

STATUTORY INSTRUMENT

Supplement to the Sierra Leone Gazette Vol. CXXXVII, No. 44

dated 21st September 2006

THE PUBLIC PROCUREMENT REGULATIONS, 2006

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STATUTORY INSTRUMENT NO. 17 OF 2006

Published 21st September, 2006

THE PUBLIC PROCUREMENT, ACT 2004
(ACT NO. 14 OF 2004)

THE PUBLIC PROCUREMENT REGULATIONS, 2006

Short title.

In exercise of the powers conferred upon him by subsection (1) of section 68 of the Public Procurement Act, 2004, the Authority hereby makes the following Regulations:-

PART I - PRELIMINARY

In these Rules unless the context otherwise requires—

Interpretation.

“Act” means the Public Procurement Act 2004.

"Authority" means the National Public Procurement Authority (NPPA) established by section 3 of the Public Procurement Act, 2004;

"bid" means, according to the type of procurement method being used, a proposal or quotation given by a bidder in response to an invitation by a Procuring Entity;

"bidder" means a natural person or a legal entity that, according to the context, is a participant or potential participant in procurement proceedings

"bidding documents" means a document or set of documents prescribing the quantity, quality, characteristics, conditions and procedures, of the transaction prior to the actual procurement, and on the basis of which the bidders are to prepare their bids;

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

"collusive practices" means a scheme or arrangement between two or more parties with or without the knowledge of the Procuring Entity, designed to establish prices at artificial, non-competitive levels.

"consultant" means the provider of intellectual services, including consultants' services;

"consultants' services" refers to activities of an intellectual and immaterial nature that do not lead to a measurable physical output. They include design, supervision, training, advisory, auditing, software development, and similar services;

"contract" means the written agreement of the parties' will, on the basis of which rights and obligations of the parties are determined;

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

"force account" means the conduct of procurement proceedings by a Procuring Entity under its own supervision and utilising its own resources.

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

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

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

"intellectual services" means any activity of an intellectual nature that does not lead to a measurable physical output;

"National Public Procurement Authority" means the central policy and monitoring unit established under section 3 of the Act;

"non-consultancy services" means any object of procurement other than goods, works and consultants' services;

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

"performance security" means the bank guarantee or other form of security submitted by the supplier, contractor or consultant to secure their obligations under the procurement contract, in accordance with the requirements in the bidding documents;

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

"Procurement Committee" means the group within the procuring entity, comprising officials within and outside of the entity established under section 18 of the Act to act as an award authority and conduct other procurement approval functions in accordance with the Act;

"procurement contract" means the written agreement of the parties' will, regarding the procurement, of the agreed goods, works or services, on the basis of which rights and obligations of the parties are determined;

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

"Procurement Unit" means the department formally established within the Procuring Entity to carry out the procurement activities of that entity in accordance with the functions set out in section 19 of the Act;

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

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

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

"regulations" means the Public Procurement Regulations issued by the National Public Procurement Authority under section 68 of the Act;

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

"request for proposals" is the method to be utilised for procurement of consultants' and other intellectual services, in accordance with section 43 of the Act;

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

"Independent Procurement Review Panel" means the three-person Panel appointed by the Minister of Finance under section 20 of the Act for the purposes of considering and deciding upon individual applications by bidders for administrative review;

"securities" means the money or the bank guarantee that the bidder provides to secure his obligations in the bidding proceedings or in contract performance, over which the Procuring Entity cannot claim any property right, unless the bidder or supplier, as the case may be, defaults in those obligations;

"services" means any services other than intellectual services;

"sole-source procurement" refers to the method of procurement, conducted in accordance with sections 46 of the Act, by which the Procuring Entity awards the procurement contract directly, without holding an competitive proceeding;

"solicitation document" means bidding documents.

request for proposals documents, request for quotations documents and any other document inviting bidders to submit a bid for the supply of goods, works or services:

"supplier" means a physical or juridical person under contract with a Procuring Entity to supply goods, construct works or provide intellectual and other services:

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

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

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

PART II – INSTITUTIONAL ARRANGEMENTS FOR PUBLIC PROCUREMENT

1. (1) In addition to the functions specified in section 14 of the Act, the National Public Procurement Authority shall conduct any other functions specified in this regulation.

National
Public
Procurement
Authority
(NPPA)

2. The NPPA shall provide training for the private sector, including small enterprises, in the application of public procurement procedures, the preparation of bids using standard bidding documents and other relevant topics.

Policy
functions of
the National
Public
Procurement
Authority.

3. The NPA shall ensure that public procurement policy, systems and procedures are consistent with and integrated into other relevant Government policies, systems and procedures, including, but not limited to those for:

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

4. (1) In conducting its monitoring functions, the NPPA may investigate and advise on any aspect of procurement procedures and process and it shall co-operate and work closely with other bodies responsible for oversight and, where appropriate, refer cases to other bodies for action.

Monitoring
functions of
National
Public
Procurement
Authority.

(2) The NPPA may participate in any mechanisms established for:

- (a) sharing information with other oversight bodies;

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

(3) In order to conduct its monitoring functions, in accordance with the provisions of section 15 of the Act, the NPPA shall request such reports as required from procuring entities relating to any aspects of procurement covered by the Law and these Regulations.

Capacity building functions of National Public Procurement Authority

5. (1) In developing certification schemes for procurement officers and members of Procurement Committees, the NPPA shall work with appropriate bodies responsible for public sector employment and capacity building.

(2) In developing certification schemes for procurement officers and members of Procurement Committees, the NPPA shall take into account:

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

- (e) requirements for different levels of procurement staff and requirements for career progression for procurement officers.

(3) Pending the development of the necessary capacity in procuring entities, the NPPA may issue interim certification requirements, linked to ongoing capacity building initiatives.

(4) In implementing measures aimed at developing human resources and professionalism for public procurement, the NPPA may contract external organisations to deliver capacity building programmes.

6. In drafting or revising procurement and supply management legislation, regulations, circulars, standard bidding documents or similar instruments, the NPPA shall:

Regulatory functions of National Public Procurement Authority.

- (a) consult with stakeholders in both the and private sectors; and
- (b) liaise with the Minister of Justice regarding the introduction or issue of all legal documents, including the general conditions of contract and contract forms in standard bidding documents.

7. (1) The NPPA shall require procuring entities to submit regular reports of procurement activities, to facilitate the establishment and maintenance of data and information bases concerning procurement and to assist in the monitoring of public procurement and development of public procurement policies and shall issue circulars regarding any such reports required.

Data management functions of the National Public Procurement Authority.

(2) Where it would increase efficiency and effectiveness, the NPPA may designate any special agency or central administration established in accordance with regulation 19 to establish centralised standing lists of bidders in accordance with regulation 26,

8. (1) In revising thresholds in accordance with section 68 NPPA setting of the Act, the may set different thresholds for different types of procuring entities,

NPPA setting and updating including thresholds

- (a) Ministries, Departments. Agencies;
- (b) State Owned Enterprises and Public Companies with Government Ownership; and
- (c) Local Government.

(2) The NPPA may also set different thresholds for the central or head offices of procuring entities and provincial, district or branch offices.

(3) Where the NPPA considers it appropriate, it may subdivide types of procuring entities into categories and set different thresholds for each category.

(4) Where different thresholds are set for different categories of procuring entity, the NPPA shall publish a list of the procuring entities in each category.

(5) In allocating Procuring Entities to a category, the NPPA shall take into account:

- (a) the need for each Procuring Entity to process its procurement in an efficient manner, taking into account its procurement budget and workload;
- (b) the capacity of each Procuring Entity and its award authorities to manage its procurement.

Environmental protection Public Procurement.

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

(2) Procuring entities shall implement measures to protect the environment in accordance with circulars issued by the NPPA.

Promotion of information and communications technology in public procurement.

10. (1) In accordance with section 28 of the Act, the NPPA, in consultation with other competent authorities, may issue circulars on measures and programmes to introduce and promote the use of information and communications technology in public procurement.

(2) Procuring entities shall implement measures and programmes to introduce the use of information and communications technology in accordance with circulars issued by the N'PPA.

(3) The N'PPA shall identify any required additions or amendments to the legal and regulatory framework for- public procurement to accommodate the application of information and communications technology and shall promote there introduction.

11. (1) In addition to the structure and functions specified in section 18 of the Act, Procurement Committees shall perform any other functions specified in these regulations. Procurement Committees

(2) Subject to approval by the NPPA. Procurement Committees may establish subsidiary procurement committees in district offices of the Procuring Entity and such subsidiary procurement committees may be subject to limited thresholds and levels of authority to be established by the Procuring Entity in accordance with regulation 8.

12. (1) In considering submissions made by the Procurement Unit, the Procurement Committee may: Approvals by Procurements Committee

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

(2) The Procurement Committee shall not:

- (a) Perform any major modification on a submission, including, in particular recommendations for contract award; or
- (b) reject any submission without good and justifiable reason

(3) The Procurement Committee shall explanation and justification of its reasons for any rejection to assist the Procurement Unit in remedying any defects in the submission prior to re-submission to the Procurement Committee.

(4) All decisions of a Procurement Committee, including reasons for any rejections, shall be recorded in minutes and notified to the Procurement Unit in writing

(5) Where any lower value award of contract or issue of a contract modification is made within the delegated authority granted to the Procurement Unit or the Head of the Procuring Entity, the Procurement Committee shall provide retrospective verification and approval at its next meeting.

Composition
of Procure-
ment Comm-
ittee

13 (1) The Procurement Committee shall be composed of a Chairman and five members appointed under sub-section 18 (10) of the Act including any rotating member representing the originating department of a procurement proceeding.

(2) Additional rotating members may be co-opted as required for specific technical, legal or business inputs.

Procurement
Committee
Meeting

14 (1) Procurement Committee meetings should be attended by all members of the Committee and a quorum for meetings of a Procurement Committee is the Chairman and two of the members specified in regulation 13(1) above.

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

(3) Where any member of the Procurement Committee has a conflict of interest in any submission, he shall declare his interest in the submission, leave the meeting while the matter is considered and shall not participate in the deliberations or decision-making process of the Committee in relation to that submission.

(4) The secretary of the Procurement Committee shall record minutes of all Procurement Committee meetings, which shall include:

(a) a register of attendance.

(b) a list of all submissions considered.

(c) the decision made for each submission, including any major issues discussed, the reasons for any rejections and any clarifications or minor amendments to which the approval subject:

(d) any conflicts of interest declared by members: and

(e) any dissenting opinions among Procurement committee members.

15. (1) Each Procuring Entity shall establish a Procurement Unit and where appropriate Subsidiary Procurement Units and such Subsidiary Procurement Units may report to a subsidiary Procurement Committee if so established, or through the main Procurement Unit to the Procurement Committee.

(2) The size and level of staffing of the Procurement Unit, and any subsidiary Procurement Units, shall be determined by the procurement workload of the Procuring Entity, taking into account the volume, value, complexity and type of procurement conducted.

(3) The location and structure of the Procurement Unit, and any subsidiary Procurement Units, shall be determined by the Procuring Entity; in accordance with its operational requirements.

(4) The Procurement Unit shall include staff with appropriate technical skills, where a Procuring Entity has a significant volume of specialised procurement or procurement activity that requires significant technical input.

(5) Staff of the Procurement Unit shall be appointed in accordance with the normal procedures applicable to the Procuring Entity, taking into account the certification and approval requirements issued by the NPPA.

16. (1) In addition to the functions specified in section 19 (3) of the Act, the Procurement Unit shall.

- (a) receive procurement requests from originating officers, check that the proposed procurement is within the approved procurement plan, and that budgeted funds are available prior to commencement of procurement proceedings;
- (b) ensure that funds are properly committed prior to issue of any contract or Purchase Order;
- (c) conduct the procurement process for approval of contract award by the head of the Procuring Entity without prior reference to the Procurement Committee if the value is within the appropriate thresholds set by the Act in the First Schedule (6) or as amended through the Regulations;
- (d) conduct the procurement and contract award process for approval of contract awards by the Procurement Unit without prior reference to the Procurement Committee if the value is less than the appropriate thresholds set by the Act in the First Schedule (6) as amended through the Regulations (or such lower thresholds as may be authorised by the Procurement Committee);
- (e) provide a written report to each meeting of the Procurement Committee detailing all contracts awarded under the authority of the head of the Procuring Entity since the previous meeting;
- (f) provide a written report to each meeting of the Procurement Committee detailing all contracts awarded under the authority delegated to the Procurement Unit since the previous meeting;

- (g) maintain any standing lists of bidders or lists of pre-qualified bidders required by the Procuring Entity
- (h) prepare, publish and distribute invitations to pre-qualify, pre-qualification documents and invitation for expression of interest;
- (i) receive, open and safeguard applications to pre-qualify and expressions of interest;
- (j) evaluate applications to pre-qualify and assess expressions of interest;
- (k) propose shortlists and lists of pre-qualified bidders to the Procurement Committee for approval;
- (l) propose the membership of Evaluation Committees to the Procurement committee for approval;
- (m) participate in or advise Evaluation Committees, as appropriate;
- (n) participate in negotiations with bidders where permitted;
- (o) prepare notices of proposed award and notices of bid acceptance;
- (p) publish notices of proposed contract award;
- (q) prepare contract documents and Purchase Orders, in line with the award decision;
- (r) prepare and issue bid rejection and bidder debriefing letters;
- (s) prepare contract variations and modifications;

- (t) assist with the inspection and acceptance of goods, works and services, including participating in inspection and receipt committees as required;
- (u) ensure that procurement records are maintained, in accordance with these regulations;
- (v) prepare any reports required; and
- (w) provide information, as required, for any petition or investigation to debar a bidder or supplier or any investigation under review procedures.

(2) In conducting its functions, the Procurement Unit shall at all times liaise with:

- (a) the originating officer or end-user who initiated the procurement, to ensure that the procurement meets the requirement;
- (b) the Procurement Committee, to ensure that all required approvals are obtained promptly; and
- (c) the NPPA and other oversight bodies, to share appropriate information and facilitate the conduct of monitoring and other NPPA functions.

Approval of contract award by the head of procuring Entity.

17. (1) The First Schedule (6) of the Act provides threshold values for the head of a procuring entity to approve the award of the contracts and in condering submissions made by the Procurement Unit, the head of a Procuring Entity may:

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

(2) The head of a Procuring Entity shall not:

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

(3) Any submission rejected by the head of a Procuring Entity may be corrected and resubmitted and the head of a procuring entity shall provide explanation and justification of the reasons for any rejection to assist the Procurement Unit in remedying any defects in the submission.

(4) Where the head of a Procuring Entity has a conflict of interest in any submission, he shall declare his interest in the submission and refer it to the Procurement Committee for a decision,

(5) The head of a Procuring Entity may summon independent advisers or members of the Procurement Unit or Procurement Committee to explain submissions or provide technical advice, where required.

18. (1) The Independent Procurement Review Panel established by section 20 of the Act provides an administrative review mechanism for bidders to complain on procedural irregularities and to challenge contract awards in any procurement proceeding. Independent Procurement Review Panel (IPRP)

(2) Subject to the conditions established in section 65 of the Act and in Regulations 159, any application by a bidder for IPRP review shall be accompanied by an administrative fee and the fee payable shall be 2% of the applicant's bid price up to a maximum of Le 2 million.

19. (1) The NPPA may designate a special agency, central administration or special Procurement Unit and Procurement Committee to conduct the procurement of common use items. Procurement of common use items.

(2) Any agency, administration, Procurement Unit or Procurement Committee so designated shall:

- (a) liaise with all Procuring Entities, as part of the annual procurement planning process and on an ongoing basis, to establish a list of common use items and estimated requirements;
- (b) issue regularly updated information to all procuring entities on the items available, prices, delivery times and arrangements established for ordering or obtaining such items;

(3) Any list of common use items established pursuant to this regulation shall be limited to items where the benefits of centralised purchasing can be demonstrated.

(4) Any special agency, central administration or special Procurement Unit and Procurement Committee designated to conduct the procurement of common use items may utilise:

- (a) warehouses to store common supplies; and
- (b) framework contracts or other appropriate contractual arrangements for the purchase of common use goods, works or Services.

PART III - QUALIFICATIONS OF BIDDERS

Eligibility and qualifications of bidders.

20. (1) In order to participate in public procurement, a bidder shall be eligible and qualified in accordance with sub-section (1) of section 21 of the Act.

(2) The Procuring Entity shall clearly state the eligibility requirements in all solicitation documents and shall require bidders to provide signed statements or documentary evidence to certify their eligibility and qualifications.

(3) The Procuring Entity shall clearly state any documentation required as evidence of a bidder's eligibility and qualifications and may include, but not be limited to:

- (a) copies of the bidder's certificate of registration, certificate of incorporation, trading licence or similar document;
- (b) copies of the bidder's tax registration, certificate of incorporation, trading licence or similar document;
- (c) a signed declaration that the bidder does not have a conflict of interest in relation to the procurement;
- (d) a signed declaration that the bidder, or any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of procurement proceedings;
- (e) a signed declaration that the bidder is not subject to debarment pursuant to sub-section (1) of section 35 of the Act and regulation 155 and that any of its directors or officers have not been involved with a bidder or supplier currently subject to debarment.
- (f) appropriate required evidence or statements of:
 - i. country of origin;
 - ii. professional and technical qualifications;

- iii. availability of equipment;
- iv. adequacy of financial resources;
- v. past performance;
- vi. after sales service;
- vii. spare parts availability;
- viii. financial resources;
- ix. manufacturer's authorisation to supply goods in Sierra Leone;
- x. payment of social security contributions.

(4) In determining the documentation required as evidence of a bidder's eligibility, the Procuring Entity should ensure that the requirements do not discriminate unfairly against foreign bidders, and permit the submission of equivalent documents from the relevant authorities in the bidder's country of origin or the submission of statements certifying that equivalent documentation is not issued in the bidder's country of origin.

Verification of bidders qualifications.

21. (1) The Procuring Entity shall verify the qualifications of bidders where the successful completion of the contract is, to a significant extent, dependent on the supplier's qualifications.

(2) The Procuring Entity may verify the qualifications of bidders through either pre-qualification proceedings in accordance with Regulation 22 'or' post-qualification proceedings in accordance with Regulation 23.

(3) Bidders' qualifications for consultancy services shall be verified as part of the short-listing process in accordance with Regulation 80 based on the information provided in expressions of interest.

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

- (a) the goods, works or services are highly complex, specialised or require detailed design or methodology;
- (b) the costs of preparing a detailed bid would discourage competition;
- (c) the evaluation process is particularly detailed and the evaluation of a large number of bids would require excessive time and resources; or
- (d) bidding is for a group of contracts.

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

(3) When prequalification proceedings are held, the Procuring Entity shall:

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

Post-qualification.

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

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

(3) Post-qualification proceedings shall be conducted in accordance with the provisions of Regulation 75.

Qualification criteria.

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

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

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

(4) Qualification criteria may relate to:

- (a) technical competence and resources, including, but not limited to, the availability of sufficient manpower, the qualifications and experience of key personnel or managers, available equipment, manufacturing or construction facilities;
- (b) available capacity to perform the proposed contract, including, but not limited to available manufacturing or production capacity, taking into account other commitments or manufacturer's authorisations to supply;

(c) financial position, including, but not limited to financial soundness, sufficient turnover or sufficient cash flow; and/or

(d) experience and satisfactory performance of similar contracts, taking into account relevant factors, including, but not limited to references and litigation record.

(5) The Procuring Entity shall state in the pre-qualification or bidding documents, the documentary evidence required from bidders, as evidence of their qualifications.

25. Invitation and pre-qualification documents shall clearly State:

(a) whether qualification criteria apply to lead contractors, subcontractors or partners in a joint venture, consortium or association;

(b) whether criteria will be applied individually or collectively to each contractor, subcontractor or partner; and

(c) any alternative criteria which apply to subcontractors or partners in a joint venture, consortium or association.

Qualification requirements for subcontractors and joint venture partners

26. (1) Procuring Entities, or any special agency designated to conduct the procurement of common use items in accordance with Regulation 19, shall establish Registers of Suppliers in order to provide information on potential bidders, to facilitate the development of shortlists and the identification of sole-sources.

Register of suppliers.

(2) In developing and maintaining Registers of Suppliers, the entity responsible for the list shall comply with the requirements of Regulation 19.

PART IV- PREPARATION FOR PROCUREMENT

SECTION A - Annual Procurement Planning

Requirement for annual procurement planning.

27. (1) Procuring entities shall prepare a procurement plan for each fiscal year containing the information required by Regulation 28.

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

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

Contents of annual procurement plan.

28. The annual procurement plan for each Procuring Entity shall include:

- (a) a detailed breakdown of the goods, works and services required;
- (b) a schedule of the delivery, implementation or completion dates for all goods, works and services required;
- (c) an indication of any items that can be aggregated for procurement as a single package, or for procurement through any applicable arrangements for common use items;
- (d) an estimate of the value of each package of goods, works and services required and the source of funding;
- (e) an indication of the rules applicable to the procurement, where any procurement is not subject to these Regulations in accordance with section 1 of the Act; and
- (f) details of any committed or planned procurement expenditure under existing multi-year contracts.

29. Procuring entities shall procure common use items in accordance with any instructions issued by the NPPA under section 19 of these regulations. Procurement of common use items.

30. Procuring entities shall aggregate procurement requirements, where appropriate, in order to achieve economies of scale and in deciding where aggregation is appropriate, the Procurement Unit shall consider all relevant factors, including: Aggregation of requirement..

- (a) which procurements are of a similar nature and likely to attract the same potential bidders;
- (b) when delivery, implementation or completion is required;
- (c) the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the requirement;
- (d) which procurements will be subject to the same bidding requirements and conditions of contract; and
- (e) the potential to realise savings in time or transaction costs or to facilitate contract administration by the Procuring Entity.

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

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

- (a) bidders who are able to bid for some, but not all, types of item; or

- (b) small enterprises who would not be qualified to bid for the complete package as a single contract.

(3) A requirement shall not be divided into lots:

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

(5) Where a requirement is divided into lots, which may result in separate contracts, the selection of the procurement method shall be determined by the estimated value of each individual lot and not the total value of all the lots

(6) Where a requirement which could be procured as a single contract is divided into lots, the Procuring Entity shall:

- (a) permit bidders to bid for a single lot, any combination of lots or all lots; and
- (b) demonstrate, prior to contract award, that the recommended contract award or combination of contract awards offers the best overall value for the Procuring Entity.

SECTION B - Initiation of Procurement Process

32. (1) Every procurement requirement shall be documented using a purchase requisition, which shall include:

Purchase requisition and authority.

- (a) a description of the goods, works or services required, in accordance with regulations 34, 36,37, as appropriate;

- (b) the estimated value of the goods, works or services; and

- (c) details of the estimated cost of the requirement, including any need for funds to be budgeted in future years for multi-year contracts.

(2) In preparing the description of goods, work or services, the originating officer shall ensure that appropriate technical advice is sought, where required.

(3) In estimating the value of the goods, works or services, the originating officer shall ensure that the estimate is realistic and based on up-to-date information of economic and market conditions.

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

(5) Approved Purchase Requisitions shall be submitted to the Procurement Unit of the Procuring Entity to initiate procurement proceedings.

33. (1) The Procurement Unit shall ensure that the proposed procurement is identifiable within the annual procurement plan and adequate funds are available within the remaining annual budget, prior to initiating procurement proceedings and shall take into account all costs involved in the procurement, and in addition to the total contract price, included the following:

Budget verification and commitment of fund.

- (a) contingencies, including any anticipated contract variations, exchange rate fluctuations or allowance for price adjustment;

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

(2) The Procurement Unit shall also ensure that adequate funds are available for managing the procurement proceedings, including, but not limited to, any funds required for publication of advertisements or procurement notices.

(3) Notwithstanding the provisions of sub-regulation 1 above, a Procuring Entity may initiate procurement proceedings up to but not including contract award, prior to formally committing the funds required.

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

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

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

Description of goods.

- (a) a list of goods and the quantities required, including any incidental services or works, such as delivery, installation, commissioning, maintenance, repair, user training, the provision of spares and after-sales services;
- (b) a delivery and completion schedule;
- (c) detailed specifications; and
- (d) drawings.

(2) Specifications shall include, where appropriate:

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

- (h) inspection and testing requirements; and
- (i) any applicable national or international standards required.

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

Use of names.

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

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

Description of works

36. (1) Every purchase requisition for the procurement of works shall be accompanied by a complete, precise and unambiguous description of the works required as such description shall include, where appropriate:

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

- (e) drawings, design requirements and preliminary surveys;
- (f) national or international specifications and standards required;
- (g) bill of quantities or activity schedule; and
- (h) inspection and testing requirements.

37. Every purchase requisition for the procurement of services shall be accompanied by a complete, precise and unambiguous description of the services required and such description shall include, where appropriate, ^{Description of service,}

- (a) background narrative to the required services;
- (b) the objectives of the services and targets to be achieved;
- (c) terms of reference;
- (d) a list of specific tasks, duties or responsibilities;
- (e) required deliverables or outputs for the services;
- (f) the role, qualifications or experience required for any key staff;
- (g) contract management and administrative arrangements including the reporting requirements of the Procuring Entity;
- (h) any facilities, services or resources to be provided by the Procuring Entity;
- (i) inspection or quality testing requirements or other indicators of successful performance and

- (j) the duration of the contract or implementation schedule.

SECTION C - SELECTION OF A PROCUREMENT METHOD

Selection of bidding document.

38. The Procuring Entity shall use the most appropriate format from among the Standard Bidding Documents specified in the Second Schedule of the Act, or as specifically approved for use by the NPPA with regard to:

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

Selection of procurement method and bidding documents.

39. (1) Procuring Units shall use the method of procurement specified by the thresholds set in the First Schedule of the Act and use the standard bidding documents prescribed in the Second Schedule of the Act, except as may be modified by these Regulations.

(2) Any proposed variation of the procurement method must be fully justified in writing by the Procurement Unit and approved by the Procurement Committee and such variation shall only be permitted where:

- (a) there is a justifiable emergency need;
- (b) there is a severely limited number of sources for the procurement requirement; or

- (c) procurement is subject to the exemption for defence considerations in sub-section (3) of section 1 of the Act.

(3) Any proposed variation to a standard bidding document or the substitution of other formats of bidding documents must be fully justified in writing by the Procurement Unit and approved by the Procurement Committee and such variations or substitutions shall only be permitted where:

- (a) the use of a specific alternative format is required by a donor providing the funds;
- (b) the procurement is a highly specialised or complex requirement where the standard bidding documents do not provide an appropriate basis for the bidding process or contractual requirements;
- (c) in the case of (b) above, the Procurement Unit has sought the advice of the NPPA in writing on any substantial variation of an existing standard bidding document or on substitution of an alternative bidding document.
- (d) The NPPA may issue additional guidelines and standard bidding documents for specialist requirements such as two-stage bidding procedures and procurement of complex IT systems.

40. (1) Where urgent circumstances or an emergency need affect the choice of procurement method, the Procuring Entity shall not automatically exclude competitive methods of procurement and shall obtain competition to the maximum extent practical in the circumstances. Emergency procurement

(2) Where the Procuring Entity uses restricted bidding on grounds of emergency in accordance with section 41 of the Act and regulation 41 (1) (b) or sole source procurement on grounds of an emergency in accordance with section 46 of the Act, the Procuring Entity shall limit the procurement to the quantity needed to deal with the urgency circumstances.

Restricted bidding.

41. A Procuring Entity may use restricted bidding procedures for goods, works or non-consultancy services in accordance with section 41 of the Act where:

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

International bidding

42. A Procuring Entity shall conduct open or restricted bidding on an international basis, where:

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

Request for proposal

43. A Procuring Entity shall use the request for proposals procurement method for all procurement of consultancy services, except where:

- (a) the estimated value is less than the threshold for request for quotations specified in regulation 44 (l) (c); or
- (b) the procurement meets the conditions for use of sole source procurement specified in regulation 45.

Request for quotations.

44. A Procuring Entity may use the request for quotations procurement method for:

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

45. (1) A Procuring Entity may use the sole-source procurement method where:

Sole-Source procurement

- (a) only one supplier has the technical capability or capacity to fulfil the procurement requirement within the time required by the Procuring Entity or a particular supplier has exclusive rights in respect of the goods, works or services and no reasonable alternative or substitute exists;
- (b) for additional deliveries of goods by the original supplier which are intended either as parts replacement for existing goods, services or installations, or as the extension of existing goods, services or installations where a change of supplier would compel the Procuring Entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;
- (c) when additional works, which were not included in the initial contract have, through unforeseeable circumstances, become

necessary and the separation of the additional works or services from the initial contract would be difficult for technical or economic reasons;

- (d) in cases of extreme urgency, provided the circumstances which gave rise to the urgency were neither foreseeable by the Procuring Entity nor the result of dilatory conduct on its part;
- (e) when the services require that a particular consultant be selected due to his unique qualifications, or when it is indispensable to continue with the same consultant.

(2) Procurement under the sole source procurement method shall be subject to prior approval by the Procurement Committee.

Two-stage bidding.

46. (1) Bidding using a two-stage procedure shall be conducted in accordance with the applicable provisions of section 58 of the Act, and:

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

- (d) The Procuring Entity may engage in discussions with any or all bidders whose proposals satisfy the conditions set forth in the bidding documents with a view to understanding the proposals or to indicate changes required to make them acceptable and to seek the bidder's willingness to make such changes; minutes of these discussions shall form part of the procurement records.
- (e) At the end of the first stage, the Procuring Entity may:
 - (i) reject those bids which do not, and cannot be changed to meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bids substantially non-responsive;
 - (ii) modify the technical specifications, evaluation criteria, and contract conditions, while seeking to maximise competition and articulate appropriate evaluation methodology.
- (f) The Procurement Unit shall finalise its requirements and issue a revised bidding document to all bidders who were substantially responsive to the initial bidding document, requesting both technical and financial information.
- (g) in the second stage, the Procuring Entity shall invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents.

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

SECTION D - Pre-Qualification

Pre -qualifi-
cation an-
nouncement

47. (1) Where the Procuring Entity conducts a pre-qualification pursuant to Regulation 22, it shall publish an invitation to pre-qualify notice, inviting all potential bidders to submit applications to pre-qualify.

(2) Invitation to pre-qualify notices shall contain at least:

- (a) the name, address and contact details of the Procuring Entity;
- (b) an outline of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
- (c) a statement of the key requirements and criteria to pre-qualify;
- (d) instructions on obtaining the pre-qualification documents, including any price payable and the language of the documents; and
- (e) instructions on the location and deadline for submission of applications to pre-qualify.

(3) The invitation to pre-qualify notice shall be published in accordance with regulation 52.

48. (1) The Procurement Unit shall promptly issue pre-qualification documents to all bidders who request them and shall maintain a record of all bidders to whom documents are issued. Pre-qualifica-
tion
document.

(2) The pre-qualification document shall contain all the information required by bidders to prepare and submit applications to pre-qualify and shall include at least:

- (a) the name, address and contact details of the procuring entity;
- (b) details of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;
- (c) the qualification criteria in accordance with regulation 24;
- (d) instructions on the preparation of applications to prequalify, including any standard forms to be submitted and the documentary evidence and information required from bidders;
- (e) instructions on the sealing, labelling and submission of applications to pre-qualify, including the location and deadline for submission; and
- (f) information on how applications will be evaluated.

(3) The Procuring Entity shall allow a sufficient period of time, to enable bidders to prepare and submit their applications to pre-qualify. In determining the pre-qualification period, the Procurement Unit shall take into account the factors in regulation 56 (4).

(4) The Procurement Unit shall promptly respond to all requests for clarification, in accordance with the procedure in regulation 59.

Evaluation of applications

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

(2) The Procurement Unit shall prepare a record of its evaluation of applications, which shall clearly state which bidders were determined to be qualified and the reasons why other bidders were not qualified.

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

(4) The Procuring Entity shall invite all pre-qualified bidders to submit bids.

Registration of suppliers.

50. (1) Procuring Entities shall maintain a register of suppliers (but excluding contractors and supervising engineers) who are assessed to be of a suitable standard to meet the specialist requirements of the Procuring Entity for the purposes of restricted bidding and request for quotations.

(2) The Ministry of Works Housing and Technical Maintenance (MOWHTM) shall maintain a central register of approved contractors and supervising engineers classified into categories according to their capability and performance.

(4) Approved contractors may be grouped into three classes on the basis of their financial and technical capacities:

1. Class A, top grade
2. Class B, medium, and
3. Class C, the lowest

(4) Pending the issue of any further guidelines by the NPPA, the supplier registration process shall be based on the following principles:

- (a) periodic public advertisement to invite applications;

(b) the establishment and publication of clear evaluation criteria for acceptance into categories and grades;

(c) monitoring and recording the performance of suppliers on contracts awarded;

(d) sharing of database information with other procuring entities; and

(e) registration to be subject to formal renewal or cancellation if a supplier has not satisfactorily undertaken any contracts within a three-year period.

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

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

PART V - BIDDING PROCEDURES

SECTION A-Invitation of Bids

51. (1) Bids shall be invited:

Inviting bids.

(a) through the publication of an announcement of bidding proceedings in the case of open competitive bidding, where no pre-qualification has been conducted;

(b) from the list of pre-qualified bidders in the case of open competitive bidding, where a pre-qualification has been conducted; and

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

(2) Invitation to bid notices shall contain all the information required to be completed in the format provided within the standard bidding document selected for the procurement proceeding.

(3) The invitation to bid notice shall be published in accordance with regulation 52.

Publication of announcement.

52. (1) The invitation to bid notice, or the invitation to pre-qualify notice, shall be:

- (a) published on the NPPA website;
- (b) published in the Sierra Leone *Gazette*;
- (c) published in at least two national print; media of wide circulation in Sierra Leone weekly for at least the first two weeks of the bidding period; and
- (d) optionally, publication on entity bulletin boards, broadcast over the radio or television, on the stations and programmes and at a time most likely to target the widest spectrum of potential bidders.

(2) In the case of international competitive bidding, the notice shall also be published in at least one printed media of wide international circulation on one occasion. This may be in an international newspaper, periodical or other trade magazine of wide circulation as the Procurement Unit believes necessary to ensure wide competition.

Shortlists

53. (1) Where the Procuring Entity invites bids from a shortlist of bidders pursuant to regulation 51(1) (c), the shortlist shall include:

- (a) all potential bidders, where restricted bidding is used on the grounds of a limited number of sources, in accordance with regulation 41 (a);

- (b) sufficient bidders to ensure effective competition, and in any case at least three bidders, where restricted bidding is used under regulation 41(b) of these regulations, and

- (c) at least three bidders, wherever possible, where restricted bidding is used on the grounds of emergency, in accordance with regulation 41 (b).

(2) In developing a shortlist, the Procurement Unit may use:

- (a) registered suppliers pre-qualified in accordance with regulation 26;
- (b) its own knowledge of the market;
- (c) any other appropriate verifiable sources of information.

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

(4) The bidders included on the shortlist shall not all have the same ownership. Where there is more than one potential bidder but all potential bidders have the same ownership, the procurement shall be considered a sole source procurement in accordance with regulation 45(2).

(5) Where the Procuring Entity uses restricted bidding on the grounds of a limited number of sources, in accordance with regulation 41 (a), it shall also publish a notice, in accordance with regulation 52, which shall state:

- (a) the nature of the procurement requirement;
- (b) that the Procuring Entity is using restricted bidding on the grounds of a limited number of sources;

- (c) the proposed shortlist of bidders: and
- (d) that any potential bidder requiring information on the procurement requirement or wishing to participate in the procurement may contact the Procurement Unit of the Procuring Entity.

(6) The proposed shortlist shall be approved by the Procurement Committee, prior to issue of the bidding documents
Contents of bidding.

Contents of bidding.

54. (1) Procuring entities shall use the appropriate standard bidding document format issued by the NPPA for drafting individual bidding documents.

(2) The Procuring Entity shall provide, in an expeditious and non-discriminatory manner, the bidding documents to all potential bidders that respond to the invitation to bid or, in the case of prequalification proceedings, to all bidders that have been pre-qualified, and the price that may be charged for the bidding documents.

(3) The bidding documents shall provide bidders with all the information required to submit bids that are responsive to the needs of the Procuring Entity through completion of all required sections of the standard bidding document prior to issue.

Evaluation methodology and criteria.

55. (1) The methodology for the evaluation of bids and the selection of the successful bidder shall consist of:

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

(2) Where appropriate, the Procuring Entity may include additional evaluation criteria in the bidding document, which shall be taken into account in determining the evaluated price of each bid. Such evaluation criteria shall be related to the performance,

characteristics or terms and conditions of a bid, such as delivery or completion schedule, payment schedule, the cost of spare parts or after sales service operating or maintenance costs or the productivity of equipment

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

(4) The application of any margin of domestic preference as specified in the bidding documents.

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

(2) The minimum bidding period shall be:

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

(3) Notwithstanding the provisions of sub-regulations (c) and (d), where restricted bidding is used on grounds of emergency, in accordance with regulation 41 (b), the minimum bidding period shall not apply.

(4) In determining an appropriate bidding period for each requirement, the Procurement Unit shall take into account, in addition to the minimum bidding period:

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

Issue and sale of bidding documents.

57. (1) Bidding documents shall be issued, as appropriate to:
- (a) all bidders responding to the invitation to bid notice; or
 - (b) all bidders on the shortlist or list of pre-qualified bidders.
- (2) Where the bidding document is issued to short listed or pre-qualified bidders, the document shall be issued to all bidders at the same time.
- (3) The Procurement Unit shall maintain a record of all bidders to whom the documents are issued.
- (4) The Procuring Entity may charge a fee for the bidding documents, but the price shall be calculated to cover the costs related to printing, copying and distribution of the documents only and shall not include any element of profit.

(5) Where bidding documents are sold, the Procurement Unit shall issue signed receipts for the documents and bidders may be required to submit a copy of the receipt with their bid.

(6) Where bidding documents are sold, the Procurement Unit shall allow potential bidders to inspect the documents, prior to purchasing the document.

58. (1) A Procuring Entity may require bid securities, in order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids. The bidding documents shall state any requirement for a bid security. Bid Securities.

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

(3) In determining the amount of bid security required, the Procurement Unit shall take into account the cost to bidders of obtaining a bid security, the estimated value of the contract and the risk of bidders failing to fulfil the conditions of their bids and the amount shall be high enough to deter irresponsible bids, but not so high as to discourage competition.

(4) The Procurement Unit shall release bid securities promptly to unsuccessful bidders upon expiry of the term of the security or formation of a contract with successful bidder and submission of any required performance security, whichever is earlier.

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

(6) The Procurement Unit shall manage bid securities in accordance with regulation 150.

59. The recommended standard periods for bid clarifications to be accepted are: Clarification of bidding document.

Pre-bid conference and site visits.

- (a) national bidding: up to 14 days prior to the deadline for bid submission; and
- (b) international bidding: up to 21 days prior to the deadline for bid submission.

60. (1) The Procuring Entity may organise:

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

(2) Details of pre-bid conferences and site visits, including the date, time and location, and contact information shall be included in the bidding document and, where possible, in the invitation to bid notice.

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

(4) The Procurement Unit shall prepare minutes of any pre-bid conference and shall promptly send them to all bidders to whom the bidding documents have been issued. The minutes shall include.

- (a) all information provided as part of any briefing;
- (b) details of any clarifications requested, but without identifying the source of the inquiry; and
- (c) the details of responses provided to clarifications.

(5) Following any pre-bid conference or site visit, the Procurement Unit shall, where required, issue clarifications or issue agenda to the bidding document.

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

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

(2) The Procurement Unit shall notify the originating officer before commencing any cancellation process of a procurement proceeding.

(3) Before rejecting all bids or cancelling any procurement proceedings, the Procurement Unit shall notify the originating officer and prepare a written request to the Procurement Committee for approval of the cancellation, which shall clearly state:

- (a) detailed reasons for recommending cancellation;

- (b) the status of the procurement proceedings, including in particular, whether bids have already been opened: and
- (c) whether new procurement proceedings are recommended and, if so, the modifications recommended.

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

(5) A Procuring Entity shall not be liable to a bidder by reason only of rejection of all bids or cancellation of procurement proceedings under subsection (1) above.

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

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

SECTION B - Receipt and Opening of Bids

Receipt of bids.

62. (1) The Procurement Unit shall make arrangements for the receipt and safekeeping of bids up until the deadline for submission of bids, which may include:

- (a) the use of a tender box, in which bidders are responsible for depositing their bids directly and which shall remain locked until the time for bid opening; or

- (b) the receipt of bids by staff of the Procurement Unit, who shall be responsible for issuing signed receipts, showing the precise date and time of receipt and keeping bids in a secure location until the time for bid opening.

(2) Where any bid is too large for the tender box, or samples are required to be submitted separately, the Procurement Unit shall receive and keep the bid, or samples, in accordance with sub-regulation 62 (1) (b).

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

(4) Bids may only be received electronically, or by other means which do not permit sealed bids, where authorised by the NPPA through circulars.

(5) The Procuring Entity shall not be held liable for the loss or delay in delivery of any bid delivered by mail or courier.

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

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

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

(2) The Procurement Unit shall assign suitable, experienced staff to manage the bid closing.

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

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

(5) Notwithstanding the provisions of sub-regulation (4), where a bid is submitted using a two-envelope system, the Procurement Unit may open the outer envelope only, for the purpose of identifying the name and address of the bidder on the inner envelopes. The inner envelopes shall not be opened, but shall be returned unopened to the bidder or left unopened and destroyed.

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

Public
opening of
bids

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

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

(3) The Bid Opening Committee shall first open any envelopes marked "withdrawal" and the corresponding bids shall be located and returned unopened to the bidder.

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

(5) With the exception of late bids, no bids shall be accepted, rejected disqualified or evaluated in any way at the bid opening. Any discrepancies or missing documents shall be noted in the record of bid opening.

(6) The Procurement Unit shall make a record of the bid opening, which shall be kept as part of the procurement record and a copy of the record made available to any participating bidder on request. The record shall include at least:

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

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

(8) The opened bids shall immediately be taken to a secure location, where they shall be kept until the evaluation begins.

SECTION C - Evaluation of Bids

65. (1) The Procurement Committee may appoint an Evaluation Committee for any procurement requirement which exceeds the authority of the Procurement Unit delegated by the Procurement Committee. The Evaluation Committee shall be responsible for the evaluation of bids and the preparation of an evaluation report with recommendations for approval by the Procurement Unit, the head of the Procuring Entity, or the Procurement Committee in accordance with authority levels given in the First Schedule of the Act.

(2) The number and level of members of the Evaluation Committee shall depend on the value and complexity of the procurement requirement, but shall be a minimum of three members.

(3) The Evaluation Committee shall include skills, knowledge and experience relevant to the procurement requirement, which may include:

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

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

(5) Membership of the Evaluation Committee shall be recommended by the Procurement Unit and is subject to the approval of the Procurement Committee.

(6) Where no Evaluation Committee is required, the evaluation shall be conducted by the person or persons designated by the head of the Procurement Unit.

Assessing responsive-ness of bids.

66. (1) Following the opening of bids, the evaluation shall first examine the bids in order to determine whether the bids are complete, signed, whether required documents to establish legal validity and required bid security have been furnished, and whether bids are substantially responsive to the technical specification and contract conditions set forth in the bidding documents.

(2) Bids which are not complete, not signed, not accompanied by a bid security in the prescribed form, if one is required, or not accompanied by essential supporting documents such as business registration certificates, business licences and tax receipts, or are substantially non-responsive to the technical specifications or contract conditions or other critical requirements in the bidding documents, shall be rejected and excluded from further evaluation and comparison.

(3) If a prequalification procedure was applied, a bid received from any other than the pre-qualified bidders shall be rejected and excluded,

(4) The Procuring Entity's determination of a bid's responsiveness shall be based on the contents of the bid itself, subject to any clarifications received pursuant to regulation 68.

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

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

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

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

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

(9) Material deviations, reservations or omissions may typically include:

- (a) unacceptable time schedules, where it is stated in the bidding document that time is of the essence;
- (b) unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; or
- (c) unacceptable counterproposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.

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

Correction of non-conformities errors and omission.

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

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

(3) The Procuring Entity may correct purely arithmetical errors in accordance with the procedure stated in the bidding document.

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

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

68. (1) The Procuring Entity may seek clarification from a bidder of its bid. Clarification of bids.

(2) The request and the clarification shall only be in writing

(3) The request for clarification shall not seek and the bidder shall not be permitted to:

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

(4) Any clarification received, which is not in response to a written request from the Procuring Entity, shall not be taken into account.

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

69. (1) The Evaluation Committee shall conduct a preliminary examination to determine whether bids are complete and are responsive to the basic instructions and requirements of the bidding document. The preliminary examination shall determine whether: Preliminary examination.

- (a) the bid has been submitted in the correct format;
- (b) any required bid security has been submitted, in the correct form and amount and valid at least the period required;

- (c) the bid has been submitted without material reservations or deviations from the terms and conditions of the bidding document;
- (d) the bid has been correctly signed and authorised;
- (e) the correct number of copies of the bid have been submitted;
- (f) the bid is valid for at least the period required;
- (g) all key documents and information have been submitted;
- (h) any required samples have been submitted; and
- (i) the bid meets any other key requirements of the bidding document.

(2) Any deviations, which are considered to be material deviations, shall result in rejection of the bid and such bids shall not be subject to technical evaluation. Deviations which are considered to be non-material shall not result in rejection of the bid.

(3) The preliminary examination shall also determine whether Bidders are eligible, where this has not been determined prior to inviting bids.

Technical evaluation.

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

(2) The technical evaluation shall determine whether bids are, or are not, substantially responsive to the technical standard defined in the bidding document and shall not be used to assess the relative quality of bid or to award points in any way.

(3) The factors taken into account shall be those indicated in the bidding document only and may include, but not be limited to:

- (a) conformity to specifications, standards, samples, drawings or terms of reference, without material deviation or reservation;
- (b) satisfactory understanding of an assignment, as demonstrated by any methodology or design; or
- (c) suitable staffing or arrangements for supervision or management of an assignment.

(4) The evaluation shall not take into account any requirements which were not specified in the Bidding Document.

(5) Any material deviations shall result in rejection of the bid and such bids shall not be subject to financial evaluation and comparison.

(6) Non-material deviations may be corrected in accordance with regulation 67 or clarified in accordance with regulation 68.

(7) When a point system is used for evaluation of technical proposals, all bids scoring less than the threshold set for qualification shall not proceed to the next stage - evaluation of financial proposals. The financial envelopes of such bids shall be returned to the bidders unopened.

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

Alternative bids.

(2) The Procuring Entity may permit alternative bids, where it is anticipated that bidders may be able to offer goods, works or services which do not conform precisely to the description of requirements, but which meet the objectives of the procurement in an alternative manner. Alternative bids may be permitted in areas of rapidly changing technology or where a need could be satisfied in a number of different ways and the Procuring Entity wishes to encourage cost efficient and technically innovative approaches by bidders.

(3) Where alternative bids are permitted, the bidding documents shall state that the alternative bid does not need to conform precisely to the description of requirements, but must:

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

(4) Alternative bids shall be evaluated in the same way as other bids, except that the technical evaluation shall take into account only the objectives or performance requirements prescribed in the description of requirements in the bidding document.

Financial
evaluation
and
comparison

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

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

- (a) taking the bid price, as read out at the bid opening;
- (b) correcting any arithmetic errors, in accordance with the methodology stated in the bidding document;
- (c) applying any non-conditional discounts offered in the bid;

(d) making adjustments for any non-material non-conformity, error or omission in accordance with regulation 67.

(e) applying any additional evaluation criteria, through an increase or decrease to the bid price, in accordance with regulation 55 (3);

(f) converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding document; and

(g) applying any margin of domestic preference indicated in the bidding document, in accordance with regulation 74.

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

(4) Where the bidding document included more than one lot and permitted bidders to offer discounts, which were conditional on the award of one or more lots, the Evaluation Committee shall conduct a further financial evaluation, to determine the lowest evaluated combination of bids.

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

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

(3) Any non-conditional discounts shall be taken into account in the financial evaluation and comparison of bids, in accordance with regulation 72 (2) (c);

(4) Bidders may also be permitted to offer discounts, which are conditional on the award of one or more lots. Conditional discounts shall be taken into account in a further financial evaluation, in accordance with regulation 72 (4).

(5) Any prompt payment discount included in a bid shall become a term of the contract, if that bid is accepted, and shall be utilised by the Procuring Entity, if payment is made in accordance with the terms of the discount. However, prompt payment discounts shall not be considered in the evaluation and comparison of bids, unless such discount is taken into account through the application of any additional evaluation criteria, in accordance with regulation 55 (2).

Domestic preference

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

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

- (a) eligibility for the margin of domestic preference, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with local partners or any other relevant factor;
- (b) the documentation required as evidence of eligibility for the margin of preference; and
- (c) the percentage of the margin of preference and the manner in which it will be applied during the evaluation.

(3) The percentage of preference in schemes issued by the NPPA shall be between five and ten percent. The NPPA may review these percentages periodically.

Post-qualification.

75. (1) The Procuring Entity shall conduct a post-qualification of the bidder who submitted the lowest evaluated responsive bid, to determine whether the bidder is qualified to perform the contract effectively.

(2) The criteria for qualification shall be as set out in the bidding document and shall be drafted in accordance with regulation 24,

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

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

76. (1) The evaluators shall prepare an evaluation report for submission to the Procurement Committee or any other required authority for the award of contract.

Evaluation reports and recommendations.

(2) The evaluation report shall include:

- (a) a summary of the bids received and opened;
- (b) the results of the preliminary examination;
- (c) the results of the technical evaluation;
- (d) reasons why bids were declared non-responsive;
- (e) details of any non-material deviations, which were accepted and the way in which they were quantified and taken into account in the financial evaluation;
- (f) the evaluated price of each bid, showing any corrections or adjustments to the bid price and any conversion to a common currency;
- (g) the ranking of the bids, according to their total evaluated price;

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

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

PART VI — Procedures for Request for Proposals

Use of request for proposals procedures.

77. Procuring entities shall ensure that they have complied with all relevant requirements of Part IV, prior to initiating Request for Proposals procedures in accordance with this Part.

SECTION A - Invitation of Expressions of Interest

Notice inviting expressions of interest.

78. (1) In order to develop a shortlist, Procuring Entity shall publish a notice seeking expressions of interest.

(2) Notwithstanding the provisions of sub-regulation (1) above, where the estimated value of the procurement is below the threshold specified in the First Schedule of the Act or where restricted bidding is justified as specified in regulation 41, procuring entities may develop a shortlist without seeking expressions of interest in accordance with regulation 52 (2) and the relevant provisions of regulation 80.

(3) The notice shall contain at least:

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

79. (1) Notices seeding expressions of interest shall be published at least 30 days prior to the deadline for submission.

Publication of notices.

(2) Notices shall be published in accordance with regulation 52.

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

Evaluation of expressions of interest and development of shortlists.

(2) The shortlist shall include sufficient bidders to ensure effective competition and shall include a minimum of three bidders, with a recommended maximum of six bidders.

(3) Bidders shall not be included unless they are expected to fully satisfy the Procuring Entity's requirements, including those related to eligibility, qualifications, capacity, resources and experience.

(4) The results of the evaluation of the expressions-of interest and/or the proposed shortlist shall be approved by the Procurement Committee, prior to issue of the Request for Proposals.

SECTION B-Invitation of Proposals

Contents of request for proposals.

81. (1) The Request for Proposals shall include all information necessary to enable bidders to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the Procuring Entity. In particular, the Request for Proposals shall include:

- (a) a Letter of Invitation addressed to each short-listed firm and including the full list of short-listed firms;
- (b) instructions on the conduct of the bidding process, including the preparation and submission of proposals, the opening and evaluation of proposals and award of contract;
- (c) information relating to eligibility to bid, including restrictions relating to conflict of interest;
- (d) a description of the services required, in accordance with regulation 37;
- (e) an explanation of the selection procedure to be applied in evaluating proposals, in accordance with regulation 82;
- (f) the evaluation criteria to be applied, in accordance with regulation 84
- (g) the type of contract to be awarded, (lump sum or time based);

(h) the terms and conditions of contract which will apply; and

(i) information on the bidder's rights to appeal under the administrative review process and on the Government's policy on fraud and corruption, including the debarment of bidders.

82. (1) The Procuring Entity shall choose the most appropriate selection procedure to be used to evaluate proposals and shall state the selection procedure in the Request Proposals. Choice of selection procedure.

(2) The selection procedure shall be either:

- (a) Quality and Cost Based Selection, which takes into account both the quality and the cost of proposals and selects the proposal which offers the optimum balance of quality and cost;
- (b) Quality Based Selection, which focuses exclusively on quality and selects the highest quality technical proposal;
- (c) Fixed Budget Selection; which selects, the highest quality proposal, which is within the Procuring Entity's pre-disclosed budget; or
- (d) Least Cost Selection, which selects the lowest priced proposal, which meets the technical requirements of the Procuring Entity.

(3) Subject to sub-regulations (4), (5) and (6) below, Quality and Cost Based Selection shall normally be used as the selection procedure for consultancy services.

(4) Quality Based Selection may be used for:

- (a) highly specialised assignments, where it is difficult to define precise terms of reference and inputs and bidders are expected to demonstrate innovation in their bids;

- (b) assignments which will have a high down stream impact and the Procuring Entity wishes to contract the best consultant; or
- (c) assignments that can be carried out in substantially different ways and where the value of the services depends on their quality.

(5) Fixed Budget Selection may be used for assignments, which are simple, can be precisely defined and where the budget is fixed.

(6) Least Cost Selection may be used for assignments of a standard or routine nature, where well established practices and standards exist.

Submission of proposal for consultancy services.

83. (1) The Request for Proposals shall require bidders to submit separately sealed technical and financial proposals, both sealed in an outer envelope.

(2) Notwithstanding the provisions of sub-regulation (1), where the selection procedure is Quality Based Selection, the Request for Proposals may require bidders to submit a technical proposal only, with a financial proposal to be submitted at a later date by the bidder with the highest technical score only.

Evaluation criteria for consultancy services.

84. (1) The Request for Proposals shall state the evaluation criteria to be applied during the technical evaluation.

(2) The evaluation criteria shall be designed to assess the ability of bidders to:

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

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

(4) The Request for Proposals will normally include sub-criteria to provide further guidance on the allocation of points under each main criterion.

85. The Request for Proposals shall be issued to all short listed bidders at the same time and a record of the issue of the documents shall be maintained. Issue of request for proposals

86. (1) The Request for Proposals shall state that a bidder may seek clarification of the Request for Proposals and shall state the period before the deadline for submission of bids after which such clarification may not be sought. Clarification and amendment of request for proposals

(2) Where a request for clarification is received, the Procurement Unit shall promptly provide a clarification in writing. The clarification shall be copied to all bidders and shall include a description of the inquiry, but without identifying the source.

(3) At any time prior to the deadline for submission of proposals, the Procuring Entity may, either at its own initiative or in response to a request for clarification from a Bidder, amend the Request for Proposals by issuing an addendum.

(4) Any addendum shall be issued in writing and the same information shall be provided to all Bidders at the same time. All addenda shall be numbered sequentially.

(5) All clarifications and addenda to the Request for Proposals shall be binding on bidders.

Extension of bidding period.

87. To give bidders reasonable time in which to take a clarification or addendum into account in preparing their proposals, the Procuring Entity, may, at its discretion, extend the deadline for the submission of proposals, through the issue of an addendum in accordance with regulation 86.

SECTION C - Receipt and Opening of Proposal

Receipt of proposals.

88. (1) The Procurement Unit shall make arrangements for the receipt and safekeeping of proposals up until the deadline for submission of proposals, which may include:

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

(2) Where any proposal is too large for the tender box, the Procurement Unit shall receive and keep the proposal in accordance with sub-regulation 88 (1) (b) above.

(3) Where the Procurement Unit is receiving proposals and issuing receipts, it shall maintain a record of all proposals received, indicating the name of each bidder, the date and time of receipt and the name of the person responsible for receipt.

(4) The Procuring Entity shall not be held liable for the loss or delay in delivery of any proposal delivered by mail or courier.

(5) The Procurement Unit shall ensure that appropriate staff are at the location for submission of proposals or that bidders have access to the tender box, for a reasonable period of time prior to the deadline.

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

89. (1) The Procurement Unit shall ensure that bidding is closed at the precise time and date of the submission deadline and shall ensure that no further proposals are received and that the tender box is sealed.

Deadline of submission of proposals.

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

(3) Following the deadline for submission of proposals, the Procurement Unit shall ensure that all proposals are kept secure and taken immediately to the location for the proposal opening.

90. (1) The Bid Opening Committee shall open proposals, at the time, date and location indicated in the Request for Proposals. Bidders' representatives shall be permitted to attend and witness the opening.

Opening of technical proposals.

(2) The Bid Opening Committee shall first open any envelopes marked "withdrawal" or "substitution". The corresponding proposal shall be located and returned unopened to the Bidder and any substituted proposal opened, stamped, read out and recorded in accordance with sub-regulation 4 below.

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

(4) The Bid Opening Committee shall open the outer envelopes of all proposals and open the technical proposal within. Key pages of the proposal shall be stamped and initialled by the Chairman and two other members of the Bid Opening Committee, and the following details read out and recorded:

- (a) the name of the bidder;
- (b) whether or not a separate sealed financial proposal has been submitted, if required;
- (c) any other information required, as stated in the Request for Proposals.

(5) With the exception of late proposals, no proposal which shall be subject to the provisions of regulation 89 (2) above, shall be accepted, rejected or evaluated in any way at the proposal opening.

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

Record of opening.

91. (1) The Procurement Unit shall maintain a record of the proposal opening, which shall form part of the procurement record.

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

SECTION D-Technical Evaluation of Proposals

Evaluation committee.

92. (1) The Procurement Committee shall establish an Evaluation Committee to conduct the evaluation of proposals.

(2) The Evaluation Committee shall have a minimum of three members, with appropriate skills and experience for the type, value and complexity of the procurement requirement.

(3) The Evaluation Committee shall prepare an Evaluation Report, with recommendations, for submission to the appropriate authority for approval.

93. (1) The Evaluation Committee shall conduct a preliminary examination to determine whether technical proposals are complete and responsive to the basic instructions and requirements of the Request for Proposals. The preliminary examination shall determine whether:

Preliminary examination of technical proposals.

- (a) the proposal has been submitted in the correct format;
- (b) the proposal has been submitted without material reservations or deviations from the terms and conditions of the Request for Proposals;
- (c) the proposal has been correctly signed and authorised;
- (d) the correct number of copies of the proposal have been submitted;
- (e) a separately sealed financial proposal has been submitted, if required;
- (f) the proposal is valid for at least the period required;
- (g) curriculum vitae have been correctly signed, if required;
- (h) all key documents and information have been submitted; and
- (i) the proposal meets any other key requirements of the Request for Proposals.

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

(3) A material deviation is one that:

- i. affects in any substantial way the scope, quality, or performance of the works, services or supplies specified in the bidding documents; or
- ii. would limit in any substantial way, inconsistent with the bidding documents, the Procuring Entity's rights or the bidder's obligations under any resulting Contract; or
- iii. if corrected would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

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

Evaluation of technical proposals.

94. (1) prior to commencing the technical evaluation, the Evaluation Committee shall review the specified criteria, to ensure that all members have a common understanding of the criteria and their relative importance.

(2) Each member of the Evaluation Committee shall independently conduct a technical evaluation of each proposal, awarding scores against each criterion. These scores shall be recorded and the score sheets signed by the evaluators.

(3) Scores from each member of the Evaluation Committee shall be compiled and an average score calculated for each proposal.

(4) The Evaluation Committee shall consider any significant deviations from the average score or inconsistencies in scoring and evaluators may be required to justify the scores awarded. Where an evaluator has misunderstood a proposal or the criteria or has evaluated proposals in an inconsistent manner, the evaluator may be permitted to adjust his scores, but no evaluator shall be obliged to make adjustments to his scores or to adjust scores without justification. Where any score is adjusted, the original score sheet shall be kept as part of the record of the evaluation, the adjusted scores recorded on a new score sheet and the reasons for making adjustments shall be recorded.

(5) The average score for each proposal shall be its total technical score for evaluation purposes,

95. (1) The total technical score of each proposal shall be compared to the minimum technical qualifying mark stated in the Request for Proposals document. Any proposal with a score less than the minimum technical qualifying mark shall be rejected and eliminated from further evaluation.

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

(2) All proposals with a score equal to or higher than the minimum technical qualifying mark shall be recommended to proceed to financial evaluation.

(3) The Evaluation Committee shall prepare a Technical Evaluation Report, which shall include:

- (a) the record of the opening of technical proposals;
- (b) the results of the preliminary examination, with reasons why any proposals were rejected;
- (c) a summary of the relative strengths and weaknesses of each proposal;
- (d) the technical scores awarded by each evaluator for each proposal;
- (e) the total technical score for each proposal;
- (f) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to scores;
- (g) a list of the proposals which reached the minimum technical qualifying mark and a recommendation to proceed to the public opening of the financial proposals of these bidders; and

- (h) in the event that technical proposals have been already submitted, a recommendation to reject all proposals which did not reach the minimum technical qualifying mark.

(4) The Technical Evaluation Report shall be submitted to the appropriate authority for approval, prior to calling for a public opening of the financial proposals.

Technical evaluation for quality based selection.

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

(2) The Evaluation Committee shall prepare a Technical Evaluation Report, which shall include:

- (a) minutes of the opening of technical proposals;
- (b) the results of the preliminary examination, with reasons why any proposals were rejected;
- (c) a summary of the relative strengths and weaknesses of each proposal;
- (d) the technical scores awarded by each evaluator for each proposal;
- (e) an analysis of any significant discrepancies or inconsistencies in scoring and an explanation of any adjustments made to scores;
- (f) the total technical score for each proposal; and

- (g) a recommendation to open the financial proposal of the bidder with the highest total technical score and to reject all other proposals.

(3) The Technical Evaluation Report shall be submitted to the appropriate authority for approval, prior to any further proceedings or the rejection of other proposals.

97. (1) Following approval of the Technical Evaluation Report by the appropriate authority, the Procurement Unit shall notify the bidder or bidders whose proposals are proceeding to the financial evaluation of the date and time set for the opening of financial proposals. The opening date shall not be sooner than two weeks after the notification date where international bidders are included, or one week where all bidders are national.

Notification of Results of technical evaluation

(2) Notwithstanding the provisions of sub-regulation (1) above, in the case of Quality Based Selection where only technical proposals have been submitted, the Procurement Unit shall notify the bidder who achieved the highest technical score, requesting the submission of a financial proposal.

SECTION E- Financial Evaluation of Proposals

98. (1) The Procurement Committee shall open the recommended financial proposal or proposals at the time, date and location notified to the bidders in accordance with regulation 97 and bidders' representatives shall be permitted to attend and witness the opening.

Financial opening.

(2) Key pages of the financial proposals shall be stamped and initialled by the Chairman and two other members of the Bid opening Committee. The following information shall be read out and recorded:

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

(3) The opened financial proposals shall be taken immediately to a secure location, where they shall be kept until the financial evaluation begins.

(4) The Procurement Unit shall maintain a record of the financial proposal opening, which shall form part of the procurement record.

(5) All bidders' representatives attending the financial opening shall be requested to sign a register of attendance which forms part of the record, but the absence of any signature in the register of attendance shall not invalidate the record.

Financial evaluation for quality and cost based selection.

99. (1) The Evaluation Committee shall determine the evaluated price of each proposal by:

- (a) correcting any arithmetic errors;
- (b) determining whether financial proposals are complete and have costed all corresponding inputs in the technical proposal, costing any missing items and adding them to the bid price, in accordance with Chapter 14.4 of the Public Procurement Manual, 2006; and
- (c) converting all proposals to a single currency for purposes of evaluation, using the currency, source and date of exchange rates indicated in the Request for Proposals.

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

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

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

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

(6) The Evaluation Committee shall prepare a Financial Evaluation Report, which shall include:

- (a) the record of the opening of financial proposals, including the technical scores and proposal prices read out;
- (b) the evaluated price of each proposal, following any corrections, adjustments and the conversion to a single currency;
- (c) the financial score of each proposal and the methodology used for allocating financial scores;
- (d) the weighting of the technical and financial scores;
- (e) the total score for each proposal;
- (f) a recommendation to award the contract to the bidder obtaining the highest total score, subject to any negotiations required: and
- (g) the currency and price of the proposed contract, subject to any changes following negotiations.

(7) The Financial Evaluation Report shall be submitted to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

Financial evaluation for quality based selection

100. (1) The Evaluation Committee shall correct any arithmetic errors and determine whether the financial proposal is complete and has costed all corresponding inputs in the technical proposal. The Evaluation Committee shall also analyse the financial proposal to determine whether it offers value for money and to prepare for negotiations.

(2) The Evaluation Committee shall prepare a Financial Evaluation Report, which shall include:

- (a) the record of the opening of the financial proposal, including the technical score and proposal price read out;
- (b) any corrections to arithmetic errors and a statement of whether the proposal appears to be complete;
- (c) a recommendation to award the contract to the bidder, subject to any negotiations required; and
- (d) the currency and price of the proposed contract, subject to any changes following negotiations.

(3) The Financial Evaluation Report shall be submitted to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

Financial evaluation for fixed budget selection.

101. (1) The Evaluation Committee shall determine the evaluated price of each proposal by:

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

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

(2) The evaluated price of the proposals shall be compared to the budget indicated in the Request for Proposals and any proposal which exceeds the budget shall be rejected. All proposals which are within the budget shall be ranked, according to their technical score.

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

(4) The Evaluation Committee shall prepare a Financial Evaluation Report, which shall include:

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

(5) The Financial Evaluation Report shall be submitted to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

Financial evaluation for least cost selection.

102. (1) The Evaluation Committee shall determine the evaluated price of each financial proposal by:

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

(2) All proposals shall be ranked, according to their evaluated price.

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

(4) The Evaluation Committee shall prepare a Financial Evaluation Report, which shall include:

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

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

(5) The Financial Evaluation Report shall be submitted to the appropriate authority for approval, prior to proceeding with any negotiations required or award of contract.

103. (1) Negotiations may relate to:

Scope of negotiations.

- (a) minor alterations to the terms of reference, methodology and staffing;
- (b) minor amendments to the Special Conditions of Contract;
- (c) mobilisation arrangements, the work-plan and completion schedule; or
- (d) inputs required from the Procuring Entity.

(2) Negotiations shall not be conducted to:

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

(3) Notwithstanding the provisions of sub-regulation (2) above, where the evaluation was conducted using quality based Selection, negotiations may relate to the total proposal price and its constituent costs, to ensure value for money.

Procedure for negotiation.

104. (1) Negotiations shall not be conducted until after the Financial Evaluation Report has been approved by the relevant authority.

(2) Negotiations shall only be held with the bidder recommended for contract award, except where negotiations fail, and approval of the appropriate authority is obtained, to open negotiations with the next ranked bidder.

(3) The Procurement Unit shall prepare a plan for the negotiations, specifying the issues to be negotiated and objectives to be achieved and shall, to the extent possible, quantify the objectives and set maximum and minimum negotiation parameters.

(4) The negotiations shall be conducted by a minimum of two staff of the Procuring Entity, who shall not commit the Procuring Entity to any proposed arrangements or agreements, but shall seek the approval of the relevant authority, prior to confirming any agreement reached.

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

PART VII - Procedures for Request for Quotations

Using of request for quotations procedures.

105. Procuring entities shall ensure that they have complied with all relevant requirements of Pan IV, prior to initiating Request for Quotations procedures in accordance with this Part.

Contents request for quotations document.

106. (1) The Procurement Unit shall prepare a written Request for Quotations document, using the appropriate standard document issued by the NPPA.

(2) The Request for Quotations shall include all information necessary to enable bidders to participate in the procurement proceedings and to submit quotations that are responsive to the needs of the Procuring Entity.

(3) Request for Quotations shall include:

- (a) instructions on the conduct of the procurement process, including the preparation and submission of quotations and information on the evaluation of quotations and award of contract;
- (b) instructions on any documents required to be submitted with the quotation, which shall include a minimum of:
 - (i) A copy of a valid business license,
 - (ii) A copy of a valid business registration certificate,
 - (iii) A copy of a valid NRA tax clearance certificate;
 - (iv) NASSIT clearance;
 - (iv) A list of recent Government contracts performed.
- (c) a description of the goods, works or services required, in accordance with regulation 34, 36 or 37 as appropriate;
- (d) information on the methodology and criteria for the evaluation of quotations;
- (e) the form and type of contract to be awarded, which shall normally be a purchase order for a lump sum contract;
- (f) the terms and conditions of contract which will apply;
- (g) information on the bidder's right to appeal under the administrative review process and on the Government's policy on fraud and corruption, including the debarment of bidders.

invitation of quotations and development of shortlist.

107. (1) Written quotations shall be requested from a shortlist of bidders

(2) To ensure effective competition the shortlist shall contain a minimum of three bidders.

(3) Notwithstanding the provisions of sub-regulation 2 above, a shortlist may consist of only two bidders, where only two suitable potential sources exist

(4) In developing a shortlist, the Procurement Unit may use:

- (a) standing lists maintained in accordance with regulation 26;
- (b) lists of pre-qualified bidders;
- (c) its own knowledge of the market;
- (d) any other appropriate sources of information.

(5) In developing a shortlist, the Procurement Unit shall comply with the following rules:

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

(6) The Procurement Unit shall record the names of the bidders included on the shortlist and the reasons for their inclusion. The shortlist shall be kept as part of the procurement record.

Submission and receipt of quotations.

108. (1) The Procuring Entity shall require bidders to submit written quotations. The request for quotations document shall specify the method or methods of submission permitted, which may include submission by:

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

(2) The request for quotations document shall specify the location, date and time for submission of quotations, and any quotation received after the deadline for submission shall be rejected.

(3) All quotations shall be kept securely until after the deadline for submission of quotations. Where quotations are received in an unsealed form, prior to the submission deadline, the contents of the quotation shall be kept confidential and shall not be revealed to any person, other than the officer responsible for receiving the quotation.

109. (1) The Procurement Committee may appoint an Evaluation Committee or designate the person or persons responsible for the evaluation in accordance with regulation 65. Evaluation of quotations.

(2) The evaluation of quotations shall be conducted in accordance with the rules and procedures in Part V, except that:

- (a) alternative quotations shall not be permitted; and
- (b) the determination of the evaluated price of quotations shall not include the application of any additional evaluation criteria as prescribed in regulation 55 (3) and 72 (2) (e).

(3) The quotation with the lowest evaluated price, which is substantially responsive to the requirements of the Procuring Entity, shall be recommended for award of contract.

PART VI11 - Procedures for Sole-Source Procurement

Use of sole source procurement produces.

110. (1) Procuring entities shall ensure that they have complied with requirements of Part IV, prior to initiating Sole Source Procurement procedures in accordance with this Part.

SECTION A - Sole-Source Procurement from a Sole Supplier

Procedure for procurement from a sole supplier.

111. (1) Where the Procuring Entity conducts sole-source procurement on the grounds that only one supplier is able to meet the Procuring Entity's needs, in accordance with regulation 45 (1) the Procurement Unit shall:

- (a) prepare a written request for a bid, containing a description of the goods, works or services required in accordance with regulation 34,36 or 37, as appropriate and a statement of the proposed form of contract and terms and conditions of contract;
- (b) issue the written request to the sole supplier and obtain a written bid;
- (c) evaluate the bid in accordance with regulation 112;
- (d) negotiate with the bidder, if required, in accordance with the procedure in regulation 113;
- (e) prepare a report for submission to the Procurement Committee, or other awarding authority, which shall contain:
 - i. a summary of the evaluation of the bid;
 - ii. a record of any negotiations held; and
 - iii. a recommendation to award the contract or take other appropriate action.

Evaluation of the bid.

112. (1) The evaluation of the sole bid shall be conducted to determine whether the bid:

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

(2) Based on the evaluation, the Procurement Unit shall determine whether negotiations are required with the bidder.

113. (1) The Procurement Unit shall prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved and shall, to the extent possible, quantify the objectives and set maximum and minimum negotiation parameters.

(2) The negotiations shall be conducted by a minimum of two staff of the Procuring Entity, who shall not commit the Procuring Entity to any proposed arrangements or agreements, but shall seek the approval of the relevant authority, prior to confirming any agreement reached.

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

SECTION C - Sole-Source Procurement for Emergency Needs

114. (1) Where the Procuring Entity conducts sole-source procurement on the grounds of an emergency need, in accordance with regulation 45, the Procurement Unit shall:

Procedure for negotiations.

Procedure for procurement of an emergency need.

- (a) first confirm that the goods, works or services required are not available from stores or under any existing framework contract or similar arrangement;
- (b) identify a suitable supplier;
- (c) where time permits, prepare a written request for a bid, containing a description of the goods, works or services required in accordance with regulation 34, 36 or 37 as appropriate and a statement of the proposed contract form and terms and conditions of contract;
- (d) issue a written or verbal request to the sole supplier and obtain a written bid;
- (e) evaluate the bid in accordance with regulation 115;
- (f) negotiate with the bidder, if required, in accordance with the procedure in regulation 116; and
- (g) prepare a brief report for submission to the Procurement Committee, or other award authority, which shall contain:
 - i. details of the requirement and the emergency circumstances;
 - ii. a summary of the action taken to invite, evaluate and negotiate the bid; and
 - iii. a recommendation to award the contract or take other appropriate action.

Evaluation of the bid. 115. (1) The evaluation of the bid shall be conducted to determine whether the bid:

- (a) meets the Procuring Entity's technical needs and in particular, its required delivery or completion schedule;
- (b) accepts the contractual terms and conditions proposed by the Procuring Entity or offers other terms and conditions which are acceptable to the Procuring Entity; and
- (c) offers value for money, based on prices previously obtained for similar goods, works or services or a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement and any additional costs involved in meeting the Procuring Entity's delivery or completion schedule.

(2) Based on the evaluation, the Procurement Unit shall determine whether negotiations are required with the bidder.

116. (1) The Procurement Unit shall prepare a plan for the negotiations, which shall specify the issues to be negotiated and objectives to be achieved and shall to the extent possible, quantify the objectives and set maximum and minimum negotiation parameters.

(2) The negotiations shall be conducted by a minimum of two staff of the Procuring Entity, who shall not commit the Procuring Entity to any proposed arrangements or agreements, but shall seek the approval of the relevant authority, prior to confirming any agreement reached.

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

117. (1) The Procurement Unit shall notify the Procurement Committee, and any other awarding authority, as soon as it identifies a procurement requirement which will be subject to sole-source procurement on the grounds of an emergency need.

Approval arrangements for emergency procurement.

(2) To ensure that emergency procurement proceeds promptly, any approvals, other than approval to award a contract, may be given by the chairperson of the Procurement Committee, or any other member designated by the chairperson, unless alternative arrangements are agreed by the Procurement Committee.

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

PART IX - Contract Award
SECTION A - Contract Award

Contact
award
decisions.

118. (1) All contract award decisions shall be taken by the appropriate award authority, in accordance with the levels of authority specified in the First Schedule of the Act.

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

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

(4) A contract award decision by the awarding authority does not constitute a contract, but only a decision as to the winning or recommended bidder. Contract awards shall be made in accordance with regulation 121, 123 or 124 as appropriate.

(5) The Procurement Unit shall also obtain any other required approvals (for example, when donor funds are used for the procurement).

119. (1) Following the contract award decision by the awarding authority, the Procuring Entity shall commit the required funds, before proceeding to award the contract. Commitments
of funds.

(2) Where the contract is a multi-year contract, the Procuring Entity shall obtain approval from the Ministry of Finance, prior to awarding the contract,

(3) Where required, the Procuring Entity shall also commit funds for any other costs linked to the contract, as described in regulation 33 (1).

120. (1) Where the value of the proposed contract exceeds the levels set in the First Schedule of the Act, following the contract award decision by the award authority, the Procuring Entity shall publish a notice of the proposed award. Notice of
proposed
award..

(2) The notice shall specify:

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

(3) The notice shall clearly state that it does not constitute the award of a contract.

(4) The notice shall be published in the Sierra Leone Government *Gazette*, and to the extent feasible, published on the NPPA website, and shall also be sent directly to all bidders.

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

Contact
award.

121. (1) Following the commitment of funds in accordance with regulation 119 and the publication of the notice of proposed award in accordance with regulation 120 and provided no application for review has been received, the Procuring Entity shall award the contract by issuing a notice of bid acceptance to the recommended bidder.

(2) The notice of bid acceptance shall state:

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

(3) The Procurement Unit shall obtain a signed acknowledgement from the bidder, confirming that it has received the notice of bid acceptance.

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

122. (1) Following the issue of the notice of acceptance in accordance with regulation 121, the Procurement Unit shall prepare a written contract, with the assistance of the Law Officers' Department using the contract included in the bidding document or request for proposal.

Contract
preparation
and signature
under open or
restricted
bidding and
request for
proposal
methods.

(2) The Procurement Unit shall obtain approval of the contract document by the Procurement Committee or other award authority, before sending it to the supplier for signature.

(3) The Procurement Unit shall ensure that the supplier signs and returns a copy of the contract and provides any performance security required as a condition for effectiveness of the contract. Failure to provide any such performance security in the time specified in the bidding documents may result in cancellation of the award and forfeiture of the bid security.

123. (1) Where procurement is conducted using the Request for Quotation method, following the contract award decision by the award authority and the commitment of funds, the Procurement Unit shall prepare a written purchase order and send it to the recommended bidder.

Contract
award in
request for
quotations.

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

(3) The purchase order shall constitute a contract between the Procuring Entity and the bidder.

(4) The Procuring Entity shall require the supplier to provide a written confirmation that it has received the purchase order and is proceeding with performance of the contract, but any failure by the supplier to provide such confirmation shall not invalidate the contract.

124. (1) Where the Procuring Entity conducts sole-source procurement under section 46 of the Act, following the contract award decision by the awarding authority and the commitment of funds, the source Procurement Unit shall prepare a written contract or purchase order and send it to the recommended bidder and the Procuring Entity may, where appropriate, send a notice of bid acceptance to the bidder, prior to sending the contract document, in accordance with regulation 121 (2).

Contract
award in sole
source
procurement.

(2) The Procurement Unit shall obtain a signed acknowledgement from the bidder, confirming that it has received the notice of bid acceptance, contract or purchase order and that it is proceeding with performance of the contract, but any failure by the supplier to provide such confirmation shall not invalidate the contract.

Performance securities

125. (1) A Procuring Entity may request a performance security, to secure the supplier's obligation to fulfil the contract. The bidding documents and contract shall state any requirement for a performance security. A performance security may cover warranty obligations, if so stated in the contract.

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

(3) In determining the amount of performance security required, the Procurement Unit shall take into account the cost to the supplier of obtaining a performance security, the value of the contract, the risk of a supplier failing to fulfil his contractual obligations and the extent of protection offered to the Procuring Entity through alternative means, such as payment retentions.

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

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

(6) The Procurement Unit shall release the performance security promptly to the supplier upon completion of all the supplier's contractual obligations which are subject to the security or termination of the contract for a reason that is not attributable to any fault of the supplier.

(7) The Procurement Unit shall manage performance securities in accordance with regulation 50.

126. (1) Upon the entry into force of the contract and, the provision by the supplier of any required performance security, the Procurement Unit shall promptly reject the bids of unsuccessful bidders.

Rejection of bids and debriefing unsuccessful bidders.

(2) When rejecting unsuccessful bids, the Procurement Unit shall return any bid securities and any unopened financial proposals.

(3) The Procurement Unit shall, where so requested by an unsuccessful bidder, provide the unsuccessful bidder in writing with the reasons for the failure of its application to pre-qualify or bid, stating at which stage of the evaluation the bid was rejected; provide brief details of any material deviation, reservation of omission leading to rejection of the bid or state that a bid was substantially responsive, but failed to offer the lowest evaluated price or highest score, as required.

(4) No details of any other bids shall be given to a bidder, other than information that is publicly available from bid openings or published notices.

SECTION B-Types of Contract

127. (1) Procuring Entities shall use the contract formats included in the standard bidding documents issued by the NPPA.

Contact formats.

(2) Where no relevant standard bidding documents or contract formats for a specific procurement exist, a Procuring Entity shall use only such contract formats as have otherwise been approved by the NPPA as indicated in this Section, in accordance with the provisions of this Section.

128. (1) A Procuring Entity may use a lump sum contract for goods, works or services, where the content, duration and outputs contracts, of the contract are well defined.

Lump sum contracta.

(2) A lump sum contract shall consist of an agreed total price for the performance of the contract and the Procuring Entity shall, subject to the conditions of the contract, pay the supplier the agreed lump sum price, irrespective of the actual quantity, time or work required for performance of the contract.

(3) Payments under a lump sum contract shall be dependent on clearly specified outputs, deliverables or events, which may include, but not be limited to:

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

Unit price contracts.

129. (1) A Procuring Entity may use a unit price contract for:

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

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

(3) For services contracts, payment shall be based on:

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

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

(5) Unit price contracts shall provide for a total contract sum, which may include a contingency amount for unforeseen work or variations in quantities. The Procuring Entity shall not allow payments to exceed the contract sum, without gaining approval for a contract modification.

(6) The Procurement Unit shall monitor unit price contracts closely, to ensure that progress is in accordance with the contract and that payments claimed by the contractor are appropriate and in accordance with the contract.

130. (1) A Procuring Entity may use a Framework contract for goods, works or services: Framework contract.

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

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

- (3) Framework contracts may:
- (a) include an estimated quantity or value, but shall not commit to purchasing this estimated quantity or value.
 - (b) commit to purchasing a minimum quantity or value or to purchasing all similar requirements from the supplier, where this is necessary or preferable to obtain competitive prices.

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

Percentage based contracts.

131. (1) A Procuring Entity may use a Percentage Based contract where it is appropriate to relate the fee paid directly to estimated or actual costs or amounts, such as the value of a contract or sale.

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

- (3) A Percentage Based contract may include:
- (a) a fixed target cost or amount;
 - (b) minimum or maximum fees;
 - (c) a sliding scale of fees; and/or
 - (d) incentive fees, related to any savings made through economic design, discounts obtained, cost reductions or similar.

Cost reimbursable and target price contracts.

132. (1) A Procuring Entity may use a Cost Reimbursable or target price contract for:

- (a) emergency works, where there is insufficient time to fully calculate the costs involved; or

- (b) high risk works, where it is more economical for the Procuring Entity to bear the risk of price variations than to pay the contractor to accept the risk, or where a contractor will not accept the risk.

(2) Payment shall be for:

- (a) the actual cost of the works, as evidenced by receipts, timesheets and other appropriate documentation; and
- (b) a fee or profit, as specified in the contract.

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

SECTION C- Miscellaneous Provisions within Contract Documents

133. (1) Price adjustment is not permitted unless provided for in the procurement contract and is subject to the provisions of section 31 of the Act. Price adjustment.

(2) For contracts with a duration of more than twelve months, the Procuring Entity may include a price adjustment provision, where it determines that it is more economical for the Procuring Entity to accept the risk of increased costs than to pay an additional cost for the supplier to accept the risk.

(3) Where a price adjustment provision is included, the contract shall clearly state:

- (a) the formula for calculating adjustments, which shall separate the total price into components, such as labour, equipment, materials and fuel;

- (b) price indices for each component specified in the formula;
- (c) any correction factor to take into account differences in the payment currency and the currencies of the source of the input and price index;
- (d) the base date for application of the formula;
- (e) the frequency with which the formula shall be applied; and
- (f) any minimum variation required to qualify for price adjustment and any other restrictions or conditions.

(4) The contract may also provide that, when the price adjustment provisions results in an increase exceeding a specified percentage or amount of the contract, the Procuring Entity may either:

- (a) terminate the contract; or
- (b) renegotiate the contract in order to stay with the budget or otherwise minimise costs for the Procuring Entity.

Payment terms

134. (1) The period for payment shall be thirty days from the Procuring Entity's acceptance of the goods, works or services, unless this is varied in the conditions of the contract.

(2) The contract may provide for interest to be paid to the supplier, where the Procuring Entity fails to make payment within the period specified in the contract. The contract shall clearly state any interest rate to be applied, how interest payments shall be calculated and any other conditions relating to payment of interest.

(3) The contract shall clearly state the currency or currencies of payment and, where required, the exchange rates or the source of exchange rates applicable.

(4) The contract shall clearly specify the payment schedule and conditionally, which may include advance payments progress payments, deduction and release of retention monies in accordance with regulations 135, 136 and 137.

135. (1) The contract may provide for advance payments to supplier, where this is necessary to ensure effective implementation of the contract or to obtain competitive prices. Advanced Payment

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

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

(4) Unless otherwise specified in the contract, any advance payment shall only be made against the provision by the supplier of an advance payment guarantee, covering the full amount of the advance payment and in accordance with regulation 139.

(5) The contract shall state that materials, equipment and personnel for which an advance payment is received, shall be used only for performance of that contract. A works contract may require that materials, equipment and personnel for which an advance payment is received, must be committed to the site or sites of the works.

(6) Where so specified in the contract, advance payments may be recovered in instalments from subsequent payments to the supplier, which shall be subject to a total deduction equal to the sum paid as the advance payment.

136. (1) The contract may provide for progress payments to the supplier. Progress payment.

(2) Progress payments shall be either:

- (a) payment of a specified percentage or amount of the contract value following particular events, milestones or submission of deliverables specified in the contract; or
- (b) payment for the actual quantities of goods, works or services delivered or completed.

(3) Progress payments shall not exceed the cost or value of the goods, works or services delivered or completed.

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

Retentions.

137. (1) The contract may provide for a specified percentage or amount of payments to the contractor to be retained pending final acceptance of the goods, works or services.

(2) The contract shall clearly specify:

- (a) the percentage or amount to be retained from each payment;
- (b) the period or event at which the retention is to be released, which may include, but not be limited to the installation of goods, completion of the contract or expiry of a warranty period; and
- (c) the documents required in evidence for release of the retention.

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

Payment documents.

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

(2) The documents required shall relate to the delivery, progress or performance of the contract for which the payment is due or provide evidence of fulfilment of contract terms and conditions. The documents required may include, but not be limited to:

- (a) Goods Received Notes, Bills of Lading, Air Waybills or other documentation proving delivery or receipt of goods, in accordance with the terms of the contract;
- (b) Packing Lists, or other documentation proving the content of any consignments delivered;
- (c) inspection Certificates or Reports, or other documentation proving that goods, works or services have passed inspection;
- (d) Installation, Commissioning, Acceptance or Handover Certificates, or other documentation proving that goods, works or services have been accepted;
- (e) Insurance Certificates or other documentation proving that the supplier has taken out the required insurance for the goods, works or services;
- (f) Certificates of Origin or evidence of nationality, where goods supplied or personnel employed under a contract are subject to restrictions on origin or nationality;
- (g) Interim Certificates, certifying the progress made in performance of a contract, as evidence of entitlement to progress payments;
- (h) Final Certificates, certifying completion of the contract and commencement of the warranty period; or

- (i) receipts or other documentation, proving that specified costs have been incurred, such as air tickets or timesheets for personnel.

Payment securities.

139. (1) Where the contract permits prepayments to a supplier prior to the delivery or completion of the goods, works or services to which the payment relates, the Procuring Entity shall require a payment security from the supplier, unless otherwise specified in the contract.

(2) The value of any payment security shall be equal to the payment to which it relates. Where appropriate, the value of a security may be progressively reduced, in line with the supplier's progress in delivering or completing the goods, works or services to which the payment relates.

(3) The contract shall state that the payment security must be:

- (a) in accordance with the format and wording provided in the contract;
- (b) in a form acceptable to the Procuring Entity;
- (c) from an institution acceptable to the Procuring Entity; and
- (d) valid for the period prescribed in the contract, which shall normally be at least one month beyond the anticipated due date of the repayment.

(4) Notwithstanding the provisions of sub-regulation 139 (1) above, the contract may permit alternative security arrangements, acceptable to the Procuring Entity.

(5) The conditions for forfeiture of the payment security shall be as specified in the contract document.

(6) The Procurement Unit shall release the payment security promptly to the supplier upon completion of all the supplier's contractual obligations which are subject to the security, or upon expiry of the security.

(7) The Procurement Unit shall manage payment securities in accordance with regulation 150.

PART X - CONTRACT ADMINISTRATION

SECTION A - Contract Administration

140. (1) The Procuring Entity shall designate a member of staff or a team of staff, as the contract administrator for each contract Contract administration responsibilities.

(2) The contract administrator shall:

- (a) manage the obligations and duties of the Procuring Entity specified in the contract: and
- (b) ensure that the supplier performs the contract in accordance with the terms and conditions of the contract,

(3) In administering the contract the contract administrator shall use existing systems, procedures and resources within the Procuring Entity and in particular, the contract administrator shall use existing payment systems and verification procedures for processing payments to suppliers.

(4) The contract administrator shall be responsible for:

- (a) monitoring the performance of the supplier, to ensure that all delivery or performance obligations are met or appropriate action taken by the Procuring Entity in the event of obligations not being met;
- (b) ensuring that the supplier submits all required documentation;
- (c) ensuring that the Procuring Entity meets all its payment and other obligations on time and in accordance with the contract;

- (d) ensuring that there is adequate cost, quality and time control, where required;
- (e) preparing or co-ordinating the preparation of any required contract variations or change orders and obtaining all required approvals before their issue;
- (f) preparing or co-ordinating the preparation of any required contract modifications and obtaining any required approvals before their issue;
- (g) managing any hand over or acceptance procedures;
- (h) making recommendations for contract suspension or termination, where appropriate, obtaining all required approvals and managing any termination process;
- (i) ensuring that the contract is completed in all respects, prior to closing the contract file;
- (j) ensuring that all contract administration records are maintained and archived as required; and
- (k) ensuring that the supplier and the Procuring Entity act in accordance with the Act, these Regulations and the contract.

Technical inspection of goods and works.

141. (1) The requirement for inspections and tests shall be as stated in the bidding documents and the conditions of contract, including:

- (a) the type of inspection or test to be performed and the standards to be met;
- (b) the location for inspection;

- (c) the person to carry out the inspection or tests;
- (d) when inspection is to be conducted;
- (e) who is responsible for payment of the various costs of inspection;
- (f) any notification or documentation required from the supplier relating to inspection or testing;
- (g) that samples provided for testing shall be provided free of charge by the supplier; and
- (h) that where goods or works fail an inspection, the supplier is liable for the correction of any defects at his own expense and the costs of any re-inspection required.

142. (1) The Procuring Entity shall ensure that all goods, works and services subject to inspection and verification by a formal inspection and Receipt Committee, prior to their acceptance.

Inspection and acceptance goods works and services.

(2) The inspection and verification shall ensure that:

- (a) the correct quantity of goods has been received;
- (b) the goods, works or services meet the technical standards defined in the contract;
- (c) the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- (d) all required deliverables have been submitted; and
- (e) all required manuals or documentation have been received.

(3) The Inspection and Receipt Committee responsible for inspecting the goods, works or services shall issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

Inspection and Receipt Committees.

143. Where an Inspection and Receipt Committee has been constituted under regulation 142 it shall consist of at least three persons, including:

- (a) a representative of the Procurement Unit;
- (b) a supervising engineer, contract manager or public officer with appropriate technical knowledge; and
- (c) a storekeeper or representative of the end user department or unit.

SECTION B-Contract Modifications

Contract modifications.

144. (1) Where any change to the terms and conditions of a contract is required, other than contract variations permitted in accordance with regulation 145, the Procurement Unit shall prepare a written contract modification.

(2) The Procurement Unit shall obtain the approval of the appropriate awarding authority, prior to the issue of any contract modification.

(3) Any contract modification shall only be valid when signed by authorised representatives of both the Procuring Entity and the supplier.

(4) Where the contract modification causes the contract value to be increased by up to twenty five percent of the original contract value, the Procurement Unit shall obtain the approval of the appropriate award authority specified in the First Schedule of the Act.

(5) Where a contract modification would cause the contract value to be increased by more than twenty five percent of the original contract value, the additional requirement shall be treated as a new procurement requirement. Where the additional requirements could be obtained from an alternative supplier, the end user shall initiate new procurement proceedings, rather than proceeding with a contract modification. Where the additional requirements can only be obtained from the existing supplier, the end user shall justify the procurement as a sole source procurement and seek approval from the appropriate award authority.

145. (1) Where appropriate, in order to facilitate adaptations to contract unanticipated events or changes in requirements, the contract may permit:

Contract variations.

- (a) the contract administrator, supervising engineer or other designated official to order variations to the description of goods, works or services, the price or the completion date; or
- (b) defined compensation events to justify variations in the price or in the completion date.

(2) Where a variation results in a change in price, any additional funds shall be committed, prior to issue of the variation order, unless such funds are already provided by any contingency amount already included in the contract,

(3) The contract may include a maximum limit on the variations which can be issued without a contract modification in accordance with regulation 144.

(4) The contract shall clearly state any approval requirements for contract variations.

146. (1) The contract document shall specify the grounds on which the contract may be terminated and specify the procedures applicable to termination.

Contract termination.

(2) The Procurement Unit shall obtain the approval of the awarding authority which authorised the original contract, prior to terminating the contract. The request for approval shall clearly state:

- (a) the reasons for termination;
- (b) actions which have been taken to avoid the need for termination;
- (c) the contractual grounds for termination; and
- (d) the costs, if any, for which the Procuring Entity will be liable following termination.

PART XI - MEASURES TO PROMOTE TRANSPARENCY AND ACCOUNTABILITY

SECTION A-Transparency

Procurement records.

147. (1) The Procurement Unit shall maintain an individual file for each procurement requirement, which shall be marked with the relevant procurement reference number. The file shall contain all information, documents and communications related to that procurement proceeding, including, but not limited to

- (a) the authorised procurement requisition, including the description of goods, works or services required;
- (b) the procurement plan, including the justification for the use of any method other than open competitive bidding or request for proposals;
- (c) a copy of any invitation to pre-qualify or call for expressions of interest notice and any pre-qualification documents;
- (d) all applications to pre-qualify or expressions of interest received and the evaluation of qualifications or comparison of expressions of interest:

- (e) the invitation to bid notice or any shortlist or list of pre-qualified bidders;
- (f) the bidding documents, request for proposals or other solicitation document issued, including any clarifications or amendments issued and minutes of any pre-bid meetings;
- (g) the record of solicitation documents issued, bids received and all bid or proposal openings;
- (h) all bids, proposals or quotations received, other than bids or proposals returned unopened to bidders;
- (i) copies of all clarifications requested and responses received;
- (j) the evaluation report, including any individual score sheets or other documentation;
- (k) records of any negotiations;
- (l) any notice of proposed award;
- (m) any notice of bid acceptance;
- (n) a copy of the contract or purchase order document;
- (o) copies of letters rejecting and debriefing unsuccessful bidders;
- (p) a copy of any published notice of contract award;
- (q) copies of original securities, negotiable documents or financial instruments;

- (r) copies of all contract variations and modifications;
- (s) all documentation and correspondence relating to contract administration;
- (t) copies of all documentation demonstrating performance of the contract, such as inspection reports, delivery documentation, interim certificates and payment authorisations;
- (u) any documentation relating to cancellation of a procurement process or termination of a contract;
- (v) information relating to any applications for review; and
- (w) all approvals from the Procurement Committee and any other award authority;

(2) Procurement records shall be kept for a minimum period of six years following completion or termination of the contract or cancellation of the procurement proceedings.

(3) Procurement records and associated supporting documentation shall be made available for inspection by the NPPA, Anti-Corruption Commission, and Auditor-General upon request and to donor officials if donor funds are used for the procurement, in accordance with section 32 (6) of the Act.

Summary record of procurement proceedings.

148. (1) The Procurement Unit shall prepare a summary record of the procurement proceedings, containing the information required in section 32 (2) of the Act.

(2) Parts of the summary record may be made available to bidders on request in accordance with section 32 (3) of the Act.

149. In disclosure of the summary record of procurement proceedings, pursuant to regulation 148, in debriefing bidders pursuant to regulation 126, or in any other context, the Procuring Entity shall not, except when ordered to do so by a competent court, and subject to the conditions of such an order, disclose:

Confidentiality and disclosure of records.

- (a) information, if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interest of the parties or would inhibit fair competition; or
- (b) information relating to the procurement process, other than the summary required in accordance with regulation 138.

150. (1) All original securities, negotiable documents, financial instruments or similar documents received by the procuring entity shall be kept in a locked safe or other secure, locked location by the Procurement Unit.

Management of securities and similar documents.

(2) Copies of the original documents referred to in sub-regulation 150 (1) above shall be kept in the procurement records, annotated with details of the location and date of receipt of the original document.

(3) The Procurement Unit shall maintain a register of all securities and similar documents in its possession, which shall record at least:

- (a) the name of the bidder or supplier providing the document;
- (b) the procurement proceedings or contract to which it relates;
- (c) the name of any financial institution who issued the document;
- (d) the dates of issue and receipt of the document;

- (e) the expiry date of the document; and
- (f) the value of any security,

(4) The Procurement Unit shall implement systems and procedures to ensure that:

- (a) the register referred to in sub-regulation 150 (3) above is updated whenever documents are added, removed or amended;
- (b) the expiry dates of documents are monitored and the appropriate staff notified at reasonable period before the expiry of any document;
- (c) any required extensions to validity are requested at reasonable period before the expiry of any document;
- (d) any reductions in the value of securities are recorded; and
- (e) documents which have expired or are to be released are returned promptly to bidders and suppliers.

Communica-
tions.

151. All communications between the Procuring Entity and bidders or suppliers shall be in writing and communications in any of other form shall be referred to and recorded in writing.

SECTION B - Accountability

Conduct of
public
officials.

152. Any public officer involved in requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of contracts, shall:

- (a) discharge his duties impartially so as to assure fair competitive access to public procurement by bidders;

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- (b) always act in the public interest, and in accordance with the object and procedures set out in the Act, in the regulations and in accordance with the Public Service codes of ethics, if any, and where applicable, the Local Government Act, 2004;

- (c) at all times avoid conflicts of interest, and the appearance of conflicts of interest, in carrying out his duties and conducting himself and immediately disclose any conflict of interest and excuse himself from any involvement in the matter.
- (d) not commit or abet corrupt or fraudulent practices, coercion or on conclusion, including the solicitation or acceptance of any inducements;
- (e) keep confidential the information that comes into his or her possession relating to procurement proceedings and to bids, including bidders proprietary information;
- (f) not take up a position of authority in any private concern with which he undertook procurement activities for a period of three years after departure from the Procuring Entity.

153. (1) Public officers of a Procuring Entity, or their close relatives, shall not participate as bidders in the procurement proceedings of the Procuring Entity. Declaration of conflicts of interest.

(2) A public officer shall excuse himself from any participation in a procurement proceeding where a bid has been submitted by a bidder who is a close relative of the public officer, or by a bidder by whom the public officer or the close relative is employed in a management capacity, or as an agent or in which he is member of the board of director, or has a financial interest.

(3) A recusal under sub-regulation 153 (2) above shall be effected immediately the public officer becomes aware of the submission of such a bid, but not later than the opening of bids; and the requirement of recusal shall extend to the administration and management of any procurement contract awarded to such a bidder.

(4) All public officers and other persons involved in public procurement shall, in accordance with the Act and other applicable legislation:

- (a) provide full co-operation and disclosure to the Authority, the National Revenue Authority, Auditor-General, and other authorities exercising monitoring and supervisory jurisdiction over public procurement pursuant to the Acts of Sierra Leone;
- (b) no later than thirty days from assuming responsibility and thirty days after leaving office, make a declaration of their assets and liabilities in such form as the Anti-Corruption Commission may determine; the declaration shall be updated annually as well as whenever there is a substantial change in assets and liabilities.

(5) Public officers who contravene the Act and these Regulations are liable to applicable administrative and civil sanctions as well as to Prosecution on pursuant to applicable criminal laws, including the Anti-Corruption Act, 2000.

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2000.

SECTION C-Condint of Siddersand Suppliers

Obligations
bidders and
suppliers.

154. (1) Bidders and suppliers shall at all times abide by their obligations under the Act, these Regulations, contracts, and other instruments applicable to their conduct and activities related to procurement.

(2) A bidder or a supplier, shall not engage in or abet corrupt or fraudulent practices, including the offering or giving, directly or indirectly, of any inducement, the misrepresentation of facts in order to influence a procurement process or the execution of a contract, or interference in the ability of competing bidders to participate in procurement proceedings.

(3) Bidders shall not engage in any activity, prior to or after bid submission, designed to deprive the procuring entity of the benefits of free and open competition, including, but not restricted to, collusion over bidding for opportunities and price fixing, and coercive, corrupt or fraudulent practices.

(4) A Procuring Entity shall reject a bid if the bidder offers, gives or agrees to give an inducement referred to in sub-regulation 154 (2) above and promptly notify the rejection to the bidder concerned, the Authority, and to the relevant law enforcement authorities.

(5) The Procuring Entity shall not award a contract to a bidder who is responsible for preparing the specifications or bidding documents for the contract or supervising the execution of a contract, or to any affiliate of such a bidder; but this sub-regulation shall not apply to the various firms (consultants, contractors or suppliers) which together are performing the supplier's obligations under a turnkey or design and build contract.

(6) Bidders and suppliers who engage in fraudulent, corrupt or coercive practices in connection with public procurement are subject to prosecution pursuant to the applicable criminal laws, including the Anti-Corruption Act, 2000.

155. (1) The NPPA may exclude a bidder or a supplier from participation in all public procurement, for a minimum period of one year and a maximum period of six years, on any of the grounds specified in section 35 (2) of the Act,

Grounds for
debarment of
bidders and
suppliers.

(2) A petition to debar a bidder or supplier may be brought by a Procuring Entity, the NPPA, the Auditor-General or any other oversight organ authorised by the Acts of Sierra Leone.

(3) Upon receipt of a petition to debar, the NPPA shall immediately:

- (a) consult with the procuring entity to gather detailed information on the circumstances;
- (b) notify the bidder or supplier, giving details of the petition and informing the bidder or supplier of its/his/her right to a hearing or to submit written evidence, prior to any decision to exclude, as long as such request or evidence is submitted within ten working days of receipt of the notice,

(4) In investigating the petition, the NPPA shall consider where appropriate:

- (a) the information contained in the petition and other information obtained through consultation with the affected Procuring Entity and the body bringing the petition;
- (b) information provided by the bidder or contractor, through a hearing or in written form; and
- (c) any other relevant sources of information, including audits already conducted by the NPPA or other oversight bodies or information from other bidders.

(5) The following procedures shall apply to any hearings:

- (a) any hearing shall be organised within ten working days of the request for a hearing from the bidder or contractor;
- (b) the bidder or contractor has the right to be represented by counsel;

(c) the hearing shall be recorded and all evidence presented shall be preserved; and

(d) witnesses must testify under oath and may be cross-examined.

(6) During the investigation of any petition to debar a bidder or contractor, the bidder shall be permitted to participate in public procurement and shall be required to continue performance of any contract, but any recommended contract award to the bidder shall be delayed, pending the outcome of the investigation.

156. (1) Upon completion of its investigation and following any hearing, the NPPA shall issue a written decision, indicating: Decisions to debar.

- (a) whether the petition is upheld or rejected;
- (b) the reasons for its decision; and
- (c) the length of any debarment imposed,

(2) The written decision shall be sent to:

- (a) the bidder or supplier;
- (b) the person who submitted the petition; and
- (c) the affected procuring entity, where the petition was not submitted by the Procuring Entity.

(3) Any debarment imposed shall take effect immediately upon issue of the written decision.

(4) During the period of any debarment, a bidder shall not be permitted to participate in any public procurement proceedings, but shall be required to continue performance of any contracts already awarded.

(5) The NPPA shall maintain a list of excluded bidders and contractors, which shall be circulated to all Procuring Entities and shall immediately inform all procuring entities of any changes to the list, including bidders and contractors removed from the list following expiry of their debarment period.

SECTION D-Complaints Procedure

Submission of application for administrative review.

157. (1) A potential or actual bidder that claims to have suffered or that is likely to suffer, loss or injury due to a breach of a duty imposed on the Procuring Entity by the Act, these Regulations or the bidding document, may seek a review at any stage of the procurement proceedings,

(2) Any application for review submitted by a bidder, in accordance with section 63 of the Act, shall contain:

- (a) details of the procurement proceedings to which the application relates, including the procurement reference number;
- (b) details of the provision of the Act, Regulations or other instrument which has been breached;
- (c) an explanation of how the provision has been breached, including, where known, the date and the names of responsible officers; and
- (d) any available documentary or other evidence supporting the application.

(3) The application for review shall be submitted in writing to the head of the Procuring Entity, unless a contract has already been awarded.

(4) The application for review may be submitted to the NPPA where;

- (a) a contract has already been awarded;

- (a) the head of the Procuring Entity has failed to issue a decision within ten working days of the date of receipt of the application for review; or
- (b) the bidder wishes to appeal against the decision of the head of the Procuring Entity.

(5) Any application for review shall be submitted within ten working days of:

- (a) the date when the bidder became aware of the circumstances giving rise to the application for review or;
- (b) the date of the head of the Procuring Entity's decision or failure to issue a decision,

158. (1) Upon receipt of an application for review, the head of the Procuring Entity shall institute an investigation, which shall consider, where appropriate:

Review by head of the Procuring Entity.

- (a) The information and evidence contained in the application for review;
- (b) information from the Procuring Entity's procurement records;
- (c) information provided by staff of the Procuring Entity; and
- (d) information from other bidders

(2) The head of the Procuring Entity shall issue a written decision within five working days of receipt of the application for review, which shall indicate:

- (a) whether the application is upheld or rejected;
- (b) the reasons for the decision; and
- (c) any corrective measures to be taken.

- (3) The decision shall be sent to:
- (a) the bidder who submitted the application for review;
 - (b) all other bidders;
 - (c) the Procurement Unit and Procurement Committee of the Procuring Entity; and
 - (d) the NPPA.

Review by
independent
Procurement
Review
Panel.

159. (1) In order for an application for review to be considered by the Independent Procurement Review Panel, the application shall be accompanied by an administrative fee of 2% of the applicant's bid price up to a maximum of Le 2 million.

(2) The procurement proceedings shall be suspended until a decision on the complaint is issued by the independent Procurement Review Panel, unless the Procuring Entity certifies that urgent public interest considerations such as natural disasters, medical emergencies, civil strife and outbreak of war, require the procurement to proceed in accordance with the provisions of section 65 (7) of the Act.

(3) Upon receipt of an application for review, the independent Procurement Review Panel shall institute an investigation, which shall consider, where appropriate:

- (a) the information and evidence contained in the application for review;
- (b) information from the Procuring Entity's procurement records;
- (c) information provided by staff of the Procuring Entity;
- (d) information from other bidders; and
- (e) information in the investigation and decision of the head of the Procuring Entity, where applicable.

(4) The Independent Procurement Review Panel shall issue a written decision within ten working days, which shall indicate:

- (a) whether the application is upheld or rejected;
- (b) the reasons for the decision; and
- (c) any corrective measures to be taken, in accordance with section 65 (5) of the Act.

(5) A complaint may be dismissed for:

- (a) failure to comply with any of the requirements of these Regulations;
- (b) setting forth only allegations that do not state a valid basis for a complaint, or that do not set forth a detailed legal and factual statement;
- (c) having been filed in an untimely manner, either at the initial level of review by the Procuring Entity, or with respect to deadlines for filing of a complaint with the Independent Procurement Review Panel;
- (d) concerning contract implementation or administration rather than contract award;
- (e) challenging an affirmative determination of qualifications as regards a competing bidder.

PART XII - DISPOSAL OF STORES AND EQUIPMENT

160. (1) This regulation covers the identification, aggregation and disposal of stores and equipment of a Procuring Entity subject to Part VII of the Act, which are: Introduction.

- (a) surplus to requirements;
- (b) obsolete; damaged;
- (c) worn out and beyond economic repair;
- (d) to be scrapped.

(2) The disposal of land, and sales of samples to bidders, textbooks, publications, reports, works of art, medicines or other items purchased for resale are not subject to this regulation.

(3) All disposals of fixed assets must be recorded in the Asset Register of the Procuring Entity and a formal notification of the disposal sent to the National Assets and Government's Property Commission.

Authority to dispose.

161. (1) At least once a year, the head of the Procuring Entity shall appoint a Board of Survey to examine, group and price all surplus, returned and scrap assets, and report its findings and recommendations to the entity and NPPA.

(2) Following approval of these recommendations by the head of the Procuring Entity, the Board of Survey shall:

- (a) classify the goods for disposal into homogeneous groups;
- (b) accurately describe the variety and type of goods;
- (c) specify weights, number and measurements;
- (d) describe the condition and other specifications;
- (e) arrange the disposal of scrap items of no value;
- (f) for assets to be sold, establish the reserve sale price by obtaining two independent market-based valuations of goods in the same condition. If this is not possible, previous selling prices for similar goods sold by the Procuring Entity or another government entity may be used to establish the reserve price;
- (g) propose the method(s) for sale and prepare draft advertisements and sale documents.

(3) Where items become unserviceable for reasons other than fair wear and tear, such as through accident or expiry, the Board of Survey shall ensure that all practical measures are taken for the recovery of losses before the items are boarded and disposed of.

162. (1) Disposal of obsolete or surplus items shall be by: Disposal pro-
cedures.
- (a) transfer to other government departments or public entities, with or without financial adjustment;
 - (b) sale by public bid to the highest bidder, subject to reserve price;
 - (c) sale by public auction, subject to reserve price; or
 - (d) destruction, dumping, or burying as appropriate.

(2) Pooling of assets for disposal is permitted in order to minimise administration and transactional costs and to attract maximum possible competition.

163. (1) Where an asset may be usefully utilised by another procuring entity the disposal of the asset shall be by formal transfer, Transfer to government department or public entity.
- (2) The receiving entity shall issue an authorised receipt of the asset to the originating entity.

164. (1) Items not exceeding an estimated sale value of Public bid. Le 10 million may be disposed of through the formal invitation of public bids.

(2) A public advertisement shall be issued in at least one official local newspaper inviting bidders to inspect the items and submit sealed bids, not less than 14 days before the deadline set for the opening of bids.

(3) Bidders shall be required to include a bid security at the value set in the advertisement with their bids. Bids submitted without the required bid security shall be rejected.

Public
auction.

165. (1) Public Auction is the required method of asset disposal for all goods with an estimated sale value exceeding Le 10 million.

(2) A public advertisement must be issued in at least one official local newspaper inviting bidders to inspect the items and attend the auction proceedings not less than 14 days before the date set.

(3) Bidders shall be required to pay a bid bond at the value set in the advertisement as a condition of entry to the auction room.

Destruction,
dumping or
buying.

166. (1) Destruction, dumping or buying of items shall only be used where the asset has no residual value and cannot be transferred to any other entity or converted into any other form which subsequently gives it value.

(2) The Board of Survey shall ensure that any such actions are conducted with due regard to:

- (a) environmental and safety factors,
- (b) minimising the possibility that items of equipment may be subsequently recovered and used in fraudulent claims for substitution with a new item.

MADE THIS 9th day of August, 2006.

JOHN O. BENJAMIN,
Minister of Finance.