed for validity of bids. Where necessary, and before the deadline for bid validity expires, the Procuring Entity may request bidders to extend the validity dates for their bids. Bidders may refuse to extend the validity dates without forfeiting their bid securities.

☞ Works contracts may take one of three forms, viz

a) Lump Sum (All-Inclusive Price)

- For simple contracts, construction of buildings
- Quantities estimated by Contractor/Bidder under his own responsibility
- Final Payment predetermined as a LS
- Payments as per Schedule of Activities
- Normally no price increase (except under Price Adjustment provision in contract)
- Engineer to supervise quality and compliance with contract specifications

b) Unit Rate (Paid Against Measured Work)

- Use of Bill of Quantity (quantities estimated by Employer and Unit Prices offered by Contractor/Bidder)
- Payments as per quantities executed * Unit Prices
- Variation Orders
- Quantity Variations: use contract provision for % limits on increases / decreases
- New Prices determined by Engineer

c) Cost Plus (Paid Against Constituent Inputs)

- Fixed Fee or
- Percentage Fee or
- Variable (Incentive) Fee

The procurement entity should select the preferred/appropriate type, and insert the selected type in the bidding documents, so that bidders will know in advance the type of contract the Procurement Entity intends to enter into.

6.2.9 STEP 9: PERFORMANCE MONITORING

**PROCUREMENT ENTITY
MONITORS CONTRACT
EXECUTION TO ENSURE
PERFORMANCE IN
ACCORDANCE WITH
CONTRACT**

Performance monitoring should be based on the condition of contract, which would specify the following

- | | |
|--|--|
| <ul style="list-style-type: none"> ● Rights And Obligations of Both Parties ● Performance Standards ● Procedure For Alterations ● Price Adjustment Procedure ● Procedure, Terms And Currencies Of Payment ● Procedure For Performance Securities | <ul style="list-style-type: none"> ● Force Majeure ● Liquidated Damages, Penalties For Delay ● Procedure For Termination ● Mode And Form For Settling Disputes ● Applicable Law |
|--|--|

Key elements of performance monitoring shall include

- ☞ Verifying work done, materials used, equipment and labour force at site to ensure that potential problems are identified as early as possible.
- ☞ Notifying the Contractor in writing requesting rectification of any deficiencies in workmanship, materials used, safety or environmental standards, or other required performance standards
- ☞ Hold regular site meetings with the Contractor to identify the causes of any slippage in the schedule of works.
- ☞ Receive regular progress reports from the Contractor and ensure that written records of any disputes or contract variation orders issued are maintained.
- ☞ Ensure that any significant problems, variation orders, day work claims, compensation events, cost overruns, or slippage in the timetable are brought to the attention of the Procurement Entity.
- ☞ Initiate and supervise any process for claims against insurance or the Contractor.
- ☞ Conduct detailed checks on the Contractors valuation of work performed, re-measure as appropriate, and prepare Interim Payment Certificates, deducting any retention percentage specified in the Contract.
- ☞ Participate in inspections for Interim and Final Handover of the Works and prepare the Final Payment Certificate releasing retention money to the Contractor

The procurement entity may decide to use private consultants to assist in monitoring contractors performance, testing and approving completed works, and making recommendations for payment.

SAMPLE CONTRACT PROGRESS REPORTING FORM

PROJECT TITLE/DESCRIPTION:

IMPLEMENTING AGENCY					START DATE					
CONTRACT NO.					DURATION					
LOCATION					ORIGINAL COMPLETION DATE					
CONTRACTOR					REVISED COMPLETION DATE					
SUPERVISOR					DEFECTS LIABILITY PERIOD					
CONTRACT SUM					PERFORMANCE BOND EXPIRY					
ESTIMATED FINAL COST					RETENTION BOND EXPIRY					
ADVANCE PAYMENT (%)										
RETENTION (%)										
PAYMENT CURRENCIES										
PAYMENT PROPORTIONS										
TOTAL PAYMENT CERTIFIED TO DATE										
ADVANCE OUTSTANDING										
RETENTION HELD										
	PHYSICAL WORKS COMPLETED (% of original works)				FINANCIAL EXPENDITURE (% of original contract sum)					
	Original plan	Actual	Revised plan	Actual/plan	Original plan	Actual	Revised plan	Actual/plan		
JAN										
FEB										
MAR										
APR										
MAY										
JUN										
JULY										
AUG										
SEPT										
OCT										
NOV										
DEC										

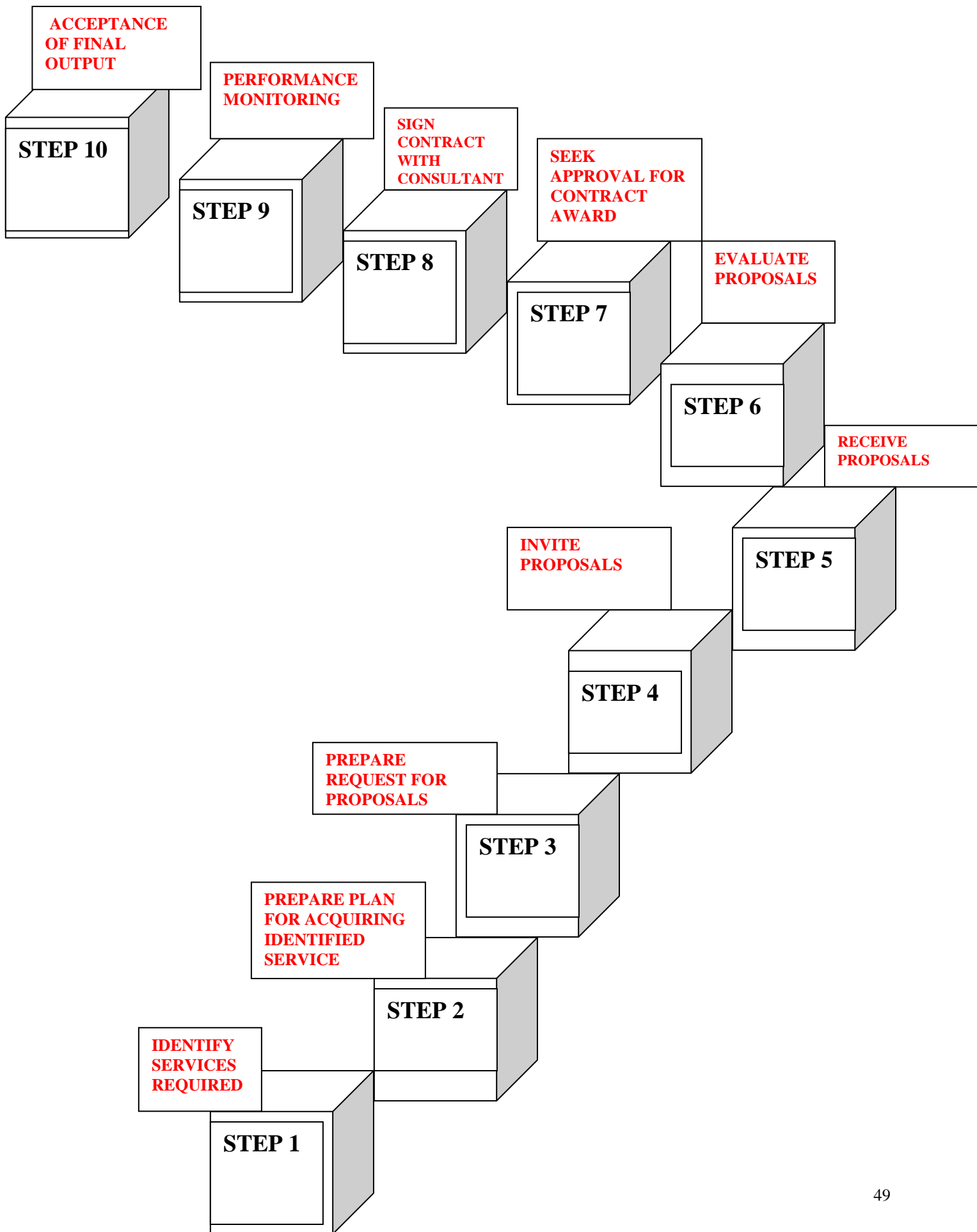
6.2.10 STEP 10: INSPECTION AND TAKING OVER

**WORKS TO BE OFFICIALLY
HANDED OVER TO CLIENT
AFTER SATISFACTORY
COMPLETION**

The key steps to note during inspection and taking over of completed works are

- Defects Liability Period
 - Final Payment and release of retention money
 - As-Built Drawings
 - Operation and Maintenance Manuals
-
- ☞ An initial takeover certificate is issued after inspection
 - ☞ Part of retention monies held may be paid to the contractor if specified in the contract.
 - ☞ As built drawings are prepared by the contractor
 - ☞ A final takeover certificate is issued at the end of the defects liability period.
 - ☞ Subject to all defects being rectified, a Certificate of Completion is issued to the contractor.
 - ☞ Payment of the balance of retention monies due to the contractor is made.

6.3 CONSULTANCY SERVICES PROCUREMENT STEPS



6.3.1 STEP 1: IDENTIFY SERVICES REQUIRED

**THE ENTITY IDENTIFIES
CONSULTANCY SERVICES
REQUIRED TO ACHIEVE ITS
OBJECTIVES FOR THE
FINANCIAL YEAR**

Consultancy services required may be identified in one of two ways, either (a) directly or (b) indirectly.

Direct identification occurs when an entity determines that particular consultancy services are needed to enable it carry out its functions adequately. In this case the entity shall incorporate the identified need in its annual budget, under the appropriate activity/expected output, for approval.

Indirect identification occurs when an entity decides that a particular activity in its annual budget requires the services of a consultant. In this case, the entity shall identify budget items requiring consultancy services (Remember: with the exception of salary payments, the Specific Tasks involved in the implementation of the budgeted activities require the procurement of goods, works, or services.)

Whether services are identified directly or indirectly, the entity should not proceed to plan for the delivery of services unless a budget provision has been made for it, except in an emergency, in which case a special budget allocation will be required.

6.3.2 STEP 2: PREPARE A PLAN FOR DELIVERING THE SERVICE

THE PLAN WILL INCLUDE CONTRACT PACKAGES, ESTIMATED COST FOR EACH PACKAGE, SELECTION METHOD AND PROCESSING STEPS AND TIMES.

The preparation of a plan for delivering consultancy services requires the development of a comprehensive description of the assignment or Terms of Reference, the determination of a shortlist of consultants, the choice of the selection method, and an estimate of the time taking to complete key steps.

Terms of Reference

- ☞ Specifies why the assignment is required, how it should be carried out, who should carry it out, and the expected outputs.
- ☞ Clear Terms of Reference enables consultants submit technical and financial proposals or carry out an assignment
- ☞ This is best achieved by indicating at least
 - the background,
 - objectives, and
 - scope of services

Shortlist of Consultants

- ☞ Unlike bidding for goods and works, selection of consultants is not carried out through open competitive bidding, but limited to a maximum of 6 competitors only. The shortlist of consultants may be obtained from the Procuring Entities records or through an Invitation for Expression of Interest.

Selection Method and Steps

The plan should indicate

- ☞ **How** to select a consultant from a shortlist of qualified consultants, to undertake the assignment. Options available include
 - Quality Based Selection,
 - Quality and Cost Based Selection,
 - Least Cost Selection,
 - Fixed Budget Selection,
 - Selection based on Consultants Qualifications,
 - Single Source selection
- ☞ **Who** to approve award decision
 - Entity Head,
 - Procurement Committee
- ☞ **When** each step is to be accomplished, taking into account the time required for
 - DOCUMENT PREPARATION AND APPROVALS
 - TECHNICAL, STAFFING, LEGAL AND OTHER CONSTRAINTS
 - ADMINISTRATIVE CONSTRAINTS

6.3.3 STEP 3: PREPARE REQUEST FOR PROPOSALS (RFP)

THE RFP SHALL BE PREPARED USING THE APPROPRIATE STANDARD DOCUMENTS PROVIDED UNDER THE ACT

The purpose of the RFP is to

- INSTRUCT CONSULTANTS ON PROCEDURE FOR PREPARATION AND SUBMISSION OF PROPOSALS
- DESCRIBE SERVICES TO BE DELIVERED
- INFORM CONSULTANTS OF CRITERIA TO BE USED IN EVALUATION OF BIDS AND
- DEFINE CONDITIONS OF CONTRACT

The standard RFP shall provide for the following sections:

SECTION 1: LETTER OF INVITATION

SECTION 2: INFORMATION TO CONSULTANTS

DATA SHEET

SECTION 3. TECHNICAL PROPOSAL - FORMS

- 3A. TECHNICAL PROPOSAL SUBMISSION FORM
- 3B. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT
- 3C. TEAM COMPOSITION AND TASK ASSIGNMENTS
- 3D. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF
- 3E. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL
- 3F. ACTIVITY (WORK) SCHEDULE

SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS

- 4A. FINANCIAL PROPOSAL SUBMISSION FORM
- 4B. SUMMARY OF COSTS
- 4C. BREAKDOWN OF PRICE PER ACTIVITY
- 4D. BREAKDOWN OF REMUNERATION PER ACTIVITY
- 4F. MISCELLANEOUS EXPENSES

SECTION 5. TERMS OF REFERENCE

SECTION 6. FORM OF CONTRACT

The following steps shall be followed in preparing the Request for Proposals:

- ☞ Make the appropriate changes to sections of the document that require changes. The sections that require changes are
 - a) The Letter of Invitation,
 - b) The Data Sheet.
 - c) Terms of Reference and
 - d) The Form of Contract.

6.3.4 STEP 4: INVITE PROPOSALS

PROPOSALS INVITED THROUGH A TWO STAGE PROCEDURE (EoI FOLLOWED BY RFP) OR A ONE STAGE PROCEDURE – RFP ONLY.

The Invitation to Bid is a key factor in assuring that the objectives of the law are achieved, viz:

- Maximizing economy and efficiency in procurement, and obtaining best value for public expenditures
- Promoting competition and fostering participation in procurement proceedings
- Providing equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders.

The following steps shall be followed in ensuring that prospective bidders are adequately notified

TWO STAGE PROCEDURE (Expressions of Interest followed by Request for Proposals):

- Decide on the mode of advertisement for Expressions of Interest, consistent with the Act and Regulations. The Act requires invitation for bids/Expressions of Interest to be published in the Procurement bulletin, Gazette, national print media of wide circulation, electronic media, and, when feasible, in selected international media.
- Ensure that budget provision has been made for the payment of cost of advertisement.
- Book space for the advertisement in advance, taking into account the time allowed bidders for submission of Expressions of Interest.
- Establish the closing date for submission of Expressions of Interest, and transmit completed Invitation for Expressions of Interest to the selected media for publication.
- Receive Consultant's submissions, evaluate and prepare a shortlist.
- Prepare and issue Request for Proposals to shortlisted consultants.

SINGLE STAGE PROCEDURE (Request for Proposals from already established shortlist)

- The Procuring Entity may issue the Request for proposals directly to a shortlist of consultants selected from its database, without inviting Expressions of Interest. There is no advertisement in this case.

6.3.5 STEP 5: RECEIVE PROPOSALS

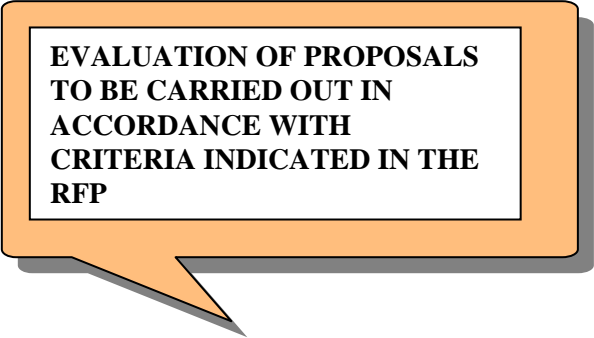
PROPOSALS SHALL BE RECEIVED THROUGH A TENDER BOX LOCATED IN A SECURED PLACE.

The procedure for receipt of proposals shall be clearly specified in the data sheet section of the Request for Proposals, indicating

- Place of submission
- Closing date
- Closing time
- Sealing of Envelopes and
- Whether or not electronic bids are acceptable.

Late bids shall be received and recorded as such, but shall be returned unopened after the evaluation process.

6.3.6 STEP 6: EVALUATE PROPOSALS



**EVALUATION OF PROPOSALS
TO BE CARRIED OUT IN
ACCORDANCE WITH
CRITERIA INDICATED IN THE
RFP**

Unlike the procurement of goods and works, the primary consideration in the evaluation of consultancy services is the technical competence of the firm. In some cases, particularly where there is limited scope for varied performance, price may be considered in addition to technical competence.

The evaluation of proposals is to be carried out in two stages, first the Quality and then the Cost. Evaluators of technical proposals should not have access to the financial proposals until the technical evaluation, including any approvals is completed. The evaluation is to be carried out in conformity with the provisions of the RFP.

The following steps shall be followed in evaluating consultant's proposals:

Evaluation of Technical Proposals

- ☞ By committee of specialists. A minimum of 3 and maximum of 7 is recommended.
- ☞ Committee examines each proposal and award points in accordance with the provision in the data sheet of RFP. The data sheet may specify points to be awarded as follows:
 - SPECIFIC EXPERIENCE OF FIRMS, i.e. Relevant assignment, similar size, complexity, technology, environment (**5 - 10 points**)
 - METHODOLOGY , i.e. Schedules, responsiveness to TOR, logistics, backstopping, innovativeness, level of detail (**20 - 50 points**)
 - QUALIFICATION OF KEY STAFF i.e. Team composition, professional qualifications/experience, suitability, local knowledge, language, training, permanent staff (**30 - 60 points**)

Evaluation of Financial Proposals (where applicable)

- ☞ Financial proposals not opened until evaluation of technical proposals is complete
- ☞ Only financial proposals from firms securing the minimum technical score shall be opened for evaluation. Other financial proposals shall be returned unopened.
- ☞ Firms securing the minimum technical score shall be invited to witness the opening of the financial proposals
- ☞ Records/Minutes of Public opening of financial proposals are kept using the sample format below
- ☞ Correct for arithmetical errors
- ☞ Convert to common currency
- ☞ Assign merit point/score using formula indicated in the Data Sheet

SAMPLE FORMAT FOR RECORDING
MINUTES OF PUBLIC OPENING OF FINANCIAL PROPOSALS

1. VENUE:
2. DATE:
3. TIME:
4. RECORD OF PUBLIC OPENING:

FIRM	TECH SCORE (%)	SEALING OF FINANCIAL PROPOSAL	TOTAL PRICE	FIRMS REPS

5. CLIENT STAFF PRESENT AT MEETING

Combined Technical and Financial Evaluation

- ☞ For evaluation purposes, taxes are excluded, but reimbursables are included.
- ☞ Under QCBS, a direct proportion or other methodology as established in the RFP shall be followed to allocate points for the cost element. The weight for cost is allocated based on complexity of the assignment, but normally between 10 and 20. Proposal with the highest total score is selected and invited for negotiations
- ☞ Under LCS, the proposal meeting the minimum technical score, and also securing the lowest evaluated price is selected.
- ☞ Under FBS, the best technical proposal within a specified budget is selected.

6.3.7 STEP 7: SEEK APPROVAL FOR CONTRACT AWARD



**SUBMIT EVALUATION
REPORT TO APPROVING
AUTHORITY**

To ensure Transparency and Economy in the award of contracts, the Acts requires that the recommendations for award be reviewed within thresholds established by Regulations for :

Head of Procurement Entity and
Procurement Committee

The following procedure shall be followed:

- ☞ Evaluation Report completed by evaluation committee, with recommendation for award
- ☞ Report submitted to Head of Entity for consideration.
- ☞ Review of Report by Head of Entity, with Assistance of Procurement Unit
- ☞ Acceptance or review of recommendations (with justification), by head of entity If contract is within Head of Entity's threshold, or
- ☞ Submission of evaluation report to appropriate authority, with head of entity's comments on the report if above Head of Entity's threshold
- ☞ The review authority may reject any recommendation that is not consistent with the criteria listed in the bid documents, and request the Head of Entity to review the report accordingly.
- ☞ Procuring Entity invites selected firm for negotiations after approval of evaluation report.

NEGOTIATION SEQUENCE

- ☞ Methodology and staffing
- ☞ Final TOR (without substantially changing original TOR)
- ☞ Staffing schedule
- ☞ Client inputs
- ☞ Consultant outputs
- ☞ Activity schedule
- ☞ Skills transfer

Final TOR and agreed methodology to be incorporated in "Description of Services" which becomes part of the Contract

6.3.8 STEP 8: SIGN CONTRACT

**CONTRACT TO BE SIGNED
BY AUTHORISED
REPRESENTATIVES OF
BOTH PARTIES TO THE
CONTRACT**

Following approval of the evaluation report by the appropriate authority, the procurement entity shall proceed to sign a contract as follows:

- ☞ Inform the firm adjudged to have submitted the highest ranked proposal that his offer has been accepted, and to request him to prepare for negotiations, contract finalization and signature.
- ☞ Prepare the contract document using the standard contract form indicated in the RFP. Options available include
 - COMPLEX TIME BASED ASSIGNMENTS
 - LUMP SUM ASSIGNMENTS
 - SMALL TIME BASED ASSIGNMENTS
 - SMALL LUMP SUM ASSIGNMENTS
- ☞ Sign contract with successful bidder
- ☞ Notify all unsuccessful bidders once contract has been signed

6.3.9 STEP 9: PERFORMANCE MONITORING

**PROCUREMENT ENTITY
SUPERVISES DELIVERY
OF OUTPUTS BY
CONSULTANT**

Key issues to note in managing consultant's contracts include

- ☞ Commencement, completion, modification and termination of contract
 - ⇒ effective date - commencement of services - expiration of contract
 - ⇒ definition of Force Majeure- measures to be taken - extension of time – payments
 - ⇒ Suspension
 - ⇒ Termination by the client and by the consultants
 - ⇒ cessation of rights, obligations & services
 - ⇒ payments upon termination
- ☞ Obligations of the consultants
 - ⇒ Standard of performance
 - ⇒ Conflict of interests
 - ⇒ Liability and insurance of consultants
 - ⇒ accounting, inspection and auditing
 - ⇒ reporting, preparation and property of documents and equipment received
- ☞ Consultant's personnel and sub-consultants
 - ⇒ Description and approval of personnel
 - ⇒ Working conditions of consultants
 - ⇒ Removal and/or replacement of staff
- ☞ Obligations of the client
 - ⇒ Assistance to be provided to consultants
 - ⇒ Exemptions to be granted consultants
 - ⇒ Access to land and services
 - ⇒ Change in the applicable law
 - ⇒ Counterpart personnel
- ☞ Payments to the consultants
 - ⇒ Currency of payments shall be specified in the contract data sheet
 - ⇒ Mode of billing and payment to be made as specified in the data sheet

6.3.10 STEP 10: ACCEPTANCE OF FINAL OUTPUT



**FORM AND TIME OF DELIVERY
OF FINAL OUTPUT TO CONFORM
TO CONTRACT PROVISION**

- ☞ The conditions of contract shall specify the reports and documents to be delivered at the end of the assignment.
- ☞ The procurement entity shall ensure that the consultant has met all contractual obligations before making final payment.

CHECKLIST FOR COMPLIANCE WITH PROCUREMENT PROCESS

CONSULTANCY SERVICES

	<i>ASPECT</i>	<i>REQUIREMENT UNDER THE ACT</i>	<i>STATUS OF COMPLIANCE</i>
1	Description of Assignment	Backed by an approved budget, or in the case of an emergency, approved by appropriate authority	
2	Terms of Reference (TOR) prepared and approved by appropriate authority	TORs adequate for achievement of objectives of assignment.	
3	Request for Expression of Interest advertised and submissions evaluated to determine shortlist of consultants.	Published in procurement bulletin, Gazette, national print media of wide circulation and/or selected international media.	
4	Approval of shortlist by appropriate authority	Approval authority specified in the Act or Regulations	
5	Request for Proposals prepared.	RFP to be based on standard document approved by PPCC	
6	Approval of RFP by appropriate authority	Approval authority specified in the Act or Regulations	
7	Request for Proposal issued to shortlisted consultants	Documentary evidence of Receipt of RFP by shortlisted consultants	
8	Time allowed for submission of proposals	Six weeks for assignments with International shortlist, or four weeks for assignments with entirely National shortlist.	
9	Technical Evaluation Report	In accordance with criteria stated in the RFP	
10	Approval of technical evaluation report by appropriate authority	Approval Authority specified in Act or Regulations	
11	Record of Opening of Financial proposals	Documentary evidence of public opening of financial proposals	
12	Final Combined Technical & Financial Evaluation Report	In accordance with criteria stated in RFP	
13	Minutes of Negotiations	Documented record of Negotiations	
14	Approval of negotiated contract	Approval Authority specified in Act or regulations	
15	Award letter	Issued to highest ranked consultant	
16	Signed Contract	Contract within threshold specified in the Act not to be signed until 14 days have passed following the issuance of award letter	

SIGNED

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HEAD OF ENTITY

GOODS AND WORKS PROCURMENT

	<i>ASPECT</i>	<i>REQUIREMENT UNDER THE ACT</i>	<i>STATUS OF COMPLIANCE</i>
1	Description of goods/works	Backed by approved budget, or in the case of an emergency, approval by appropriate authority	
2	Prequalification process	Indicated in procurement plan where applicable	
3	Prequalification evaluation report	Consistent with evaluation criteria indicated in the prequalification document	
4	Approval of prequalification report by appropriate authority	Approval authority specified in the Act or Regulations	
5	Bidding documents prepared.	Bidding documents to be based on standard documents approved by PPCC	
6	Approval of bidding documents by appropriate authority	Approval authority specified in the Act or Regulations	
7	Advertising for bids	Published in procurement bulletin, Gazette, national print media of wide circulation and/or selected international media	
8	Time allowed for submission of bids	Six weeks for International competitive bidding or four weeks for national competitive bidding	
9	Minutes of Bid opening	Documentary evidence of public opening of bids	
10	Bid evaluation Report	In accordance with evaluation criteria stated in the bidding documents, and in a format approved by PPCC	
11	Approval of bid evaluation report by appropriate authority	Approval authority specified in the Act or Regulations.	
12	Notification of Contract Award	Issued to the Lowest Evaluated Responsive Bidder, as per the approved evaluation report	
13	Preparation of final contract for signature	Contract document to be consistent with standard document approved by PPCC	
14	Signed Contract	Contracts within threshold specified in the Act not to be signed until 14 days have passed following issuance of award letter.	
15	Commencement	Notice to commence execution of contract to be issued in accordance with relevant clause.	

SIGNED

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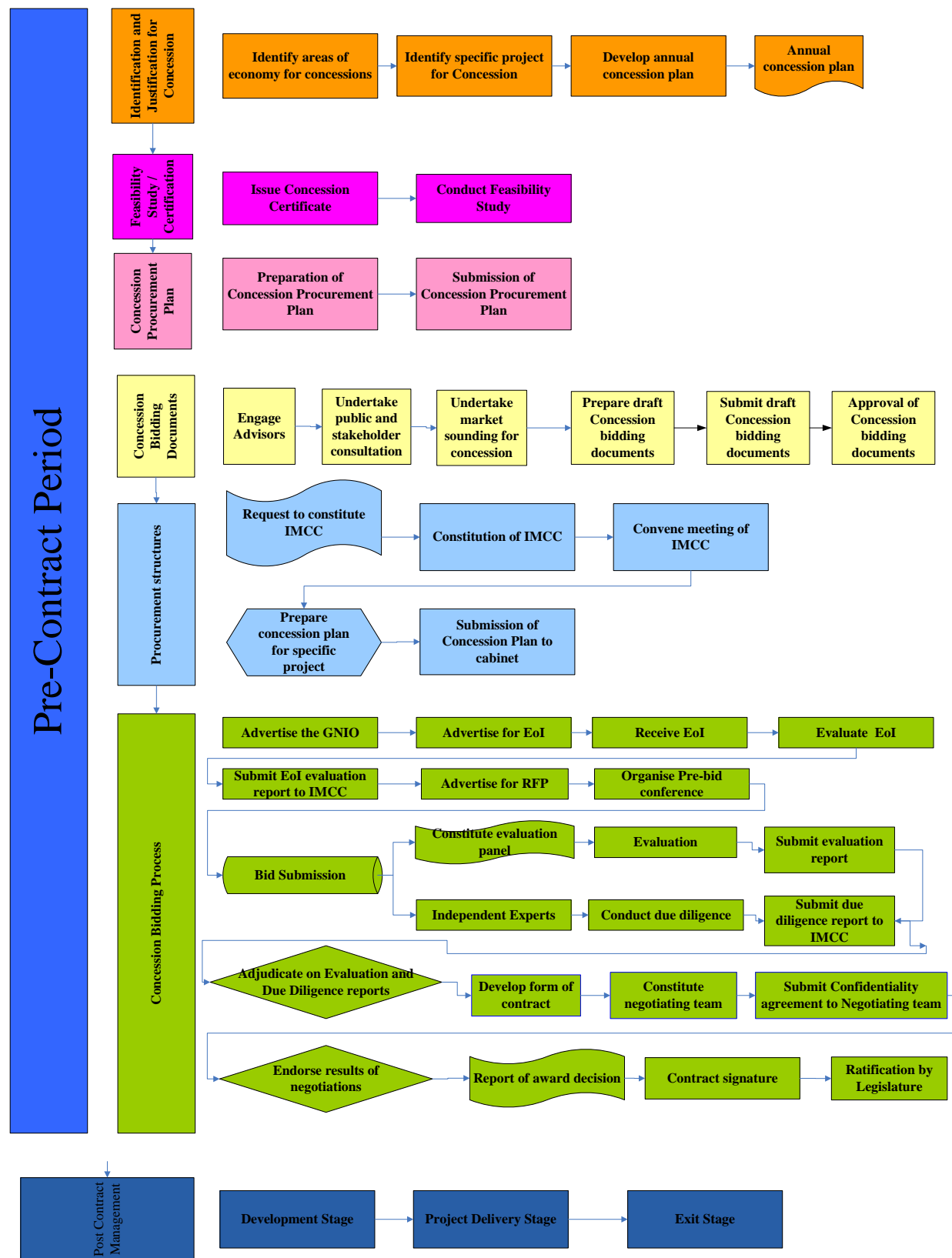
HEAD OF ENTITY

THE CONCESSION PROCESS - STEP BY STEP ABBREVIATIONS AND ACRONYMS

ADV	Advisor
CAB	Cabinet
CBEP	Concession Bid Evaluation Panel
CE	Concession Entity
CHIMCC	Chairman of IMCC
CT	Concession Template
EDP	Economic Development Plan
EEC	Entity Evaluation Committee
EEP	EoI Evaluation Panel
EOI	Expression of Interest
HCE	Head of Concession Entity
ICB	International Competitive Bidding
IE	Independent Experts
IMCC	Inter-Ministerial Concessions Committee
ITB	Invitation to Bid
MEA	Ministry for Economic Affairs
MoJ	Ministry of Justice
NCB	National Competitive Bidding
NT	Negotiating Team
PC	Procurement Committee
PPCC	Public Procurement and Concessions Commission
PRS	Poverty Reduction Strategy
PT	Project Team
PU	Procurement Unit
RFP	Request for Proposals
TE	Technical Experts
TOR	Terms of Reference

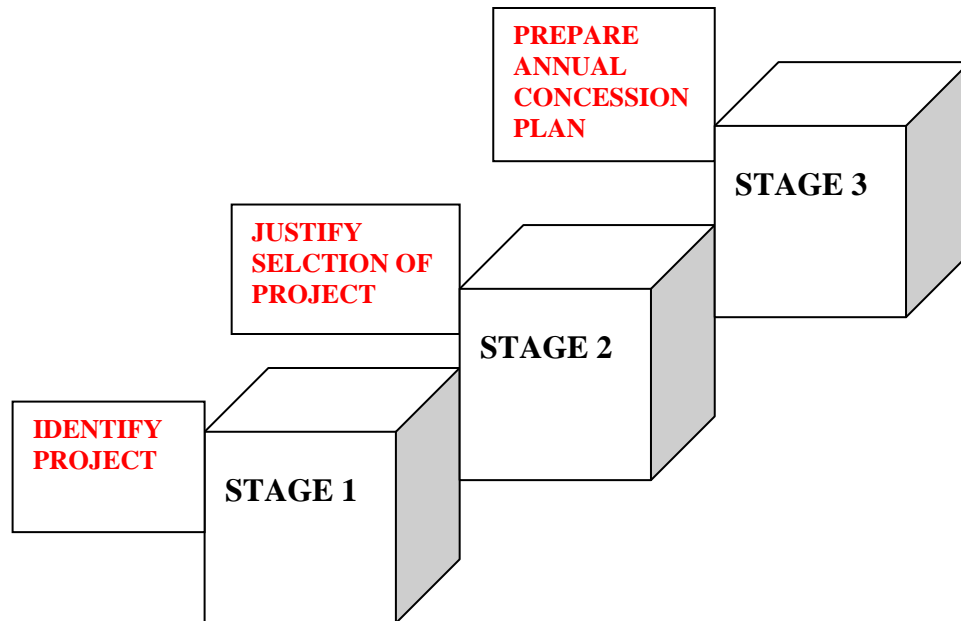
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2.0 IDENTIFICATION AND JUSTIFICATION OF CONCESSION

This Part provides a rational basis for selecting prospective concession projects for implementation by Concession Entities.



2.1 *Stage 1: Identify project*

The aim of the process is to identify project(s) that will benefit both the public sector and the private sector. The project identified must meet one or more of the objectives of a concession as stated in the Act. It must also present commercially attractive business opportunities for the private sector.

- STEP 1: The prospective project selected for a concession should be identified from the overall National Development Framework of the Government. The National Development Framework may be variously titled, but it should reflect the Government's program for development in the short to medium term. The National Development Framework shall be published in a government bulletin/document which should be widely available to all sector Ministries.
- STEP 2: Each Concession Entity and its sector Ministry may develop a Strategic Plan from the National Development Framework of the Government and consequently formulate projects, program and activities necessary to fulfill the development mandate of the sector.
- STEP 3: The Concession Entity shall select from its Strategic Plan or other relevant Planning framework, projects which have a potential for being undertaken through a concession. These projects may include:

- ☞ Projects which promote the economic development of the country
- ☞ Projects which will not receive public funding in the short-medium term
- ☞ Projects in which private sector participation will be in the public interest

2.2 Stage 2: Justify Selection of project

The aim of this process is to determine the best method of delivering the project. The identified project may be delivered either by the normal procurement method or by using the concession approach.

The concession approach should be used only where it can deliver better value for money than the normal procurement method. A Concession project is more likely to be successful if the private sector has the capabilities to add value to the delivery of public services.

STEP 1: The Concession Entity shall undertake a Pre-Feasibility/Preliminary study on the identified project to assess its potential as a concession project.

STEP 2: The Pre-Feasibility/Preliminary study may be undertaken by internal human and financial resources of the Concession Entity. If an external consultant is contracted, it must be an independent consultant shall be procured in accordance with the relevant sections of the Act.

The Pre-Feasibility/Preliminary study should cover the following areas among others:

- ☞ The project title
- ☞ Nature and scope of the project
- ☞ Key objectives and strategic benefits
- ☞ Measurable outcomes
- ☞ Benefits of private sector participation
- ☞ Sufficient project scale to attract private sector
- ☞ Implementation schedule
- ☞ Risk sharing arrangements
- ☞ Issues to be addressed prior to the award of a concession.
- ☞ Environmental and social impacts
- ☞ Financial appraisal and sensitivity analysis
- ☞ Funding required for undertaking the Concession
- ☞ Identify lacking information which will be necessary for the *Feasibility Study*.
- ☞ The Terms of Reference for a *Feasibility Study*(if required, ***Concession Template 1***)

STEP 3: The Concession Entity shall submit the Pre-Feasibility/Preliminary study report(s) to the Sector Minister for review.

STEP 4: The Sector Minister on approval shall submit the list of the selected projects and copies of the Pre-Feasibility/Preliminary study to the Minister for Economic Affairs.

2.3 Stage 3: Prepare Annual Concession Plan

STEP 1: The Minister for Economic Affairs will determine the potential projects suitable for concession after consideration of the Pre-feasibility/Preliminary study.

STEP 2: The Minister for Economic Affairs shall compile all the suitable projects in an Annual Concession Plan.

The Annual Concession Plan shall detail the following:

- ☞ The project title
- ☞ The specific sector of the economy
- ☞ Nature and scope of the concession
- ☞ The period for procuring the concession
- ☞ The project registration number
- ☞ Any additional information required for further consideration

STEP 3: The Minister for Economic Affairs shall submit the Annual Concession Plan to Cabinet for approval.

STEP 4: The approved Plan shall be communicated to the Sector Ministers and the PPCC.

STEP 5: The approved Plan may be published in a Government bulletin for the information of the public and prospective investors.

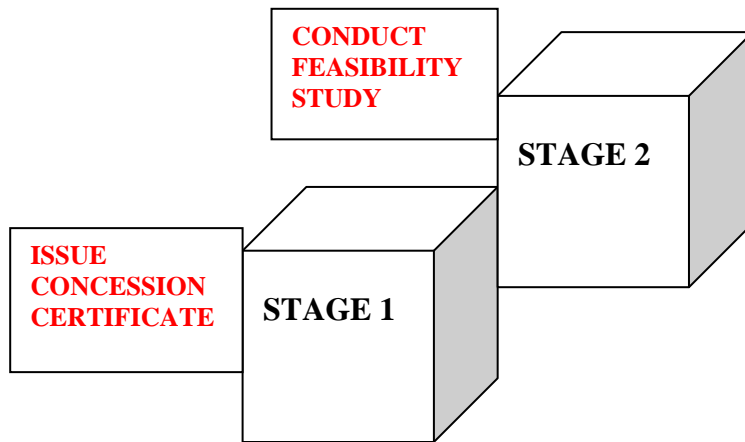
3.0 CONCESSION CERTIFICATE AND FEASIBILITY STUDY

This section provides guidance on the requirements for the issue of Concession Certificate and how to undertake a Feasibility study to support the decision to proceed with a proposed project as a concession project, where required.

The feasibility study is a critical part of the project preparation period and it provides an opportunity to assess the likely success of the project. The Feasibility study may also be conducted by the Selected Bidder, where the Concession Entity so determines.

It allows the Concession Entity to determine the following:

- ☞ role of the public sector
- ☞ the method of concession to be used for the project
- ☞ how the project will be structured
- ☞ affordability of the project
- ☞ the identification, quantification, allocation and mitigation of risks
- ☞ that a proper business/commercial case is developed for the project



3.1 Stage 1: Issue Certificate of Concession

STEP 1: The Concession Entity shall make a request to the Minister for Economic Affairs for a Certificate of Concession for the specific project only after the project has been included in the Annual Concession Plan approved by the Cabinet. The request shall be supported with the report of the Pre-Feasibility study or an update of the Pre-Feasibility study as appropriate.

STEP 2: Upon receipt of the request for a Certificate of Concession, the Minister for Economic Affairs shall set up a team to determine if the Preliminary Study/Pre-Feasibility report has covered all pertinent issues and meets the criteria set in Section 89 of the Act.

STEP 3: The team shall submit their advice in a written report to the Minister for Economic Affairs within fourteen (14) days after the Minister has constituted the team.

STEP 4: Minister for Economic Affairs shall proceed to:

- 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
- 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 PPCC.

The Certificate of Concession shall state:

- ☞ The project registration number
- ☞ The proposed period of the concession
- ☞ The key objectives and strategic benefits of the concession
- ☞ Any bottlenecks and/or barriers that need to be addressed in the course of the procurement process and in the agreement.
- ☞ If the services of an Advisor is required in the concession procurement phase and/or the concession management process.
- ☞ Any other requirements (may include for a Feasibility study where the decision has been based on a Preliminary Study)

3.2 Stage 2: Conduct Feasibility Study

The Feasibility study is an evolving, dynamic process. While it is done primarily to decide the optimum service-delivery option, it is also used throughout the procurement phase: for guidance on the formulation of the bidding documents and continuous risk tracking.

STEP 1: The Concession Entity shall initiate a Feasibility study for a proposed concession only after the Minister for Economic Affairs has included the project in the Annual Concession Plan.
The requirement to undertake a Feasibility study for a project will be communicated to the Concession Entity by the Minister for Economic Affairs.

STEP 2: The Feasibility study may be undertaken by an external Advisor(s), who shall be procured in accordance with the relevant sections of the Act or by the selected Bidder.
If an external Advisor is to be procured at this stage and it is deemed that his services may be required after the issue of the Certificate of Concession, then the Terms of Reference shall be drafted to cover two stages; Feasibility study and Procurement Phase.

STEP 3: The minimum requirements of the Terms of Reference for engaging

the Advisor to undertake the Feasibility study is provided in ***Concession Template 1***.

The Advisor shall conduct the Feasibility study in consultation with the Minister for Economic Affairs and other relevant Agencies; including but not limited to stakeholders directly affected by the project, Ministries and Agencies.

CONCESSION TEMPLATE 1	
TERMS OF REFERENCE FOR EXTERNAL ADVISOR	
1	Introduction
2	Scope of work
	<ul style="list-style-type: none"> ▪ Feasibility study ▪ PPP procurement
3	Background
	<ul style="list-style-type: none"> ▪ Mandate ▪ Needs ▪ Objectives ▪ Background documentation and preparatory work
4	PPP FEASIBILITY STUDY DELIVERABLES
	The Advisor is required to produce, in close liaison with the Concession Entity, a comprehensive feasibility study for the each of the proposed projects. The feasibility studies need to clearly demonstrate the viability and affordability for the full project cycle.
4.1	Components of the Feasibility study (see Concession Template 2)
4.2	Presentation of the feasibility study
	<p>The feasibility study, comprising all the above deliverables, must be compiled in a</p> <ul style="list-style-type: none"> ▪ Main report Single report in Word format (with relevant annexure), and delivered as both electronic and hard copy documents. <ul style="list-style-type: none"> ○ A thorough executive summary and must be accompanied by a PowerPoint presentation that encapsulates all the key features of the study. <p>The executive summary and PowerPoint presentation must be compiled in such a manner that they can be used by Concession Entity for decision-making purposes.</p> ▪ Financial Model All financial models must be in Excel format, and clearly set out all assumptions made, sensitivity analyses carried out, and model outputs. The financial models must be sufficiently adaptable for use by others at later stages.
5	PPP PROCUREMENT DELIVERABLES (if applicable).
6	Advisor skills, experience, remuneration and management
	Necessary Advisor skills and experience Remuneration schedule and disbursement arrangements Management of Advisor

STEP 4: The Feasibility report shall be submitted to the Head of the Concession Entity for review.
The requirements of the components for a Feasibility Study to be provided by

an external Advisor is provided in *Concession Template 2*.

- STEP 5: Upon approval, the Head of the Concession Entity shall submit a copy of the report to the Minister for Economic Affairs.
- STEP 6: If the report is required for the issue of a Certificate of Concession, the Minister for Economic Affairs shall so consider the report and give his decision to the Concession Entity in a written report as provided in *Stage 1: Issue Certificate of Concession*.
- STEP 7: If the Feasibility report indicates that the key objectives of Government will not be met when the project is implemented as a concession, then the Head of the Concession Entity shall discuss the report with the sector Minister for further action.

In the event that a Certificate of Concession is not issued by the Minister for Economic Affairs, then the services of the external Advisor shall be terminated at the submission of the Feasibility study.

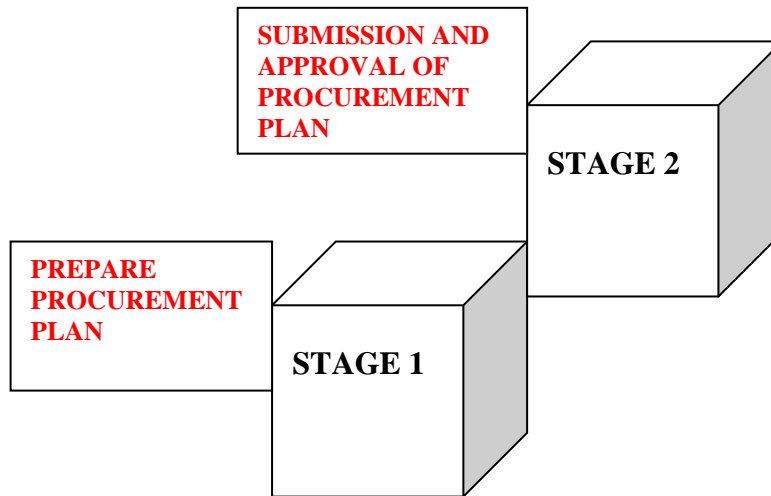
CONCESSION TEMPLATE 2	
CONCESSION FEASIBILITY STUDY	
TERMS OF REFERENCE FOR EXTERNAL ADVISOR	
Components of the feasibility study	
1.1	Introduction
	<ul style="list-style-type: none"> ▪ Executive summary ▪ Introduction ▪ Project background ▪ Approach and methodology to the feasibility study
1.2	Needs analysis
	<ul style="list-style-type: none"> ▪ Overall National Economic Impact ▪ Institution's strategic objectives ▪ Impact on Budget ▪ Institutional analysis ▪ Output specifications ▪
1.3	Solution options analysis
	<ul style="list-style-type: none"> ▪ Options considered ▪ Evaluation and assessment of each option ▪ Summary of evaluation and assessment of all options considered ▪ Recommendation of a preferred option
1.4	Project due diligence
	<ul style="list-style-type: none"> ▪ Legal aspects (See sample scope on Page 113) ▪ Financial Impact ▪ Environmental and social impacts ▪ Opportunities for domestic businesses
1.5	Value assessment
	<ul style="list-style-type: none"> ▪ Technical definition of project ▪ Discussion on costs (direct and indirect) and assumptions made on cost estimates ▪ Discussion on revenue and assumptions made on revenue estimates ▪ Discussion on proposed PPP type ▪ Proposed PPP project structure and sources of funding ▪ Payment mechanism ▪ Discussion on all model assumptions made in the construction of the model, including inflation rate, discount rate, depreciation, and tax ▪ Summary of results from the PPP-reference model: NPV
1.6	Risk assessment
	<ul style="list-style-type: none"> ▪ Comprehensive risk matrix for all project risks ▪ Summary of the institution's retained and transferable risks ▪ Include risks identified by legal and financial due diligence
1.7	Risk-adjusted PPP-reference
	<ul style="list-style-type: none"> ▪ Summary of results: NPV, key indicators ▪ Sensitivity analyses ▪ Statement of affordability ▪ Recommended procurement choice
1.8	Implementation Plan
1.9	Information verification
	Summary of documents attached to verify information found in the feasibility study report

4.0

CONCESSION PROCUREMENT PLAN

The concession procurement plan spells out the processes, timelines, approvals as well as the Agencies responsible for various actions. The Procurement Plan is required to ensure that the procurement is undertaken in a timely and cost effective manner by the Concession Entity. Aspect of the Plan may be incorporated into the Concession Bidding document.

It will be available to facilitate the monitoring of the process by the PPCC and guide the IMCC in planning their meetings.



4.1 Stage 1: *Prepare procurement plan*

The Procurement Unit shall be responsible for the preparation of the Concession procurement plan.

STEP 1: Set out;

- A. the timetable for the key milestones and approvals required from
 - ☞ The PPCC
 - ☞ The Ministry for Economic Affairs
 - ☞ The Ministry of Finance
 - ☞ The Ministry of Justice
 - ☞ The Procurement Committee
 - ☞ The IMCC
- B. The procurement option recommended and endorsed in the Certificate for Concession.
- C. The roles and responsibilities of persons/institutions responsible for various actions should be clearly stated,
- D. The timetable for reforms and other actions necessary to

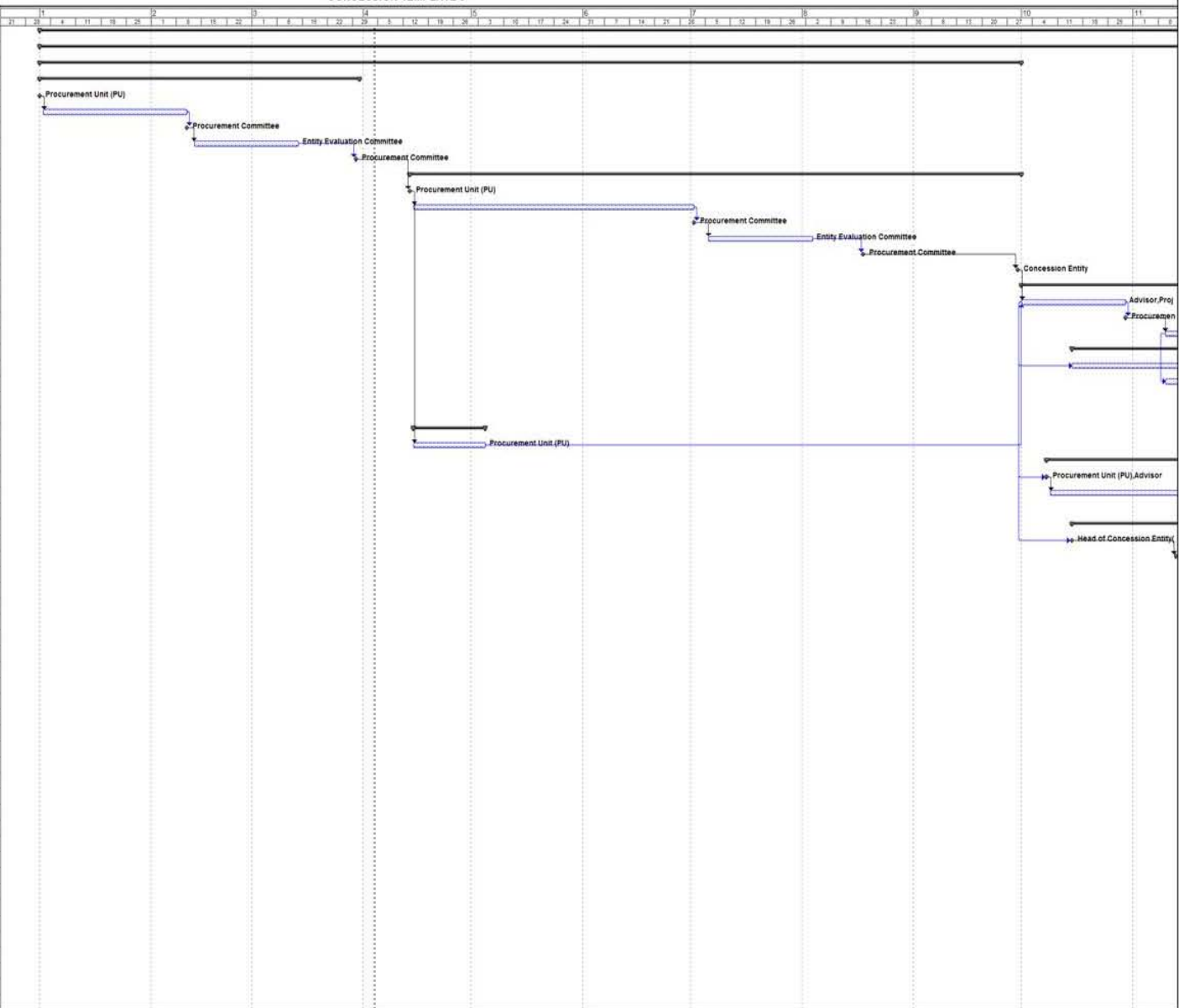
ensure the successful implementation of the concession.

- E. A Gantt chart of the procurement process, noting and providing adequate time for various actions and incorporating all of the above. The Gantt chart is provided as *Concession Template 3*. The relevant activities may be selected and incorporated into a Plan by the Concession Entity.
- F. In addition write-up on:
 - ☞ A process for record documentation and storage
 - ☞ Establishing and maintaining an audit trail of the process
 - ☞ Contingency plan for dealing with deviations from plan

STEP 2: The Procurement Unit shall submit the Concession procurement Plan to the Head of the Concession Entity.

**CONCESSION PROCUREMENT PLAN
CONCESSION TEMPLATE 3**

ID	Task Name	Duration	Action By	Action Within (days)
1	Concession Procurement Plan	527 days?		
2	Concession Bidding Documents	269 days?		
3	Engage Advisor	195 days		
4	Expression of Interest for Advisor	63 days		
5	Publish EoI	1 day	PU	
6	Period for submission of EoI	28 days		
7	Receive EoI	1 day	PC	
8	Evaluate EoI	21 days	EEC	
9	Adjudicate on EoI	1 day	PC	14
10	Request for Proposals	122 days		
11	Invite Proposals	1 day	PU	14
12	Period for submission of RFP	56 days		
13	Receive RFP	1 day	PC	
14	Evaluate RFP	21 days	EEC	
15	Adjudicate on RFP	1 day	PC	14
16	Advisor engaged	1 day	CE	42
17	Public and Stakeholder Consultation	56 days		
18	Prepare Communication Strategy	21 days	ADV,PT	
19	Invite Target Groups	7 days	PU	
20	Consult Target Groups	28 days	ADV,PT	
21	Draft Bidding documents	64 days?		
22	Prepare draft bidding document	42 days	ADV,PT	
23	Collate Stakeholder report	28 days	ADV,PT	
24	Finalise draft bidding document	14 days	ADV,PT	
25	Submit Draft Bidding documents to IMCC	1 day?	PU	2
26	General Notice of Investment Opportunity	14 days		
27	Publish GNO	14 days	PU	
28	Expression of Interest for Bidders	30 days?		
29	Publish EoI for bidders	1 day?	PU,ADV	7
30	Period for submission of EoI for Bidders	28 days		
31	Receive EoI of bidders	1 day?	PC	
32	Inter-Ministerial Concession Committee	88 days?		
33	Request to President to appoint members of IM	1 day?	HCE	14
34	President's nominee selected	1 day?		28
35	IMCC convened	1 day?	CHIMCC	14
36	IMCC constitutes Evaluation Panel for EoI	1 day?	IMCC	
37	Evaluate EoI	21 days	EEP	2
38	Endorsement of EoI evaluation report	1 day?	IMCC	
39	Approval for Bidding documents	1 day?	IMCC	21
40	Request for Proposals	86 days?		
41	Publish RFP	1 day?	PU	7
42	Pre-Bid meeting	1 day?	PU,ADV,PT	
43	Period for submission of RFP for Bidders	84 days		
44	RFP submission	1 day?	PC	
45	Evaluation of Proposals	143 days?		
46	IMCC constitutes Concession Bid Evaluation Panel	1 day?	IMCC	
47	RFP evaluation	60 days	CBEP	
48	Submit evaluation report	1 day?	CBEP	1
49	Request for due diligence	1 day?	HCE	
50	Conduct due diligence	60 days	IE	
51	Submit Due diligence reports	1 day?		
52	Adjudication of evaluation and due diligence rep	1 day	IMCC,TE	14
53	IMCC notifies President	1 day?	IMCC	7
54	Draft Contract Agreement	21 days		
55	Prepare Draft Agreement with Ministry of Justice	21 days	ADV,PT,MoJ	7
56	Negotiations	49 days?		
57	President appoints Negotiating team	7 days	IMCC	7
58	Prepare for negotiations	3 days	ADV,PT,NT,IMC	
59	Conduct negotiations	14 days	NT	7
60	Conclude Negotiations	1 day?	NT,IMCC	
61	Finalise Agreement with Ministry of Justice	14 days	ADV,PT	
62	Award Notification	1 day?	IMCC	28

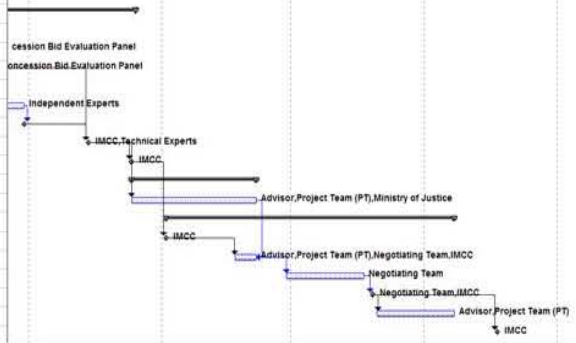


**CONCESSION PROCUREMENT PLAN
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ID	Task Name	Duration	Action By	Action Within (days)	Timeline (Days)																																																													
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**CONCESSION PROCUREMENT PLAN
CONCESSION TEMPLATE 3**

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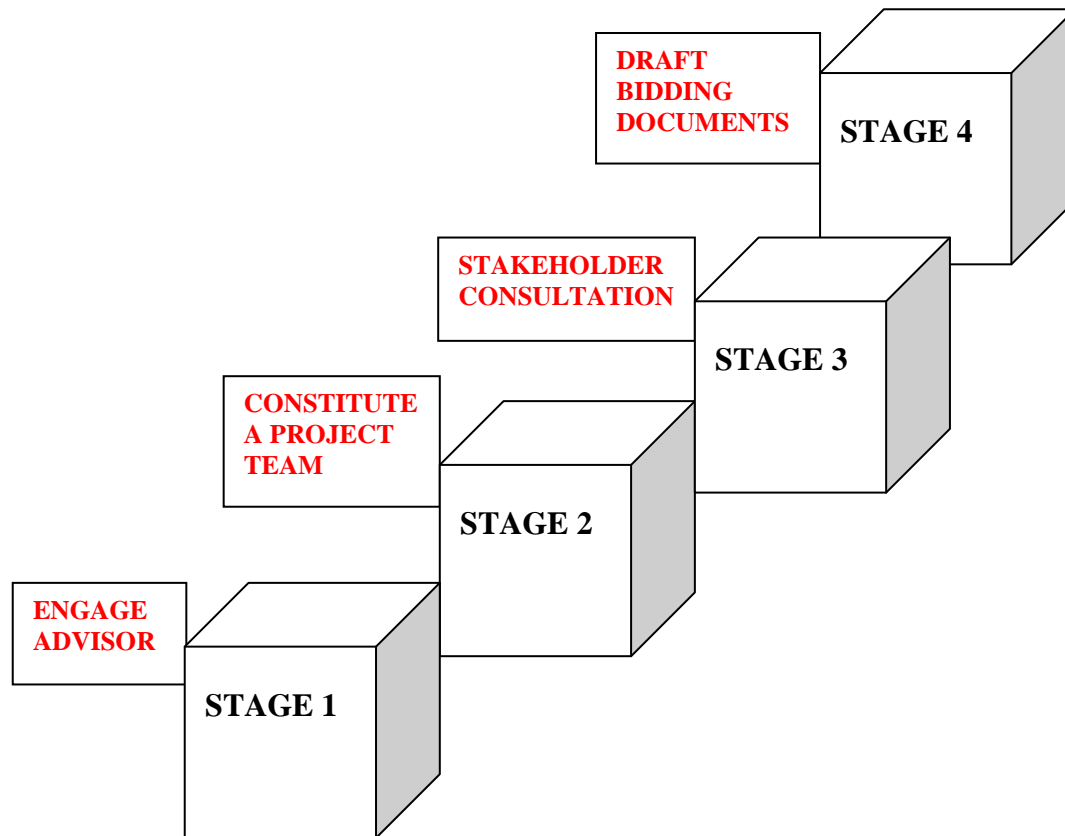
4.2 Stage 2: Submission and Approval of procurement plan

- STEP 1: The Head of the Concession Entity shall review the procurement plan at a meeting of the Procurement Committee.
- STEP 2: Upon approval the Head of the Concession Entity shall forward the plan to the PPCC. The submission shall be addressed to the Executive Director.
- STEP 3: The PPCC shall review the Plan and state their comments within twenty-one (21) days after receipt of the Plan.
The PPCC shall convey their decision to the Head of the Concession Entity. The PPCC shall, where applicable, indicate any areas of the plan that requires an amendment.
If the Concession Entity does not receive any comments within twenty-one (21) days, it shall proceed to implement the Plan as submitted.
- STEP 4: The Concession Entity shall effect the necessary amendments to the Plan and submit it to the Executive Director of the PPCC.
- STEP 5: Thereafter, the Concession Entity shall proceed to comply with the Plan as amended.

5.0 CONCESSION BIDDING DOCUMENTS

This Part provides guidance on the consultative process required for the development of the Concession bidding documents.

The guidance for the preparation of the draft bidding documents must be in accordance with the terms and conditions of the Certificate of Concession issued by the Minister for Economic Affairs, the Pre/Feasibility study and the Stakeholder consultations.



5.1 *Stage 1: Engage Advisor*

- STEP 1: The Concession Entity must comply with the terms of the Certificate of Concession with regards to the engagement of an external Advisor for the procurement phase.
- STEP 2: If an external Advisor was employed at the Feasibility study stage and his services have been retained for the concession procurement process, then proceed with the services. If not, then commence the procurement of an external Advisor.
The external Advisor must be procured in accordance with relevant sections of the Act. The detailed procedure for procurement of consulting services is provided in Section 5.3 of Part A of this manual.
- STEP 3: The Procurement Unit of the Concession Entity must formulate the Terms of Reference of the Advisor. The minimum scope of the services is provided in *Concession Template 4*.

CONCESSION TEMPLATE 4	
CONCESSION PROCUREMENT PHASE	
TERMS OF REFERENCE FOR EXTERNAL ADVISOR	
PPP PROCUREMENT DELIVERABLES	
The Advisor is required to work with the Concession Entity's Procurement Unit to manage the procurement process. The Advisor will then have to deliver the following:	
1	Administration of the bidding process
	The Advisor must prepare a complete set of procurement documents, complying with the Act. The Advisor must also give the Concession Entity all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process to be conducted in accordance with the Act and regulations, and to the highest standards of efficiency, quality and integrity.
1.1	Expression of Interest
	<p>The Advisor must design and administer a pre-qualification (request for Expression of Interest (EoI)) process with the intention of:</p> <ul style="list-style-type: none"> ▪ ensuring that the Concession Entity's exact interest is communicated clearly to the market ▪ determining the extent and nature of interest in the private sector ▪ Pre-qualifying a competitive number of competent firms/consortia in an equitable and transparent way. <p>The Advisor must prepare all the necessary EoI documentation, including advertising material; set up and administer the process by which the Concession Entity can pre-qualify interested parties and help the Concession Entity evaluate and pre-qualify bidders.</p>
1.2	Bid evaluation criteria and bid process design
	The Advisor must set up a bid evaluation system and criteria, design a suitable bid process that will ensure comparable bids, devise effective systems for communicating with bidders; inspire market confidence.
1.3	Request for proposals (RFP)
	<p>The Advisor must prepare an RFP document in accordance with best industry practice, consistent with the results of the feasibility study. The RFP must concisely set out:</p> <ul style="list-style-type: none"> ▪ the output specifications ▪ requirements for compliant bids ▪ a risk profile as established in the feasibility study ▪ the payment mechanism ▪ the bid process and time table ▪ evaluation criteria ▪ bidder communication systems
1.4	A Draft PPP agreement
	The Advisor must prepare a draft PPP agreement in consultation with the Ministry of Justice.

2	Administration of the bidding process
	The Advisor is to provide all necessary administrative support for efficient and professional management of the bidding process. This includes managing a data room, facilitating structured engagement between the Concession Entity and bidders, helping the Concession Entity communicate effectively with bidders.
2.1	Evaluation of bids
	The Advisor will assist the Evaluation panel constituted by the IMCC to evaluate the bids.
2.2	PPP agreement negotiations, PPP agreement management plan
	The Advisor must assist the Negotiation panel constituted by the IMCC in final negotiations with the Concession Entity's preferred bidder. This will involve preparing the issues for negotiations teams, categorizing issues appropriately, developing timelines for completion, and planning negotiation tactics and processes for reaching agreement. The Advisor must ensure that all agreements reached are incorporated into all the Concession financial, commercial and legal documentation, and must assist with drafting the necessary and related correspondence.
2.3	PPP agreement signature, close-out report and case study, and Financial Closure
	The Advisor must help the Concession Entity with all functions related to signing the final agreement. The Advisor must also compile a comprehensive close-out report. The close-out report will be a confidential document of the Concession Entity. Financial closure signifies that all the procurement deliverables have been successfully completed, and that the Advisor's work is finished, if applicable.

STEP 4: The Procurement Unit submits the Term of Reference to the Head of the Concession Entity for review.

STEP 5: Upon approval, the Procurement Unit shall procure the external Advisor in accordance with the relevant sections of the Act.

STEP 6: Upon approval, the Procurement Unit shall procure the external Advisor in accordance with the relevant sections of the Act.

5.2 Stage 2: Constitute a Project Team

The success of the project depends on a good management team within the Concession Entity which can work with the external Advisor.

The external Advisor will provide guidance to the Concession Entity in the formation of the Project Team. The roles, responsibilities and competencies of the Project Team are set out in *Table 1*.

5.3

TABLE 1	
THE PROJECT TEAM	
The Project Team will be led by the Director of the Procurement Unit of the Concession Entity. The role of the Project Team will be to:	
1	<p>Role of the Project Team</p> <ul style="list-style-type: none"> ▪ Provide the requisite technical, human resources, financial, industrial relations, legal and administrative input and information to the Advisor. ▪ Keeps record of all project documents, including progress reports, minutes of meetings, feasibility deliverables, and procurement reports. ▪ Ensures that the progress of the project is effectively communicated to the relevant Agencies as required under the Act and to the public where required
2	<p>Competencies of the Project Team</p> <ul style="list-style-type: none"> ▪ Financial and Government accounting ▪ Legal (Contracts and contract law) ▪ Risk management techniques ▪ Technical – specifications, contract management needs(sector specific)

Stage 3: Conduct Stakeholder Consultation

The process of public consultation provides an opportunity for the project to be structured to deal with the anticipated impacts of the project on the various categories of Stakeholders.

The Stakeholder forum shall be held prior to the development of the concession bidding documents so that issues can be appropriately addressed throughout the life of the project.

STEP 1: The Advisor shall work with the Project Team to develop a Communication Strategy for consultation with the identified target groups. The Strategy may also:

- ☞ Cover the consultation with potential bidders.
- ☞ Identify the persons/staff responsible for communicating with stakeholders through various media.
- ☞ Identify the means and persons responsible for communicating with Stakeholders throughout the procurement and implementation phases.

STEP 2: The Project Team must notify the target stakeholder groups through

existing communication channels, giving at least 30 days notice for the meeting. The minimum information to be provided to the Stakeholders is given in Section 91 of the Act.

Notification must include:

- ☞ A fact sheet or summary of project details.
- ☞ A request for submission of comments at the venue of the meeting or a designated venue within a stated time.

STEP 3: At the meeting:

- ☞ The fact sheet or project summary should be distributed to the stakeholders.
- ☞ The proceedings of the meeting must be recorded.
- ☞ All other written comments submitted either at the venue or through the designated communication channels must be collected and collated.

STEP 4: The collated record of proceedings of all stakeholder consultations must be used by the Advisor and the Project Team in developing the Concession Bidding documents.

5.4 Stage 4: Draft Bidding Documents

The Advisor shall be responsible for developing the draft concession bidding documents.

STEP 1: Refer to the Feasibility study, the Certificate of Concession and the records of the Stakeholder consultations to prepare the concession bidding documents.

The Concession bidding documents shall enable bidders to provide all the appropriate information required about their firms/consortium. The bidding documents shall also set out clearly the evaluation criteria and the stages of the procurement.

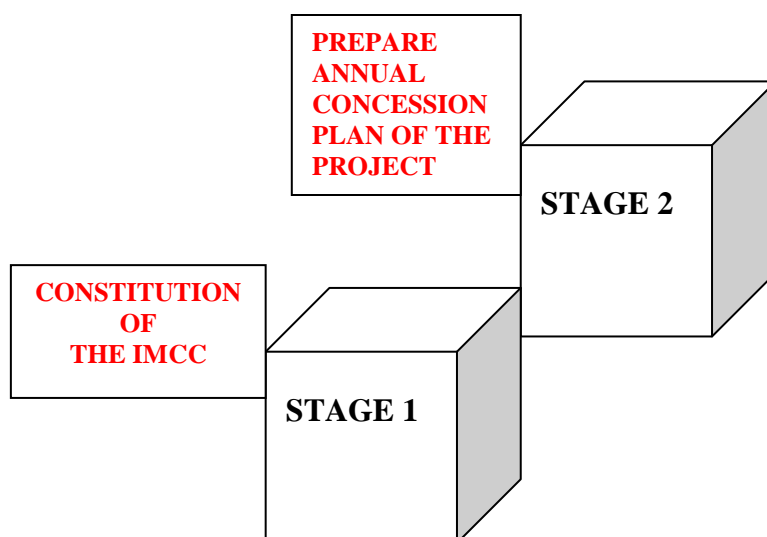
The minimum content of the Concession Bidding documents is set out in ***Concession Template 5***.

CONCESSION TEMPLATE 5	
CONTENTS OF THE DRAFT CONCESSION BIDDING DOCUMENTS	
1	Disclaimer
2	Information about the project
	<ul style="list-style-type: none"> ▪ Project description, background and overview ▪ Socioeconomic requirements ▪ Pre/Feasibility Study ▪ Performance parameters/output specifications ▪ Legal requirements and statutory regulations related to the concession ▪ Financing requirements ▪ Identified revenue parameter ▪ Risk transfer
3	Outline of contents
	<ul style="list-style-type: none"> ▪ Invitation to Bid ▪ Information Memorandum ▪ Instructions to Bidders ▪ Formats ▪ Draft Concession Agreement ▪ Technical Drawings/sketches ▪ Annexure
4	Procurement process
	<ul style="list-style-type: none"> ▪ Schedule of bidding process ▪ Language ▪ Clarification processes ▪ Changes to the composition of consortiums ▪ Participation in more than one consortium ▪ Bid security ▪ Confidentiality ▪ Negotiations ▪ Non-Discriminatory and Transparent and Objective Manner
5	Instructions to Bidders
	<ul style="list-style-type: none"> ▪ Preparation and submission of proposals ▪ Submissions ▪ Technical Proposals ▪ Financial Offer ▪ Alternative Bids ▪ Format and Signing of Proposal ▪ Sealing and Marking of Proposal ▪ Bid Submission Date ▪ Late Bids ▪ Modification/Substitution/Withdrawal of Bid

	<ul style="list-style-type: none"> ▪ Criteria for responsiveness ▪ Status and composition of Bidders ▪ Project inspection and site visits ▪ No contact policy ▪ Pre-bid meeting ▪ Bidder's responsibility ▪ Grounds for disqualification ▪ Concession Entity contact details.
6	Information required about Bidders
	<ul style="list-style-type: none"> ▪ Current workload of consortium members ▪ Bidder's capability and strength ▪ Proposed consortium composition and structure ▪ Covenant between consortium members, subcontractors and lenders (if applicable) ▪ Financial and market standing ▪ Equity, ownership and directorship ▪ Ability to fulfill the project's socioeconomic objectives ▪ Historical and current approach to social responsibility ▪ Approach to the concession including innovations and methodology ▪ Commitment and capacity to meet project timetable ▪ Ability to raise debt and equity or corporate finance and to provide security ▪ Project management capability ▪ Risk management capability ▪ Demonstration of understanding key project demands/complexities ▪ Disclosure of legal processes underway that affect bidding consortiums ▪ General issues raised by bidders
7	The Evaluation process
	<ul style="list-style-type: none"> ▪ Methodology ▪ Opening and Evaluation of Technical Proposals ▪ Determination of Proposal Responsiveness ▪ Technical Evaluation Criteria including Margin of Preference (if applicable) ▪ Opening and Evaluation of Financial Proposals ▪ Financial evaluation criteria
8	SAMPLE FORMATS
	<ul style="list-style-type: none"> ▪ Letter of Acceptance and Execution of Concession Agreement ▪ Letter of Transmittal ▪ Power of Attorney ▪ Bid security ▪ Financial Offer ▪ Evidence of Access to or Availability of Credit facilities

- STEP 2: The Head of Concession Entity shall formally submit the draft concession bidding documents to the IMCC for its review and comments.
- STEP 3: The IMCC's team of technical experts shall review the concession bidding document and submit a written report of the review process within 14 days upon receipt of the documents.
- STEP 4: The IMCC shall approve or reject the draft concession bidding documents within 21 days upon receipt of the documents from the Head of the Concession Entity.
- STEP 5: If the draft concession bidding documents are rejected, the IMCC shall indicate in writing to the Concession Entity the areas of concern for correction/amendment.
- STEP 6: The Concession Entity shall resubmit the corrected draft concession bidding documents to the IMCC for its approval within 7 days.

6.0 PROCUREMENT STRUCTURES



6.1 *Stage 1: Constitution of the IMCC*

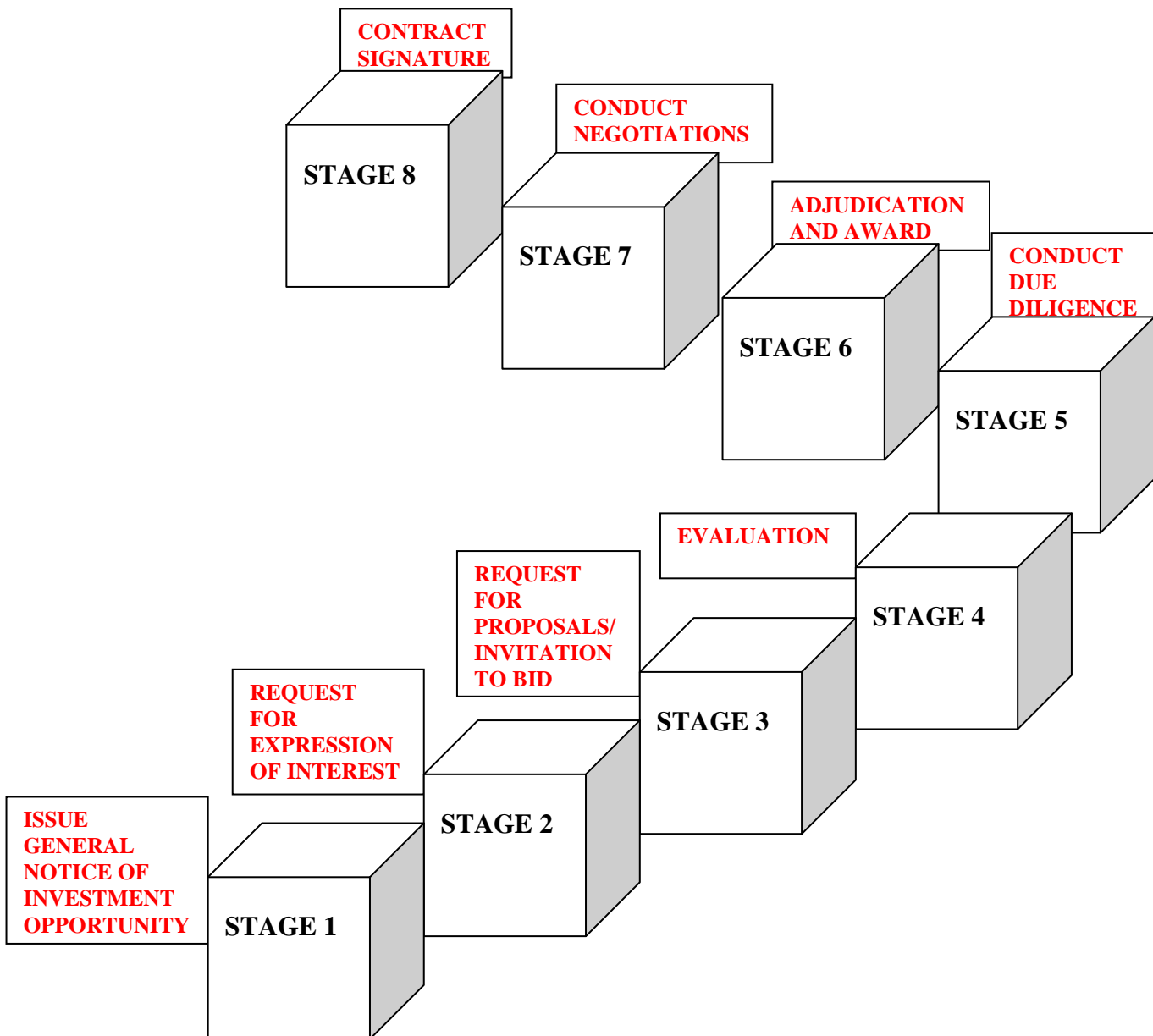
- STEP 1: The Concession Entity must initiate the request for the constitution of the IMCC after the approval of the concession procurement plan by the PPCC.
- STEP 2: The Concession Entity will make a request to the President to constitute the IMCC for the procurement of the specific concession. The Certificate of Concession issued by the Minister for Economic Affairs must accompany the request. The request must be copied to the Chairman of the National Investment Commission.
- STEP 3: The Chairman of the IMCC must convene a meeting of the IMCC within 7 (seven) days after the President has appointed members to the Committee.
- STEP 4: The Head of the Concession Entity must submit to the IMCC the following for deliberation at its first meeting:
- ☞ The concession procurement plan
 - ☞ The name of the Advisory firm (where applicable)
- STEP 5: The IMCC must at its inaugural meeting require all members to disclose any interest in the specific project under consideration. A copy of the minutes of this meeting shall be forwarded to the PPCC.
Where a member discloses a conflict of interest in the project under consideration, the member shall not participate in the deliberations.
The President may appoint another Minister to replace the member.
- STEP 6: The IMCC shall constitute a team of experts, whose competencies shall cover the following areas, to assist the IMCC in its work:
- ☞ Financial

- ☞ Legal and regulatory
- ☞ Technical – sector specific
- ☞ Procurement

6.2 *Stage 2: Annual Concession Plan of the project*

- STEP 1: The team of technical experts of the IMCC shall work with the Concession Entity to review and update the Concession Procurement Plan submitted to the IMCC. The updated Concession Procurement Plan shall constitute the Annual Concession Plan for the project.
- STEP 2: The Team of experts shall submit their written report and the updated Concession Procurement Plan to the IMCC.
- STEP 3: The IMCC shall submit the Annual Concession Plan of the project to the Cabinet for their information. A copy of the Annual Concession Plan of the project shall be submitted to the PPCC.

7.0 CONCESSION BIDDING PROCESS



7.1 Stage 1: Issue General Notice of Investment Opportunity

- STEP 1: The Procurement Unit of the Concession Entity must advertise the GNOI for the concession after approval of the Concession Procurement Plan by the PPCC.
- The advert for GNOI applies to all concessions to be procured under National Competitive and International Competitive Bidding. A minimum of two notices must be placed in the print media of wide circulation within a period of 14 (fourteen) days.
- A sample format for the advertisement of the GNOI is provided as *Concession Template 6*.

CONCESSION TEMPLATE 6	
General Notice of Investment Opportunity	
1	Intentions of the Concession Entity acting on behalf of the Government of Liberia
2	Brief description of the Project
3	The intentions of the Concession Entity to procure the concession using a particular procurement option and a specific procurement method.
4	Purpose of the advertisement [<i>to notify potential investors of this unique investment opportunity</i>]
5	Expected date for request for [<i>Expression of Interest</i>]/[<i>Request for Proposals</i>]
6	Concession Entity's contact address and responsible Officer for further enquiries.

7.2 Stage 2: Request for Expression of Interest

- STEP 1: The Advisor working with the Procurement Unit of the Concession Entity must prepare an Expression of Interest information document for concessions using National Competitive Bidding, where applicable, and all concessions using International Competitive Bidding.

The information document for the Notice of Expression of Interest will consist of:

- The Government's objectives in seeking a public-private partnership
- Description of the project
- The nature of the proposed partnership
- The contribution and expectation of the skills the preferred partner will bring to the partnership
- Mandatory submission requirements and instructions to respondents
- The evaluation scheme including weightings, points or other considerations that will be applied to each

- Elements of the evaluation
- The full extent of the selection process, including timetables
- Any other relevant information

STEP 2: the Advisor shall prepare the Notice of the Expression of Interest for advertisement in the print media as required under relevant section of the Act. A minimum of two notices must be placed in the print media of wide circulation within a period of 14 (fourteen) days. The format of the Notice of the Expression of Interest is provided as ***Concession Template 7***.

CONCESSION TEMPLATE 7	
NOTICE FOR EXPRESSION OF INTEREST	
1	The Government's objectives in seeking a public -private partnership
2	A brief description of the project
3	The role that will be played by the successful private sector partner
4	the location and deadline for submissions
5	the expected format of submissions:
	<ul style="list-style-type: none"> ▪ A profile of the potential partner making the application (if the partner is to be a consortium formed for the purpose of providing a proposal, each person or firm in the consortium should provide information on its principal business and the length of time that it has been in operation); ▪ The identification of the contact person for the private partner; ▪ A statement of financial stability (that can be evaluated on a pass/fail basis); ▪ A statement of financial capability including access to capital (debt and equity); ▪ A statement of performance capability that includes an overview of overall experience, <ul style="list-style-type: none"> ○ experience in similar projects, ○ senior management expertise, ○ expertise of those staff members who will work on the project, ○ ability to obtain necessary resources, references
6	A contact name and address
7	An address where the full EoI document can be obtained

STEP 3: the Procurement Committee of the Concession Entity shall receive the submissions of the EoI in accordance with the relevant sections of the Act.

STEP 4: the IMCC shall constitute a Concession Bid Evaluation Panel to evaluate the submissions. A sample of the evaluation criteria for evaluating the Expressions of Interest is set out in ***Concession Template 8***.

CONCESSION TEMPLATE 8	
CATEGORY AND SUBCATEGORIES	WEIGHTINGS
Structure of Firms and Composition	
<ul style="list-style-type: none"> ▪ Proposed firm/consortium composition and structure ▪ Strength of covenant between firm/consortium and key subcontractors 	
Technical capacity and Deliverability	
<ul style="list-style-type: none"> ▪ Commitment and capacity to meet project timetable ▪ Project management capability ▪ Current workload of consortium members ▪ Risk management capability ▪ Skill and experience of relevant firm/consortium and key subcontractors 	
Track record and experience	
<ul style="list-style-type: none"> ▪ Projects of similar size and nature ▪ Experience in the area of the Concession option 	
Financial capacity	
<ul style="list-style-type: none"> ▪ Financial and market standing ▪ Ability to raise debt and equity and to provide security 	
TOTAL	100

Concession Bid Evaluation Panel must complete its work within 14(fourteen) days and submit the evaluation report to the IMCC for adjudication.

STEP 6: The IMCC shall give its approval or otherwise of the evaluation report within 7 (seven) days upon receipt of the report.

STEP 7: The IMCC must also submit a copy of the evaluation report to the relevant Agencies as listed and notify them of its decision:

- ☞ The Commission
- ☞ The Ministry of Finance
- ☞ The Ministry of Justice
- ☞ The Ministry Economic Affairs
- ☞ The National Investment Commission
- ☞ The Concession Entity

STEP 8: the Concession Bid Evaluation Panel constituted for the evaluation of the Expression of Interest must be dissolved upon completion of its work.

7.3 Stage 3: Request for Proposals/Invitation to Bid

The Request for Proposal shall be based on the Concession bidding documents developed by the Advisor and Project Team and approved by the IMCC.

- STEP 1: the Advisor working the Procurement Unit shall prepare the Notice of the Request for Proposals for advertisement in the print media as required under relevant sections of the Regulations.
- STEP 2: the Concession Entity shall receive and respond to clarifications from Bidders as provided in the Concession Bidding documents.
- STEP 3: The Concession Entity shall organize a Pre-Bid meeting for all Bidders to further clarify any outstanding issues relevant to the implementation of the concession.
- STEP 4: if required, the Concession Entity shall issue a Corrigendum to the Concession Bidding documents as applicable.
- STEP 5: the Procurement Committee of the Concession Entity shall receive the submission of the RFP in accordance with relevant sections of the Act and forward the documents to the IMCC.

7.4 Stage 4: Evaluation

- STEP 1: The Advisor shall assist in developing the evaluation criteria for the evaluation of the Request for Proposals.

The broad categories for the technical and financial evaluation shall be stated in the Concession Bidding documents to focus bidders' attention on the assessment areas of the RFP.

Using a two-envelope system

The evaluation process may use *a two-envelope system* in the evaluation of an RFP.

The first envelope would contain all required submission contents except for the financial offer. The second envelope would contain the financial offer.

If the proposal meets the technical criteria established by the Project Team and detailed in the Request for Proposals (RFP), then the second envelope containing the financial offer can be opened and evaluated.

If the proposal does not meet the technical criteria, the second envelope remains unopened and shall be returned to the Bidder at the end of the evaluation process.

The RFP shall specify that the technical proposals and the financial offer shall each be scored out of 100 points. The scores achieved will be calculated into the bidder's overall score using the following formula:

Calculating the bidder's overall score
$a * (\text{technical score}/100) + b * (\text{price score}/100) = c$ where:
<ul style="list-style-type: none"> ▪ a is the weighting for technical (between 60% and 80%) ▪ b is the weighting for price (between 20% and 40%), and ▪ c is the total score achieved by the bidder.

STEP 2: The IMCC shall constitute a Concession Bid Evaluation Panel to evaluate the submissions of the Request for Proposals.

STEP 3: the Concession Bid Evaluation Panel shall undertake the following:

- check for completeness of the proposals (submission of all required documents)
- check for compliance with the instructions to Bidders (has met the minimum requirements of the RFP)

If the Concession Bid Evaluation Panel determines that the Bidder's submission has not complied with the Instructions to Bidders and

STEP 4: the Concession Bid Evaluation Panel may request for clarification (where required) from Bidders. The request and subsequent responses shall be in writing.

Responses which set out to change or amend the proposals shall be ignored. If the response does not clarify the issue raised, then the Concession Bid Evaluation Panel shall interpret the information in the proposal to give the minimum of possible scores.

STEP 5: The evaluation of alternative bids shall be considered only after the bid has been judged to be compliant. The compliant bid shall be evaluated in accordance with the evaluation criteria. The alternative bid should be evaluated as a stand-alone proposal.

Evaluation criteria can vary depending on the type of project and end users. The technical evaluation criteria may include the following as set out in *Concession Template 9*.

CONCESSION TEMPLATE 9	
TECHNICAL EVALUATION CRITERIA	
	<ul style="list-style-type: none"> ▪ Details of the project participants and overall organization structure
	<ul style="list-style-type: none"> ▪ Is the project deliverable?
	<ul style="list-style-type: none"> ▪ Can the required outputs be delivered?
	<ul style="list-style-type: none"> ▪ A technical feasibility assessment may be carried out to assess whether or not the solution can become a reality.
	<ul style="list-style-type: none"> ▪ Each element of the system service specification must be assessed from the design, development and operational perspectives. the objective is to: <ul style="list-style-type: none"> ➤ Confirm that the system service specification is, given bidder responses, an accurate reflection of the Client's needs ➤ Capture the particular perspective of the proposal ➤ Capture the deficiencies or added benefits ➤ Assess a value for money impact.
	<ul style="list-style-type: none"> ▪ The proposal must be checked against the requirements of the standard specifications.
	<ul style="list-style-type: none"> ▪ Proposed solution meets the needs of the government (has innovation been incorporated in the proposal? If so, is it valuable to the process?)
	<ul style="list-style-type: none"> ▪ Previous experience of the potential partner;
	<ul style="list-style-type: none"> ▪ Commitment of the proposed partner to achieving a solution that will benefit all parties;
	<ul style="list-style-type: none"> ▪ Understanding of the needs of the government;
	<ul style="list-style-type: none"> ▪ Management capacity of the potential partner;
	<ul style="list-style-type: none"> ▪ Compliance with the non-negotiable requirements of the government;
	<ul style="list-style-type: none"> ▪ Staff capability;
	<ul style="list-style-type: none"> ▪ Financial stability of the potential partner;
	<ul style="list-style-type: none"> ▪ Financial capability and ability to deliver infrastructure or services;
	<ul style="list-style-type: none"> ▪ Proposed solutions for dealing with affected stakeholders;
	<ul style="list-style-type: none"> ▪ Legality of the proposed solution;

The financial evaluation criteria may include the following:

CONCESSION TEMPLATE 9	
FINANCIAL EVALUATION CRITERIA	
	<ul style="list-style-type: none"> ▪ The length of the concession period
	<ul style="list-style-type: none"> ▪ Affordability
	<ul style="list-style-type: none"> ▪ Certainty of project costs (development and operational)
	<ul style="list-style-type: none"> ▪ Certainty, nature and costs of funding
	<ul style="list-style-type: none"> ▪ All items omitted by bidders from the financial model
	<ul style="list-style-type: none"> ▪ the proposed initial level of user charges and the formula for

	varying charges over time
	<ul style="list-style-type: none"> ▪ The degree of project risk transferred to the Client
	<ul style="list-style-type: none"> ▪ Project bankability, where appropriate, which is a function of the consortium's composition, structure, risk distribution, and funding plan.
	<ul style="list-style-type: none"> ▪ Final basis for making the decision, including value for money and life-cycle costs.

STEP 6: On completion of the evaluation report, the Concession Bid Evaluation Panel shall submit the report to the IMCC. The IMCC must not deliberate on the evaluation report in the absence of the 'Due Diligence' report.

7.5 Stage 5: Conduct Due Diligence

STEP 1: The Concession Entity may engage an Independent Expert to conduct due diligence on the Bidders. The due diligence shall be conducted concurrently with the evaluation of the Bids.

The due diligence process shall focus on the legal and financial aspects of the submission of the Bidders and must cover the areas required in Section 116 of the Act. It may also cover specific areas identified by the entity.

STEP 2: The Independent Expert shall submit its report to the Head of the Concession Entity.

STEP 3: The Head of the Concession Entity shall submit the 'Due Diligence' report to the IMCC for its final adjudication on the bidding process.

7.6 Stage 6: Adjudication and Award

STEP 1: The IMCC shall adjudicate on the Evaluation report and the Due Diligence report simultaneously and make its decision after receipt of the reports.

STEP 2: The IMCC must also submit a copy of the Evaluation and Due Diligence reports to the relevant Agencies as listed and notify them of its decision:

- ☞ Office of the President
- ☞ The Commission
- ☞ The Ministry of Finance
- ☞ The Ministry of Justice
- ☞ The Ministry Economic Affairs
- ☞ The National Investment Commission
- ☞ The Concession Entity

STEP 3: the Concession Bid Evaluation Panel constituted for the evaluation of the Request for Proposals must be dissolved upon completion of its work.

7.7 Stage 7: Conduct Negotiations

STEP 1: The IMCC shall constitute the Negotiations Team as provided in Section 118 of the Act. The IMCC or the President, as the case may be, shall appoint the Lead Negotiator and a secretary to the Team.

STEP 2: The Advisor shall work with the Negotiation Team to prepare the Negotiation Preparatory Plan for conducting the negotiations for the consideration of the IMCC.

The Advisor and the Team shall set out clearly the following:

- the Objectives of the negotiations
- the issues based on the provisions of Section 118 of the Act, the technical and financial submissions of the Bidder
- the strategy for conducting the negotiations including the positions to be adopted (fall-back etc)
- time table to meet the bid validity period

STEP 3: The Negotiation Preparatory Plan must be submitted to the IMCC for its approval.

STEP 4: Upon approval of the Negotiation Preparatory Plan, the Concessions Entity shall invite the recommended Bidder to a meeting to:

- Introduce the Government's Negotiation Team
- Request the names and position of each member of the Bidder's negotiation team.
- Provide the timetable and venue for the negotiations.
- Discuss and sign the Confidential Agreement for the negotiations.
- Provide a list of the issues to be discussed.

STEP 5: The negotiations shall commence upon the signing of the Confidential Agreement and the agreed timetable.

The proceedings of the negotiations shall be recorded and all documentation used or submitted including all changes shall be properly labeled and filed.

The Negotiation Team shall, where necessary during the negotiations, consult as the context requires. The Negotiation Team shall present the final position of the negotiations to the IMCC for concurrence before reaching a final agreement with the Bidder.

STEP 6: The Negotiating teams shall sign a memorandum which provides details of all agreements reached during the negotiations. The details shall include:

- Record of negotiated points and resolutions
- Agreement on the areas of the Draft Agreement which shall be amended to reflect the negotiated positions.

- A preliminary schedule for signing the Concession agreement.

STEP 7: The Advisor shall work with the Negotiation Team and the Ministry of Justice to draft the Final Agreement for the implementation of the Concession. The records of the negotiations must provide guidance for the drafting of the Final Agreement.

7.8 Stage 8: Contract Signature

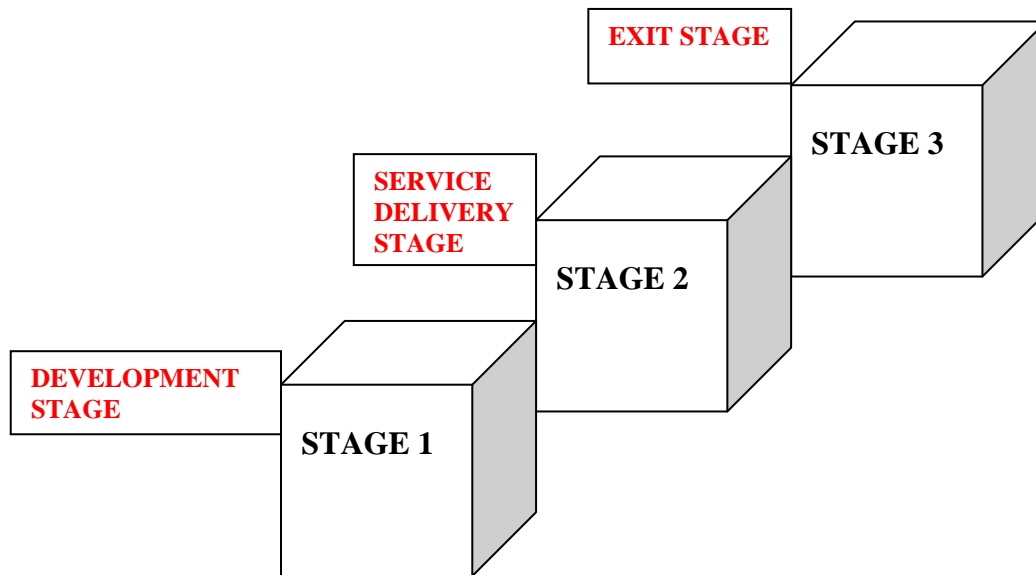
STEP 1: The Concession Entity shall submit the Final Agreement including all Schedules to the IMCC for its final approval. The approval must be given within two (2) weeks after the submission by the Concession Entity.

STEP 2: The IMCC shall inform all the parties indicated in Regulation 37.

STEP 3: The Signing Authority as determined by existing financial regulations shall sign the concession within thirty (30) days after the IMCC has informed all the relevant parties.

STEP 4: If the value of the contract exceeds US\$ 10 million (Ten million United States dollars) or any other limit set by legislation, it must be submitted to the Legislature for ratification.

8.0 POST CONTRACT MANAGEMENT



The various stages of the Post-Contract management phase are defined as follows:

1. The Development Stage – from the signing of the contract until the commencement of service delivery.
2. The Service Delivery Stage – the period when services are provided and used
3. The Exit Stage – the period towards the end of the life of the project (whether the project ends through expiry or termination) during which activities are wound up and the Concession Entity makes new financial and contractual arrangements for continued service delivery.

The key functions of the various stages are set out in *Table 2*.

8.1 Stage 1: Development Stage

STEP 1: The Concession Entity and the Concessionaire must nominate members to constitute a Steering Committee for the management of the partnership for the project.
The Steering Committee shall include the Leader of the Project Team.

STEP 2: The Project Team of the Concession Entity and the Advisor/Supervision Team (where applicable) shall be responsible for service delivery activities relating to the Development Stage. The activities shall include:

- ☞ Establishing risk control/mitigation procedures
- ☞ Establishing a performance management systems
- ☞ Monitoring the development of the service towards the commencement date

The Team shall work with other regulatory and monitoring Agencies in the development of the systems. The procedures and systems shall be in written format and shall be in accordance with the Contract Agreement and other relevant Legislation.

Copies of the procedures and systems shall be given to the Concessionaire and the Steering Committee. They shall be available for inspection by Auditors.

STEP 3: The Project Team of the Concession Entity and the Advisor/Supervision Team (where applicable) shall be responsible for the contract administration activities during the Development Stage. The activities shall include:

- ☞ Developing financial administration, contract maintenance and variation management procedures
- ☞ Developing a contract management manual

The procedures and systems shall be in written format and shall be in accordance with the Contract Agreement and other relevant Legislation.

Copies of the procedures and systems shall be given to the Concessionaire and Steering Committee. They must be available for inspection by Auditors.

8.2 Stage 2: Project Delivery Stage

STEP 1: The Steering Committee shall be responsible for the partnership management during this stage. The activities for partnership management shall include:

- ☞ Reviewing and revising the partnership as necessary
- ☞ Commissioning independent reviews, where applicable

STEP 2: The Project Team of the Concession Entity and the Advisor/Supervision Team (where applicable) shall be responsible for the service delivery activities. The activities shall include:

- ☞ Managing variations to the project
- ☞ Ensuring that contracted services are provided in accordance with the output specification
- ☞ Managing risks
- ☞ Managing performance

The results of these activities should be in written format and should be presented to the Client periodically in accordance with the Contract Agreement and other relevant Legislation.

They must be available for inspection by Auditors.

STEP 3: The Project Team of the Concession Entity and the Advisor/Supervision Team (where applicable) shall be responsible for the contract administration activities. The activities shall include:

- ☞ Updating the contract management manual
- ☞ Reviewing and revising the financial administration, contract maintenance and variation management procedures

The revised procedures shall be in written format and shall be issued to the Concessionaire and the Steering Committee. They shall be available for inspection by Auditors.

8.3 Stage 3: Exit Stage

STEP 1: The Steering Committee shall be responsible for the partnership management during this stage. The activities for partnership management relating to the Exit Stage shall include:

- ☞ Record lessons of the partnership into a final report
- ☞ Organize closure events

STEP 2: The Project Team of the Concession Entity and the Advisor/Supervision Team (where applicable) shall be responsible for closing out the service delivery activities. The activities should include:

- ☞ Organize post implementation review
- ☞ Assess deliverables, value for money, quality and innovation achieved by the project

The results of these activities must be incorporated into a Project Close-Out report.

STEP 3: The Project Team of the Concession Entity and the Advisor/Supervision Team (where applicable) shall be responsible for closing out the contract administration activities. The activities should include:

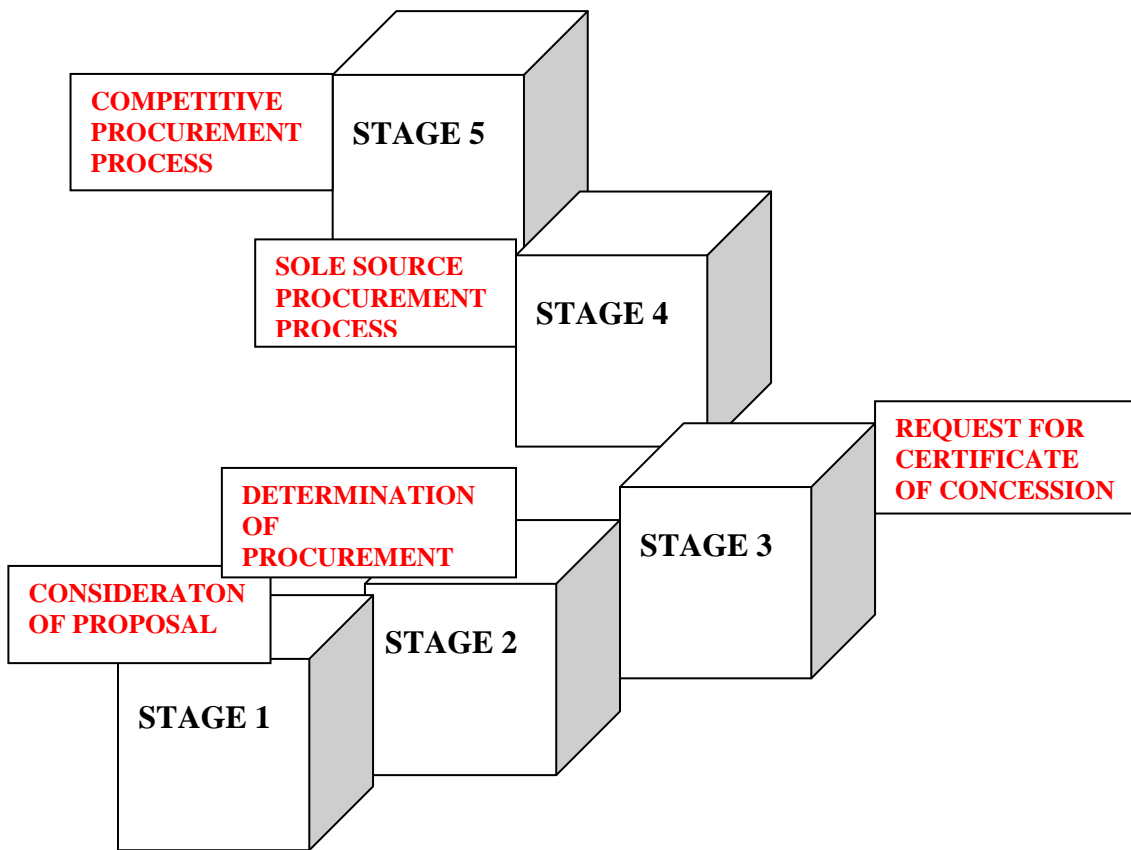
- ☞ Make arrangements to continue the delivery of the services
- ☞ Implement hand- back procedures

The results of these activities must be incorporated into a Project Close-Out report.

TABLE 2			
POST-CONTRACT MANAGEMENT			
Critical stages of Concession post-contract management	Key functions of contract management		
	Partnership management	Service delivery management	Contract administration
Development	<ul style="list-style-type: none"> ▪ Ensure a seamless transition to the new arrangements ▪ Establish sound partnership management systems 	<ul style="list-style-type: none"> ▪ Establish risk control procedures ▪ Establish performance management systems ▪ Monitor the development of the service towards the commencement date 	<ul style="list-style-type: none"> ▪ Develop financial administration, contract maintenance and variation management procedures ▪ Develop the contract management manual
Delivery	<ul style="list-style-type: none"> ▪ Review and revise the partnership as necessary ▪ Commission independent reviews 	<ul style="list-style-type: none"> ▪ Ensure contracted services are provided in accordance with the output specification ▪ Manage risks ▪ Manage performance ▪ Manage variations 	<ul style="list-style-type: none"> ▪ Review and revise financial administration, contract maintenance and variation management procedures ▪ Update the contract management manual
Exit	<ul style="list-style-type: none"> ▪ Organize closure events ▪ Record lessons of the partnership into final report 	<ul style="list-style-type: none"> ▪ Assess deliverables, value for money, quality and innovation achieved by the project ▪ Organize post implementation review 	<ul style="list-style-type: none"> ▪ Implement hand back procedures ▪ Make arrangements to continue the delivery of the services

9.0 UNSOLICITED PROPOSALS

This section of the Manual relates to how Concession Entities should deal with unsolicited proposals for concessions submitted by prospective investors.



9.1 *Stage 1: Consideration of Proposal*

STEP 1: Conduct a check to determine if the criteria for consideration of unsolicited proposals have been met. The criteria are as follows:

- ☞ The proposal is included in the overall development framework but
- ☞ not included in the Annual Concession Plan
- ☞ the product or service will be exceptionally beneficial to or have exceptional cost advantages for the Government
- ☞ There are no substantial financial contributions to be made by Government.
- ☞ the product or service offered in terms of the proposal is a demonstrably or proven unique innovative concept;
- ☞ The proposal is specialized in nature and will not attract other bidders

If the criteria have been met completely, then the Concession Entity will proceed on the basis of sole source procurement in accordance with the Act. The Concession Entity may proceed to Step 2.

If any of the criteria with the exception of Criterion 5 has not been met, then the Concession Entity will not make any further consideration of the unsolicited proposal.

If criterion 5 is the only criterion that has not been met, then the Concession Entity will proceed to Step 3.

9.2 Stage 2: Determination of Procurement Method

Step 1: The Concession Entity will submit a justification to proceed to undertake a sole source to the Commission. The justification will specifically include evidence that the proposed concession will not attract other bidders.

If the Commission grants the request for a sole source method of procurement, then Concession Entity will proceed to Stage 3.

If the Commission rejects the request for a sole source method of procurement, then the Concession Entity will proceed to Stage 5.

9.3 Stage 3: Request for Certificate of Concession

Step 1: The Concession Entity will develop a Value for Money analysis to determine if the proposal submitted is competitive.

Value for money means that the provision of a service or function by a private sector entity results in a net benefit to the public, defined in terms of cost, price, quality, quantity, or risk transfer, or a combination of these.

The Concession Entity may use a number of methods to determine if value for money will be achieved if the concession is undertaken based on the proposals as received. If not the Concession Entity may note the areas for adjustment as inputs for negotiations.

The methods for value for money may include:

A cost-benefit analysis is essentially the analysis whereby benefits (both quantitative and qualitative) are reflected in the output specifications and compared with cost considerations (both quantitative and qualitative).

A Public Sector Comparator (PSC) model is a costing of the project with specified outputs with the public sector as the supplier. Costs are based on recent, actual costs of a similar project, or best estimates.

An external reference model is a costing of a project with the identical specified outputs but with the private sector as supplier.

Comparing the two models enables the public to assess whether service delivery by government or by a private party yields the best value.

Risk is inherent in every project. Conventional public sector procurement has tended not to take risk into account adequately, often resulting in unbudgeted cost overruns. In a Concession, the private party manages and costs the risks inherent in the project differently. The treatment of risk in the project is a key aspect of the value for money assessment.

Step 2: The Concession Entity will proceed to request the Minister for Economic Planning to issue a Certificate of Concession for the project. The request will be supported with a written report indicating that the objectives for a concession have been met in accordance with Section 74 of the Act. The report will also provide evidence the following have been detailed or achieved in the unsolicited proposal:

- ☞ a sound business case for the concession
- ☞ The proposed period of the concession
- ☞ Fair risk allocation
- ☞ Financial benefits to the state and the concessionaire
- ☞ Financial and other obligations of the state
- ☞ Environmental and social impacts
- ☞ Value for money

Step 3: Upon receipt of the request for a Certificate of Concession, the Minister for Economic Affairs shall set up a team to determine if the Preliminary Study/Pre-Feasibility report has covered all pertinent issues and meets the criteria set in Section 89 of the Act.

STEP 4: The team shall submit their advice in a written report to the Minister for Economic Affairs within fourteen (14) days after the Minister has constituted the team.

STEP 5: Minister for Economic Affairs shall proceed to issue a written approval as the Certificate of Concession for the procurement of the project as a concession. The Certificate of Concession shall be issued to the Concession Entity with a copy to the PPCC.

The Certificate of Concession shall state:

- ☞ The project registration number
- ☞ The proposed period of the concession
- ☞ The key objectives and strategic benefits of the concession
- ☞ Any bottlenecks and/or barriers that need to be addressed in the course of the procurement process and in the agreement.
- ☞ If the services of an Advisor is required in the concession procurement phase and/or the concession management process.
- ☞ Any other requirement that meets other national objectives.

9.4 Stage 4: Sole source procurement process

The Concession Entity shall thereafter follow the procedures set out in this manual as follows:

<p>4.0 Concession Procurement Plan 4.1 Stage 1: Prepare procurement plan 4.2 Stage 2: Submission and Approval of procurement plan.</p> <p>5.0 Concession Bidding Documents 5.1 Stage 1: Engage Advisor (Modify TOR to exclude; preparation of bidding documents, evaluation of bids but include value for money assessment) 5.1 Stage 2: Constitute a Project Steering Team 5.3 Stage 3: Conduct Stakeholder Consultation</p> <p>6.0 Procurement Structures 6.1 Stage 1: Constitution of IMCC 6.2 Stage 2: Annual concession plan project</p> <p>7.0 Concession Bidding Process 7.4 Evaluation (replace the evaluation process with a ‘Value for money’ assessment 7.5 Conduct Due Diligence 7.6 Award 7.7 Conduct Negotiations 7.8 Contract Signature</p> <p>8.0 Post Contract Management 8.1 Development stage 8.2 Service Delivery stage 8.3 Exit stage</p>

9.5 Stage 5: Competitive Procurement process

Proceed to develop the project on a competitive basis as provided in this Manual

SAMPLE DUE DILIGENCE CHECK LIST

Due diligence shall be conducted on each responsive Bidder (this includes each member of a consortium)

SAMPLE DUE DILIGENCE INFORMATION GATHERING CHECK LIST (Section 116 of the Act)

1. The capacity of the private sector entity to enter into the concession agreement
a. Does the private entity meet the requirements of Section 86?
b. Is the private entity incorporated to undertake this line of business?
2. General Information
a. Information of the company's products/services
b. Location addresses of head offices (and branch offices worldwide, if applicable)
c. Details of any international affiliations/holding/subsidiary companies where applicable
3. Corporate Documents
a. Certified copies of company memorandum or articles of association/regulations/amendments if any
b. Composition of board of directors
c. Profile of directors
d. Shareholding Structure
e. Stated capital/alterations
f. Minutes of the ordinary and extraordinary meetings of the shareholders in the last three (3) years if the entity is a public listed entity
g. Board policy/corporate governance rules where available
h. Shareholder and Management agreements if context requires
i. Management agreement if applicable
j. Joint Venture Agreements where applicable
k. Inter-company agreements/contracts with parent company (where applicable)

4. Resolutions/Approvals
a. Special board/shareholder resolutions authorising the entry into the concession
b. Authorisation from regulatory body if applicable
c. Statement of statutory compliance with corporate, business and general laws of Liberia/country of origin as required
5. Licensing
a. Licenses/approvals where required
b. Regulatory reports on the prospective concessionaire, if any
c. Any technology transfer agreements
6. Material Contracts
a. Any other material contracts/agreements/arrangements including business cooperation agreements
7. Labour
a. Employment contracts/appointment letters of key employees to manage the concession
b. Employee policy/procedures if available especially related to skill transfer
c. Collective bargaining agreements with employees where applicable
d. Details of share options/investments/other performance schemes if applicable
e. Pension/Provident Fund schemes if any
8. Assets & Liabilities
a. List of assets (movable and immovable)
b. Proof of ownership or other interest where applicable
c. Charges on the assets including mortgages and other liens, if any
9. Litigation
a. Details of any litigation, by or against the company

b. If litigation involves a claim against the bidder and the claim amount is substantial enough to disturb the bidder's financial strength then provide evidence of how such contingent liability may be met
10. Finance, Investments, Loans & Guarantees
a. External Auditor Statements
b. Credit/debt profile of the company
c. Investments made by the company
d. Guarantees granted by the company
e. Financing agreements related to any borrowing
f. Audited Accounts, Financial Projections and External Auditor Statement
g. If litigation involves a claim against the bidder and the claim amount is substantial enough to disturb the bidder's financial strength then provide evidence of how such contingent liability may be met
11. Insurance
a. Details of all insurance policies
12. Intellectual Property Rights/Technology Transfer
a. Evidence of trademark registration/patent rights if applicable
b. Technology transfer agreement

In its regular meeting held on -----, 2009, the Commissioners approved the Manuel of the Public Procurement and Concessions Act as Manuel No. 001. Those present at this 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 Manuel shall take effect as of the date publication.

DONE IN THE CITY OF MONROVIA, COUNTY OF MONTSEERRADO, REPUBLIC OF LIBERIA THIS 1ST 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