

**THE REPUBLIC OF LIBERIA**



**AMENDMENT AND RESTATEMENT OF THE  
PUBLIC PROCUREMENT AND CONCESSIONS ACT, 2005**

**APPROVED SEPTEMBER 16, 2010**

***PUBLISHED BY AUTHORITY OF  
MINISTRY OF FOREIGN AFFAIRS  
Monrovia, Liberia***

**PRINTED SEPTEMBER 18, 2010**



**ARRANGEMENT OF SECTIONS**

Sections

PART I – PRELIMINARY .....	6
OBJECTIVES OF THE LAW .....	6
1. Scope and Application .....	7
2. Interpretation .....	9
PART II – PUBLIC PROCUREMENT AND CONCESSIONS COMMISSION .....	14
3. Establishment of the Public Procurement and Concessions Commission .....	14
4. Objects of the Commission .....	14
5. Functions of the Commission .....	14
6. Membership and Appointment .....	16
7. Tenure of Office .....	17
8. Meetings of the Commissioners and Election of Vice Chairperson .....	19
9. Filling of Vacancies among the Commissioners .....	19
10. Complaints, Appeals and Review Panel .....	20
11. Power to Obtain Information .....	23
12. Confidentiality and Prohibition of Disclosure of Information .....	24
13. Disclosure of Interest .....	25
14. Administration of the Commission .....	25
15. Executive Director .....	26
16. The Secretariat .....	26
17. Financing of the Commission .....	27
18. Accounts and Audit .....	28
19. Fiscal Year .....	28
20. Annual Reports and Answerability to the Legislature .....	28
PART III – ENTITIES .....	29
Sub-Part 1 – Entities Generally .....	29
21. Procuring and Concessions Entities .....	29
22. Decisions of the Entity and Responsibility .....	29
23. Declaration of Procuring Entity; When Prior Commission Approval of Contract Awards is Required .....	29
24. Use of Private Sector Practices by Procuring Entities .....	31
25. Non-Application of Section 24 to Concessions .....	31
Sub-Part 2 – Procurement Structures in Procuring Entities. ....	31
26. Procurement Committees .....	31

27. Functions of the Procurement Committee ..... 32  
28. Meetings of Procurement Committees ..... 34  
29. Procurement Unit ..... 34  
30. Bid Evaluation Panel ..... 36  
31. Time for Entering into Contracts; Report to Commission of Proposed Awards;  
Certain Procurement Committee Actions Deemed Certifications by Head of  
Procurement Committee ..... 36

**PART IV – GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS OF  
PROCURING ENTITIES ..... 37**

32. Qualification of Bidders ..... 37  
33. Clarification and Modification of Bidding and Prequalification Documents ..... 39  
34. Requirements Applicable to Bid and Bidder Prequalification Documentation ..... 39  
35. Deadline for Bids and Other Applications ..... 40  
36. Cancellation of Proceedings or Rejection of Bids ..... 40  
37. Public Notice of Contract Awards ..... 42  
38. Debriefing of Unsuccessful Bidders ..... 42  
39. Form of Communications ..... 42  
40. Procurement Planning ..... 43  
41. Contract Administration ..... 44  
42. Price Adjustment ..... 44  
43. Records and Reports of Procurement ..... 45  
44. Debarment of Bidders, Contractors and Suppliers ..... 47  
45. Margin of Preference ..... 49

**PART V – METHODS OF PROCUREMENT ..... 50**

46. Choice of Procurement Method ..... 50  
47. Open Competitive Bidding ..... 51  
48. National Open Competitive Bidding ..... 52  
49. International Open Competitive Bidding ..... 52  
50. Restricted Bidding; ..... 53  
51. Procedures for Restricted Bidding ..... 53  
52. Request for Proposals ..... 54  
53. Request for Quotations; Alternative for Small Scale Purchases ..... 54  
54. Basic Procedures for Requests for Quotations ..... 55 55.  
Sole Source ..... 55  
56. Basic Procedures for Sole Source Procurement ..... 56  
57. Invitation to Bid ..... 56  
58. Bidding Documents ..... 57  
59. Submission of Bids ..... 59

60.	Bid Security .....	59
61.	Bid Opening .....	60
62.	Examination, Evaluation and Comparison of Bids .....	60
63.	Non-Disclosure of Evaluation Details .....	62
64.	Prohibition of Negotiations .....	62
65.	Award of Procurement Contract .....	62
66.	Acceptance of Bid and Signature of Contract .....	63
67.	Two-Stage Bidding .....	63
68.	Request for Consultant’s Services .....	64
69.	Selection Methods Based on Quality and Cost .....	66
70.	Selection Based on Quality .....	66
71.	Award of Consultancy Contract .....	67
72.	Procurement Activity .....	67
PART VI – SPECIFIC PROCEDURES FOR PROCESSING CONCESSION AGREEMENTS .....		67
Sub-Part 1 – Definition and Objectives of Concession Agreements .....		67
73.	Definition .....	67
74.	Objectives of Concessions .....	68
Sub-Part 2 – Scope, Application and Disqualified Private Sector Entities .....		69
75.	Scope, Application and General Principles .....	69
76.	Concession Entities .....	74
77.	The Entity Concession Committee .....	74
78.	Engagement of Advisors .....	76
79.	Preparation of Concession Procurement Plan .....	77
80.	Concession Structures .....	78
81.	Composition of the Inter-Ministerial Concessions Committee .....	78
82.	Functions of the Inter-Ministerial Concessions Committee .....	79
83.	Formation and Meetings of the Inter-Ministerial Concessions Committee .....	81
84.	Disclosure of Interest .....	81
85.	Quorum .....	82
86.	Qualified Holder of a Concession .....	82
87.	Inclusion In Economic Development Plan .....	83
88.	No Concession without Certificate .....	83
89.	Criteria for the Issue of the Certificate for Concession .....	83
Sub-Part 3 – The Concession Process .....		84

90. Presentation of Concession Option to the Public .....	84
91. Information at the Stakeholder Forum .....	84
Records of the Concession Bidding Process .....	84
93. Inspection of the Records .....	86
94. Specific Records to Be in Writing .....	87
95. Competitive Bidding .....	88
96. National Competitive Bidding .....	89
97. International Competitive Bidding .....	89
98. Domestic and Liberian Businesses May Participate in International Competitive Bidding .....	90
99. Criteria for the Application of Margin of Preference in Concessions .....	90
100. Restricted Competitive Bidding .....	90
101. Sole Source and Unsolicited Bids .....	91
102. Prequalification or Qualification of Bidders .....	93
Sub-Part 4 – Concession Documents Preparation .....	94
103. Performance of Preliminary Feasibility Studies .....	94
104. Concession Bid Documents .....	95
105. Scope of Invitation to Bid; Bid Security .....	95
106. Publication of General Notice of Investment Opportunity, Expression of Interest and Invitation to Public .....	97
107. Publication of Regulations .....	97
Sub-Part 5 – Pre-Bid Meeting, Bid Submission and Opening .....	97
108. Pre-Bid Meeting; Bidder Requests for Clarification .....	97
109. Particulars of the Pre-Bid Conference .....	98
110. Submission and Opening of Bids .....	99
Sub-Part 6 – Evaluation .....	99
111. Concession Bid Evaluation Panel and Evaluations .....	99
112. Certainty of Evaluation Criteria .....	100
113. Minimum Contents of the Evaluation Criteria .....	100
114. Prohibited Criteria in Evaluation .....	101
Sub-Part 7 – Post-Evaluation .....	102
115. Evaluation Report .....	102
116. Due Diligence .....	103
117. Form of Contract; Role of Ministry of Justice in Developing Contract .....	106
118. Review of Evaluation Report; Negotiations .....	106

119. Issues to be Considered at the Negotiations .....	108
120. Confidentiality Agreement .....	110
121. Post-Contract Management .....	110
122. Regulations Pertaining to Mining and Petroleum Concessions .....	111
<b>PART VII – RULES ON DISPOSAL OF STORES, PLANT AND EQUIPMENT .....</b>	<b>111</b>
123. Authority to Dispose .....	111
124. Disposal Procedures .....	111
<b>PART VIII – COMPLAINTS AND REVIEW PROCESS .....</b>	<b>112</b>
125. Right to Review .....	112
126. Further Review by the Complaints, Appeals and Review Panel .....	114
127. Decisions on Complaints and Appeals .....	116
128. Publication of Complaints and Appeals and Their Disposition .....	118
129. Suspension of Procurement Proceedings; Additional Regulations .....	119
<b>PART IX – GENERAL PROVISIONS .....</b>	<b>120</b>
130. Code of Conduct .....	120
131. Conduct of Procuring Entities, Public Officers and Their Representatives .....	120
132. Conduct of Bidders and Suppliers .....	122
133. Records .....	122
134. Regulations, Guidelines, Manuals and Detailed Instructions .....	123
135. Modifications .....	124
136. Request for Information by the Commission .....	124
137. Statutory Audits .....	125
138. Offences Relating to Procurement .....	125
139. Review of Thresholds .....	125
140. Public Access .....	126
141. Repeals and Amendments .....	126
142. Transitional Provisions and Previous Acts .....	129
143. Coming into Force .....	129

## **SCHEDULES**

Schedule of Thresholds.....As established in Regulations Promulgated by the Commission

**A**

**BI L L**

**ENTITLED**

IT IS ENACTED by the Senate and House of Representatives of the Republic of Liberia in Legislature Assembled. That from and immediately upon the passage of this:

“ AME NDME NT AND R E ST AT E ME NT OF T HE PUBL I C  
PR OCUR E ME NT AND CONCE SSI ONS ACT , 2005,”

the Public Procurement and Concessions Act of 2005 is hereby amended and restated as follows:

**PART I – PRELIMINARY**

**OBJECTIVES OF THE LAW**

THIS ACT regulates all forms of public procurement and Concessions, establishes the Public Procurement and Concessions Commission, provides for institutional structures for public procurement and Concessions, and stipulates methods and procedures for public procurement and Concessions and for purposes related thereto.

This Act is intended to:

- (a) Maximize economy and efficiency in procurement and Concessions, and obtain best value for public expenditures;
- (b) Promote economic development of Liberia;
- (c) Build capacity of officials and institutions in public procurement;
- (d) Promote competition and foster participation in procurement proceedings and Concession agreements by qualified suppliers, contractors and consultants;
- (e) Provide equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders;
- (f) Promote integrity, fairness, accountability and public confidence in the procurement process;
- (g) Achieve transparency in the procedures, processes and decisions relating to procurement and Concession agreements;



- (h) Decentralize public procurement to procuring entities;
- (i) Promote the growth of an indigenous Liberian Private sector;
- (j) Harness private sector financial, human and technical resources through Concession agreements; and
- (k) Eradicate monopolies and promote competitiveness in the Concession procurement process.

1. Scope and Application

(1) This Act shall apply to the procurement of goods, works and services, financed in whole or in part from public funds including the disposal of government stores, plant and equipment and all Concessions as defined under this Act.

(2) Notwithstanding the generality of subsection (1) of this Section, this Act shall apply to:

- (a) All executive agencies including Government ministries, commissions, bureaus, departments and agencies;
- (b) The Judiciary and the Legislature;
- (c) Subsidized Agencies;
- (d) Independent bodies and commissions set up by the State;
- (e) All public enterprises which are wholly owned by the State or in which the State has a majority interest;
- (f) Counties, districts and local authorities;
- (g) Public universities, public schools, colleges and hospitals;
- (h) Financial institutions, public trusts, pension funds, insurance companies, building societies and similar institutions which are wholly owned by the State or in which the State has majority interest;
- (i) National security institutions subject to the provisions of subsections 3(c) and 5 of this Section;
- (j) Any private sector entity vested with the responsibility for the execution of activities using public funds; and

(k) Concession Entities as defined under Part VI of this Act. *Non-application*

(3) This Act shall however not apply to:

(a) International agreements concluded between the Government of Liberia and other countries or international organizations for general or specific projects where these agreements provide for specified procurement rules and procedures;

(b) Agreements executed by the Central Bank of Liberia relating to the implementation of monetary policy or procurement related to the production of coins or currency provided that agreements relating to the general administration of the Central Bank of Liberia will not be excluded from the application of the Act including but without limitation procurement of general stores, stationery, office equipment or vehicles; and

(c) Procurement of military or national security equipment subject to subsection 5 of this Section. *Conditions Applicable To Exemptions*

(4) The government agency responsible for the execution of the agreements stated in subsections 3 (a) and (b) of this Section on behalf of the Republic of Liberia shall inform the Head of the relevant Entity of the provisions of such agreements.

(5) The following rules shall apply to subsection 3(c) of this Section:

(a) Where the Minister responsible for Defense, or the head of any national security agency with the prior approval of the President and the National Security Council, determines that any procurement related to national defense or national security requires the application of special procedures, the procedures set out in this Act may be modified by the Commission for the specific procurement, but the modification shall be governed strictly by considerations relating to defense or security.

(b) For the purpose of subsection 3(c) of this Section, procurement of items such as general stores, uniforms, stationery, office equipment and ordinary vehicles for the military or security agencies shall not be classified as related to national defense or national security procurement.

- (c) The Commission, in consultation with the President and National Security Council, may by regulation adopt further procedures relating to military and national security procurement. *Application of Other Enactments*

(6) Nothing contained in this Act shall be interpreted to limit or prevent the application of specific legislation enacted to regulate and govern Concessions in specific sectors of the economy provided each regulation is consistent with this Act.

*Strengthening the Concession Process*

(7) The Government shall introduce legislation providing for the creation of an autonomous entity headed by a Presidential appointee subject to the consent of the Liberian Senate to monitor and evaluate compliance with concession agreements in collaboration with all concession entities in Liberia.

2. Interpretation

Except as otherwise stated under this Act, the following words shall have the respective meanings ascribed to them in this Section:

(1) **“Act”** when referred to as “this Act,” means this Amended and Restated Public Procurement and Concessions Act, and, when referred to as “the original Act,” means the Public Procurement and Concessions Act of 2005.

(2) **“affiliate”** with respect to any individual, organization or other entity means any other individual, organization or other entity that controls, is controlled by, or is under common control with the first such individual, organization or other entity.

(3) **“bid”** means the response submitted to an invitation for bids. However, in some contexts (including Sections 35 and 36), “bid” is used as a generic term which includes responses to an invitation for bids, a request for quotations or a request for proposals, and in other contexts (such as Section 59) “bid” includes only responses to an invitation for bids or a request for quotations.

(4) **“bidder”** means a supplier of goods, services or works who submits a bid, proposal, or quotation; or an applicant for the acquisition of government stores, plant or equipment being disposed of or an applicant submitting a bid for a Concession. The term “bidder” also includes, unless the context otherwise requires, a supplier or applicant seeking designation as a qualified bidder in a pre-qualification procedure.

(5) **“Bid Evaluation Panel”** means the body constituted pursuant to Section 30 of this Act.

(6) **“bid security”** means the security provided by a bidder to secure the obligation of the bidder participating in a procurement or Concession bidding process, including any obligation to sign the procurement or Concession contract in accordance with the requirements of the bidding documents.

(7) “**Bureau of Concessions**” means the Bureau of Concessions of the Ministry of Finance and any ministry or agency of the Government that succeeds to its functions

(8) “**business day**” means a date on which offices of the Government in Monrovia are generally open for business.

(9) “**Certification for Concessions**” means a certification by the Minister responsible for Economic Planning that a project is qualified to be a subject of a Concession procurement process.

(10) “**Close Relative**” means, as to any person, a parent, child, brother, sister, in-law, grandchild, grandparent, uncle, aunt, niece, nephew or first cousin of such person, or the spouse of any of the foregoing.

(11) “**Coercive Practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of a person to influence the action of a public officer in the selection process or in contract execution, or to affect the participation of another person in the bidding process.

(12) “**Collusive Practice**” means a scheme or arrangement between two or more bidders with or without the knowledge of the Procuring Entity, designed to establish prices or terms at artificial non-competitive levels whether or not such scheme or arrangement results in a contract.

(13) “**Commission**” means the Public Procurement and Concessions Commission established under this Act, including the Commissioners, the Complaints, Appeals and Review Panel, the Executive Director and the Secretariat.

(14) “**Commissioners**” refer to persons appointed under Section 6 of this Act.

(15) “**complaint and appeal panel**” has the meaning given in subsection (7) of Section 10 of this Act.

(16) “**Complaints, Appeals and Review Panel**” means the panel constituted pursuant to Section 10 of this Act.

(17) “**Concession**” has the meaning given in Section 73 of this Act.

(18) “**Concession Bid Evaluation Panel**” means a panel for evaluating bids for a specific Concession constituted pursuant to Section 111 of this Act.

(19) “**Concession Entity**” means an Entity that proposes to award a Concession.

(20) “**Concession Information Memorandum**” means the information that is provided in a request for proposals covering a proposed Concession.

(21) “**Concession Procurement Plan**” means a plan prepared pursuant to Section 79 of this Act.

(22) “**conflict of interest**” means, in respect of a person, where the person or a Close Relative of that person has an interest that may influence or be perceived to influence the performance of the person’s functions or duties under this Act.

(23) “**Corporate Manner**” means the observance of rules and procedures, statutory or otherwise, governing decision-making in a Procuring Entity, including record-keeping, transparent actions and ethical behavior.

(24) “**Corrupt Practice**” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public officer in the selection process or in contract execution.

(25) “**Day**” means working days excluding Saturdays, Sundays and public holidays.

(26) “**Domestic Business**” means a private sector entity or firm incorporated under the laws of the Republic of Liberia and operating in Liberia.

(27) “**emergency**” means any situation that (a) threatens public health, welfare, safety or security, or (b) brings about an urgent need for preservation of critical services or programs.

(28) “**Entity**” means a ministry, department, agency or county of the Republic of Liberia.

(29) “**Entity Concession Committee**” means a committee appointed by the Head of a Concession Entity pursuant to Section 77 of this Act.

(30) “**Executive Director**” means the executive director of the Commission provided for in Section 15 of this Act.

(31) “**Fraudulent Practice**” means any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

(32) “**Force Account**” as defined in Section 46 subsection 6 and 7.

(33) “**goods**” means tangible items in any form including raw materials, products, equipment and objects in solid, liquid or gaseous form, as well as services incidental to the supply of the goods where the value of those incidental services is insignificant in relation to the value of the goods.

(34) “**Head of the Entity**” means the person responsible for the overall function of the Entity. In the case of a ministry, the Head of the Entity is the responsible minister. In the case of each autonomous department or agency of the Government, the Head of the Entity is the Chairperson, Director-General or other person responsible for the functioning of that department or agency, regardless of title. In respect of the counties, the Head of the Entity is the political head of the county, howsoever designated.

(35) “**hearing panel**” has the meaning given in subsection (7) of Section 10 of this Act.

(36) “**Inter-Ministerial Concessions Committee**” means the inter-ministerial committee established for the purposes of a specific Concession award process under Sections 80 and 81 of this Act.

(37) “**interest**” when used in the context of conflicts of interest (including in Sections 13 and 84 of this Act) includes any relationship, investment, benefit (pecuniary or non-pecuniary), or any direct or indirect involvement or engagement of a person or a Close Relative of that person in any business transaction or arrangement for profit.

(38) “**invitation to bid**” in the context of Part VI of this Act, means either an invitation to bid for a Concession or a request for proposals for a Concession, as the Concession Entity and the Inter-Ministerial Concessions Committee may determine, and, in the context of Part V, means the solicitation used for national and international open competitive bidding.

(39) “**Liberian Business**” means a private sector entity or firm organized under the laws of the Republic of Liberia and operating in Liberia that has 51% or more legal and beneficial ownership by Liberian citizens. For the purposes of this definition, a person is the “beneficial owner” of shares or other property if the person is entitled to receive all or substantially all the benefits of the ownership of the property, even though another person holds bare legal title to the property.

(40) “**Margin of Preference**” means the margin given to bidders on the basis of Section 45 or Section 99 of this Act.

(41) “**Mineral Development Agreement**” has the meaning set forth in the Mining Law.

(42) “**Mining Law**” means The Act Adopting A New Minerals And Mining Law Part 1, Title 23, Liberian Code Of Laws Revised; Approved April 2000, as from time to time amended, modified or supplemented.

(43) “**Minister**” means the minister in charge of a Ministry of the Republic of Liberia.

(44) “**Negotiation Team**” means a team designated for the negotiation of a particular Concession pursuant to subsection 5 of Section 118 of this Act.

(45) “**Performance Security**” means a financial instrument submitted by a bidder to secure the bidder’s obligations under a procurement or Concession contract, including but not limited to a bank guarantee, insurance bond or financial deposit.

(46) “**Person**” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or any governmental body, organization or authority.

(47) **“Procurement”** means the acquisition by contract of goods, services or works. The procurement process begins with planning and ends with the completion of the post-contract phase.

(48) **“Procuring Entity”** means an entity carrying out procurement of goods, works, services or disposal of stores, plant and equipment using public funds and/or assets under this Act.

(49) **“Public funds”** means funds of the Republic of Liberia including such funds as may be designated by the Legislature whether the source of such funds is from taxes, grants, gifts, loans, internally generated funds of public- and state-owned entities or other sources.

(50) **“Public Interest”** means the interest that will inure to the people of Liberia.

(51) **“Public Officer”** means any person who is considered a public officer under the civil and public service law of the Republic of Liberia.

(52) **“Publish”** or **“Publication,”** unless otherwise specified in this Act or in regulations adopted by the Commission, (a) when publication is required from an Entity, means placement of the relevant information in a newspaper of wide circulation in Liberia and posting the information on the web-site of the relevant Entity or, if the Entity lacks a web-site, on the website of the Commission, (b) when publication is required from the Commission or the Complaints, Appeals and Review Panel, means placement of the relevant information in a newspaper of wide circulation in Liberia and posting the information on the web-site of the Commission, and (c) when publication is required with respect to International Open Competitive Bidding, in addition to any publication required by (a) or (b), means placement of the relevant information in an international newspaper with adequate circulation to attract foreign competition, in the United National Development Business online (UNDB online) website and in the Development Gateway’s Market, or any successor publications to UNDP online or Market. Information required to be published must be published as soon as reasonably practical after it becomes available to the Entity, the Commission or the Complaints, Appeals and Review Panel and, if published on a web-site, must remain accessible until the later of (i) six (6) months from the date of publication on the web-site and (ii) such time as all events referred to in the information as events to occur in the future have occurred and become final. Decisions of the Complaints, Appeals and Review Panel must remain available on the web-site of the Commission indefinitely in reasonably indexed form.

(53) **“Regulation”** means, unless the context clearly otherwise requires, regulations adopted by the Commissioners that have become effective as provided in Section 134 of this Act, provided that any regulations adopted and effective under the original Act that are not directly in conflict with the requirements of this Act shall remain in effect until amended, modified, supplemented or supplanted by the Commissioners.

(54) **“Schedule”** means the Schedule annexed to this Act, as such Schedule may be amended, modified, supplemented or supplanted by regulation of the Commission in accordance with Sections 134 and 139 of this Act.

(55) “**Secretariat**” means the Secretariat of the Commission provided for in Sections 14 and 16 of this Act.

(56) “**Services**” means services which are of an intellectual, technical or advisory nature, including consultancy services.

(57) “**Solely-Owned Liberian Business**” means a private sector entity or firm organized under the laws of the Republic of Liberia and operating in Liberia that has **100%** legal and beneficial ownership by Liberian citizen(s). For the purposes of this definition, a person is the “beneficial owner” of shares or other properties if the person is entitled to receive all of the benefits of the ownership of the shares or properties.

(58) “**Subsidized Agency**” means an agency established by Government to provide public service but which may generate its own funds in addition to funds from public funds.

(59) “**Threshold**” means the Threshold levels set forth in the Schedule, as such Schedule may from time to time be amended or modified as permitted by this Act..

(60) “**Works**” means work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, assembling, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a works contract.

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

### **3. Establishment of the Public Procurement and Concessions Commission**

(1) There is hereby established by this Act a body to be known as the Public Procurement and Concessions Commission, referred to in this Act as “the Commission”.

(2) The Commission shall have the oversight responsibility for all public procurement and Concessions in accordance with this Act.

(3) The Commission shall have a distinct corporate identity with perpetual succession and a common seal and may sue and be sued in its corporate name.

(4) The Commission may acquire, hold, manage or dispose of any movable or immovable property in connection with the discharge of its functions and may enter into contracts and transactions that are directly or reasonably related to its functions.

### **4. Objects of the Commission**

The object of the Commission is to ensure the economic and efficient use of public funds in public procurement and to ensure that public procurement and Concession processes are conducted in a fair, transparent and non-discriminatory manner.



5. Functions of the Commission

In furtherance of its objects, the Commission shall perform the following functions:

- (a) Monitor compliance with this Act by all parties and persons to whom the Act applies;
- (b) Disseminate information related to this Act and information related thereto;
- (c) Develop rules, instructions, regulations and related documentation on public procurement and concessions procedures, including designing formats in furtherance of this Act;
- (d) Formulate, promote, support and implement human resource development programs in furtherance of the aims of this Act;
- (e) Review procurement and Concessions documents and/or inspect records as and when necessary to prevent corruption of the any intended processes;
- (f) Formulate policy and prepare standards for procurement and Concessions, including forms of contract;
- (g) Assess the operations of the public procurement and Concession processes and make improvements as and when necessary;
- (h) Present an annual report to the Legislature on the public procurement and Concessions, which shall be a public document;
- (i) Hold an annual procurement forum on the status of the implementation of this Act;
- (j) Publish a quarterly public procurement and Concessions magazine and maintain an internet-accessible public national database that is updated regularly that includes procurement notices above a specified threshold, notices on Concessions, notices of invitations to bid and contract award information above a specified threshold, a list of complaints received, the outcome of the procurement or Concession dispute resolution process and any other procurement information specified in this Act or by regulation for public disclosure by the Commission.
- (k) Advise the Government on issues related to this Act;

- (l) Investigate and debar business entities and bidders who have seriously neglected their obligations under a public procurement or Concessions contract or done anything in contravention of this Act from participating in public procurement and Concessions in accordance with this Act;
- (m) Maintain and publish a list of suppliers, contractors, consultants and prospective bidders who have been debarred from public procurement and communicate the list to procurement entities on a regular basis;
- (n) Conduct independent reviews of complaints and appeals related to the procurement and Concessions process and make decisions thereon;
- (o) Formulate with advice from the appropriate public sector institutions appropriate certifications and qualifications requirements for the professionalization of staff members of Procurement Units;
- (p) Perform such other functions as are incidental to the attainment of the objects of this Act.

6. Membership and Appointment

- (1) The overall leadership of the Commission shall be vested in seven (7) Commissioners appointed in accordance with this Section 6 of this Act. The Commissioners shall be nominated by the President in accordance with subsections (2) through (4) of this Section and with the consent of the Senate shall be appointed and commissioned by the President. The Commissioners shall be persons in good standing and of unimpeachable character.
- (2) The Commissioners shall include:
  - (a) a chairperson who shall be knowledgeable in public procurement and Concessions procedures and practices and financial management;
  - (b) three (3) persons with experience in the public sector, as follows:
    - (i) a lawyer from the office of the Attorney General other than the Attorney General, who shall be nominated on the advice of the Attorney General; and
    - (ii) two (2) persons, at least one of whom shall be a woman, and each of whom shall have prior experience in public procurement and/or Concessions procedures and practices and/or be familiar with governmental operations; and also possess training in management and economics;

- (c) three (3) persons nominated from the private sector.
- (3) In furtherance of subsection 2(c) of this Section, the President shall seek to ensure that such persons from the private sector are knowledgeable in procurement or concessions management.
- (4) The President shall ensure that in making such nominations of the seven (7) Commissioners or in the filling of any vacancy under Section 11 of this Act, the experience of the nominees shall as much as possible be evenly spread over the scope covered by this Act.
- (5) No member of the Commission, including the Executive Director, members of the secretariat, shall engage in activities that may conflict with his/her assignment while serving at the Commission.
- (6) No Commissioner may, while serving as a Commissioner, otherwise serve as a Government officer or employee except with respect to the lawyer from the office of the Attorney General.

7. Tenure of Office

- (1) The Chairperson of the Commission shall be appointed by the President with the consent of the Senate for a term of four (4) years and shall be eligible for reappointment for one additional term of four (4) years.
- (2) To ensure continuity, the President on a staggered term basis, subject to confirmation by the Liberian Senate, shall appoint six (6) additional persons for terms as follows:
  - (a) Three (3) persons shall be appointed for an initial term of three (3) years;
  - (b) Three (3) persons shall be appointed for an initial term of two (2) years. Thereafter, all subsequent appointments shall be for a fixed period of four years.
  - (c) ) Commissioners so appointed shall be eligible for re-appointment once.
- (3) A Commissioner may be removed from office by the President on any of the following grounds:
  - (a) Inability to perform the functions of office by reason of infirmity of mind or body;
  - (b) Proven misconduct;
  - (c) Conviction of an offence involving fraud or dishonesty;

- (d) Absence from seven (7) consecutive meetings without any valid reason as determined by the Commission, provided that at least two (3) of the meetings are meetings required under Section 8 of this Act;
  - (e) Failure timely to disclose a material conflict of interest; or
  - (f) Persistent failure substantially to comply with his or her duties under the Act, but only following a request from a majority of the other Commissioners for the removal of such Commissioner on the grounds of persistent and continuing failure to perform such duties.
- (4) A person may also cease to be a Commissioner if the person resigns from office by written notice to the President with a copy to the Senate. If the person who is a Commissioner by virtue of being a lawyer in the office of the Attorney General for any reason no longer occupies such a position, he or she is conclusively deemed to have resigned as a Commissioner effective on the date his or her position with the office of the Attorney General terminates.

8. Meetings of the Commissioners and Election of Vice Chairperson

- (1) The Commissioners shall elect one of their members as a Vice Chairperson. The Commissioners shall hold regular meetings for the dispatch of business once every month or not less than once every quarter at such regular time and place as may be fixed by the Commissioners from time to time.
- (2) If the Commissioners are unable to meet at their regular meeting place the Chairperson shall fix an alternate meeting place, provided that the Commissioners receive notice of the new location at least three (3) days in advance of the meeting.
- (3) The chairperson shall preside at meetings of the Commissioners. In the absence of the chairperson, the vice chairperson shall preside, and in the absence of both the chairperson and the vice chairperson, the Commissioners shall elect one of their members to preside. The Executive Director shall serve as the non-voting secretary for meetings of the Commissioners, and if the Executive Director is unable to attend, he or she shall designate another senior member of the Secretariat to attend and serve as acting secretary.
- (4) The quorum for a meeting of the Commissioners shall be five (5) Commissioners. Any action to be taken or approval to be given by the Commissioners under this Act or any regulations adopted pursuant thereto shall be deemed to be taken or given if it has the affirmative vote of at least five Commissioners, unless a greater number is expressly required by the terms of this Act.
- (5) Each Commissioner shall have one vote, but in case of an equality of votes, the Chairperson whether substantive or in acting capacity shall have a casting vote.
- (6) The Commission may co-opt any person to act as advisor at a meeting of the Commissioners. No co-opted person shall have the right to vote on any matter being considered by the Commissioners.
- (7) Except as otherwise expressly provided in this Act, the Commissioners shall determine the procedure for their meetings.

9. Filling of Vacancies among the Commissioners

- (1) If a Commissioner ceases to be a Commissioner, the following actions shall be taken:
  - (a) The Chairman or Vice Chairman shall notify the President of a vacancy within fifteen (15) days of the date on which the person ceases to be a Commissioner, and the President shall promptly act to fill the vacancy in accordance with Section 6 and 7 of this Act;

- (b) If the chairperson ceases to be a Commissioner, the Commissioners shall within thirty (30) days elect one of their members to act as chairperson to serve until such time as the President appoints another chairperson. The President may designate the new chairperson from among the Commissioners then holding office or may designate a newly appointed and commissioned Commissioner as chairperson.
  - (c) In the case of the vice chairperson, the Commissioners shall within thirty (30) days of the occurrence of the vacancy elect a Commissioner to fill that position.
- (2) The President shall, within sixty (60) days of receiving a request to fill a vacancy or the vacancy coming to the notice of the President, nominate a new person for the approval of the Liberian Senate to fill the vacancy.
  - (3) A person appointed and commissioned to fill a vacancy among the Commissioners shall, subject to Section 7 of this Act, hold office for the remainder of the term of the Commissioner whom such person replaced. A person appointed and commissioned to fill a vacancy with a remaining term of less than 18 months at the date of appointment may thereafter serve up to two complete terms, which may but need not be consecutive.

10. Complaints, Appeals and R eview Panel

- (1) The Commission shall have a Complaints, Appeals and Review Panel which shall perform the following functions:
  - (a) deciding complaints and appeals to the Commission made pursuant to the provisions of Part VIII of this Act;
  - (b) advising the Commission on regulations and procedures proposed for adoption;
  - (c) advising the Commission on standard form contracts and other documents proposed for adoption;
  - (d) conducting hearings and making findings of fact in debarment cases; and
  - (e) based on its experience in resolving complaints and appeals and conducting hearings, advising the Commissioners and the Executive Director as to potential improvements in this Act and in the regulations, guidelines or procedures of the Commission.
- (2) The Complaints, Appeals and Review Panel shall consist of five (5) persons.

- (a) Three (3) of such persons shall be qualified and licensed lawyers.
  - (b) Two (2) of such persons shall be non-lawyers who have significant experience in the procurement or Concession process or in matters relating to the administration of procurement or Concession contracts.
  - (c) The members shall be persons in good standing and of unimpeachable character and may not be officers or employees of any ministry, agency or other arm of the Government.
- (3) The members of the Complaints, Appeals and Review Panel will be appointed by the President in the manner provided in this subsection (3).
- (a) Within seventy-five (75) days of the effective date of this amendment and restatement, the Commissioners shall deliver to the President a list of at least ten (10) candidates for membership on the Complaints, Appeals and Review Panel selected on a competitive basis, including not less than six (6) persons qualified under subsection 2(a) of this Section and not less than four persons qualified under subsection 2(b) of this Section.
  - (b) If the President does not appoint all five members of the Complaints, Appeals and Review Panel from this list, the Commissioners shall deliver to the President lists of additional candidates, selected with regard to the number of positions remaining vacant under subsections 2(a) and 2(b) of this Section, until the President has appointed all five members of the Complaints, Appeals and Review Panel.
  - (c) On the date when at least three new members have been appointed under the provisions of this subsection 10(3), provided that if at such time any complaint or application for review has been timely and properly filed with the existing Complaints, Appeals and Review Panel and remains undecided, the existing Complaints, Appeals and Review Panel shall remain in existence solely for the purpose of hearing and resolving such complaint or application (and, notwithstanding any procedures enacted by this Act, shall continue to apply the procedures for the resolution of any such complaint or application for review that existed on the date such complaint or application for review was filed), without prejudice to  
the commencement of operations of the newly appointed Complaints, Appeals and Review Panel. Prior to expiration of the terms of the members of the Complaints, Appeals and Review panel existing under the original Act, the Complaints, Appeals and Review

Panel shall perform all the functions contained in subsection (1) of this Section except the function in subsection (1)(d).

- (d) The President shall designate the terms of the five members initially appointed under this subsection (3) so that two (2) members serve for three years, two (2) members serve two years and one (1) member serve for one year.
  - (e) All subsequent nominations and appointments (other than to fill vacancies) shall be for regular three year terms, each ending on the June 30 three years after the expiration date of the prior term.
- (4) At the end of the term of each member, and whenever there is a vacancy on the Complaints, Appeals and Review Panel, the Commissioners shall seek to identify and screen qualified candidates for submission to the President in accordance with this Act. At least two candidates shall be provided for each vacancy, and the candidates shall have the qualifications set forth in clause (a) or clause (b) of subsection (2) of this Section that were applicable to the member who is being replaced. If the President does not fill the vacancy from the candidates presented, the Commissioners shall deliver to the President additional candidates, until the President has appointed a person to fill the vacancy. A person appointed to fill any vacancy shall hold office only for the remainder of the term of the member whom such person replaced. A person appointed to fill a vacancy having a remaining term of less than 12 months at the date of appointment may thereafter serve up to two complete terms, which may but need not be consecutive.
- (5) The members of the Complaints, Appeals and Review Panel shall elect one of their members as chairperson, who shall serve at the pleasure of the members. The Complaints, Appeals and Review Panel shall meet from time to time for the conduct of business as may be requested by the Commissioners or the chairperson of the Complaints, Appeals and Review Panel. A quorum for meetings of the Complaints, Appeals and Review Panel is four (4) members. Any action by the Complaints, Appeals and Review Panel requires the affirmative vote of at least four (4) members. Except as otherwise expressly provided in this Act, the members of the Complaints, Appeals and Review Panel shall determine the procedure for their meetings.
- (6) In carrying out its responsibilities under subsections 1(b), 1(c) and 1(e) of this Section, the Complaints, Appeals and Review Panel shall function as a panel of the whole.
- (7) In carrying out its responsibilities under subsections 1(a) and 1(d) of this Section, the Complaints, Appeals and Review Panel shall function as set forth below.



- (a) Upon receipt of a complaint or an appeal, the chairperson of the Complaints, Appeals and Review Panel, after consultation with the members, shall schedule a meeting of the Panel to hear the complaint or appeal or conduct a fact-finding hearing.
  - (b) Decisions of a complaint and appeal panel or hearing panel must be in writing, and shall be circulated among the Complaints, Appeals and Review Panel members for advice and comment before release. If a decision of a complaint and appeal or hearing panel is not unanimous, the dissenting member must issue an opinion setting forth the grounds for his or her dissent.
- (8) The Complaints, Appeals and Review Panel is entitled to request and receive technical, research and administrative assistance from the Secretariat in connection with complaints, appeals and hearings before the Complaints, Appeals and Review Panel.
- (9) Neither the Commissioners nor any agency of the Government shall interfere with the complaints, appeals, review or hearing functions of the Complaints, Appeals and Review Panel.
- (10) A member may resign by notice to the Executive Director, who shall give prompt notice of any such resignation to the Commissioners and the Office of the President. Notwithstanding subsection (9) of this Section, a member of the Complaints, Appeals and Review Panel may be removed by the President
  - (a) for any reason specified in (a), (b) or (c) of Section 7(3) of this Act;
  - (b) if the member has failed timely to disclose a material conflict of interest; or
  - (c) on the written recommendation of at least four (4) Commissioners if the member has regularly failed to participate in the proceedings of the Complaints, Appeals and Review Panel and otherwise to perform his or her duties under this Act, and has been warned at least twice by the Commissioners.

**11. Power to Obtain Information**

- (1) The Commissioners, and the Executive Director, at the express direction of and in the name of the Commission, shall have the following powers:
  - (a) By notice in writing, to require any bidder or any party to a procurement or Concession proceeding or contract (whether such party is in the private or public sector) to furnish information in such

form and manner and within such time as may be specified in the notice, for the purposes of the Commission ensuring compliance with this Act; and

- (b) To interview any bidder or party to a procurement or Concessions proceeding or contract and request him/her to furnish such particulars as may be required for the performance of the Commission's functions.
- (2) Any complaint and appeal or hearing panel of the Complaints, Appeals and Review Panel shall have the power by notice in writing with respect to any matter properly before such panel, to require any bidder or any party to a procurement or Concession proceeding or contract (whether such party is in the private or public sector) to appear before such panel or to produce documents reasonably relevant to the determination of such matter and in such person's possession or control in such form and manner and within such time as may be specified in the notice, for the purposes of determining such matter.
  - (3) A notice referred to in subsection (1) or (2) of this Section shall state that it is served in exercise of the powers conferred by such subsection and shall include a general statement of the purpose for which the information or response is required.
  - (4) When a requirement to furnish information or particulars under this Act is made, the response shall be furnished by the party concerned not later than the time specified in the notice or such extension as the Commissioners or relevant complaint or hearing panel, as the case may be, may grant.
  - (5) A person who fails to comply with a proper request under subsections (1) or (2) of this Section or who knowingly provides misleading or false information or materials or willfully obstructs the Commission, the Complaints, Appeals and Review Panel or any complaint or hearing panel of the Complaints, Appeals and Review Panel constituted under this Act, or any officer, agent or employee of the Commission in the performance of any of the Commission's functions under this Act, commits an offence and shall be liable upon conviction to the assessment of the applicable penalty under Section 138 of this Act.
12. Confidentiality and Prohibition of Disclosure of Information

Any Commissioner, member of the Complaints, Appeals and Review Panel or other member, official, employee or agent of the Commission or any person whether in the private or public sector who commits any of the offences listed below in this Section shall be liable upon conviction to the assessment of the applicable penalty under Section 138 of this Act:

- (a) Disclosure of any data or information obtained under Section 11 to a person not authorized to receive the information; or
- (b) Use of data or information obtained under Section 11 directly or indirectly for commercial purposes including the purpose of speculating in any stock, bond or other security or any goods or services.

13. Disclosure of Interest

- (1) A Commissioner, any other official, employee or agent of the Commission and any person appointed, retained or co-opted to assist the Commission who has any interest, direct or indirect, that could be affected by any matter being considered by or proceeding before the Commission shall disclose the nature of his or her interest to the Commissioners or the Executive Director immediately on becoming aware of such an affected interest. A member of the Complaints, Appeals and Review Panel who has any interest, direct or indirect, that could be affected by any matter with respect to which the Complaints, Appeals and Review Panel is advising the Commission, shall disclose the nature of his or her interest to the other members and the Executive Director immediately on becoming aware of such an affected interest. A member of a complaint and appeal panel or hearing panel of the Complaints, Appeals and Review Panel who has any interest that could be affected by any matter before such panel shall disclose the nature of his or her interest to the chairperson of the Complaints, Appeals and Review Panel and the Executive Director immediately on becoming aware of such an affected interest. All disclosures pursuant to this Section shall be recorded in the records of the Commission.
- (2) A person with an interest shall not take part in any deliberation or decision of the Commissioners, the Secretariat, or a complaint and appeal or hearing panel, as the case may be, that could affect such interest, provided the foregoing prohibition does not extend to persons (other than officials, employees or agents of, and persons appointed, retained or co-opted to assist, the Commission) who appear to testify before or otherwise provide information to the Commission or who appear as parties or witnesses in a complaint or appeal before the Complaints, Appeals and Review Panel, or to participation of a member of the Complaints, Appeals and Review Panel in advice given to the Commissioners or Secretariat by the Complaints, Appeals and Review Panel if proper disclosure of the interest was timely made.
- (3) A person who contravenes this Section shall be guilty of misconduct and liable to be removed as a Commissioner or from the Complaints, Appeals and Review Panel or the Secretariat, as the case may be, and/or suffer any penalty that may be applicable under this Act or other applicable laws.

14. Administration of the Commission

- (1) The Commissioners, all acting as a Body shall have overall leadership for the Commission in furtherance of this Act.
- (2) The Commissioners shall be responsible for the adoption of policies and regulations, including without limitations:
  - a. To make, approve, alter or repeal policies governing or to govern the operations of the Commission; and
  - b. To review and approve the annual budget and work plan of the Commission.
- (3) The Secretariat spelt out under Section 16 of this Act, headed by the Executive Director, appointed in accordance with Section 15 of this Act, shall implement the policies, administer the regulations and carry out the day-to-day administrative and operational responsibilities of the Commission set forth in Section 5 of this Act.
- (4) The Secretariat shall provide technical, professional, research, analytical, and investigative functions for the Commission, as well as administrative, secretarial and other support services for the Commission, including the the Complaints, Appeals and Review Panel.
- (5) The Executive Director may delegate functions of his or her office to any senior staff of the Secretariat but shall not be relieved of the ultimate responsibility for the discharge of the delegated function(s).

15. Executive Director

- (1) The Commissioners shall appoint an Executive Director selected through a competitive recruitment process in accordance with Civil Service Agency guidelines and he or she shall serve on a full-time basis.
- (2) The Executive Director shall serve as the Chief Executive Officer of the Commission and, as provided in subsection (4) of Section 8 of this Act, as the non-voting secretary for meetings of the Commission.
- (3) The Executive Director shall be a person with integrity, significant relevant knowledge and experience in public administration and related business disciplines.
- (4) The Executive Director may resign from office by notice to the Chairperson of the Commission or may be removed from office for any of the reasons described

under clause (a), (b) or (c) of Section 7(3) of this Act. The chairperson of the Commission shall give notice to the President of the resignation or removal of the Executive Director.

16. The Secretariat

- (1) The Commission shall have a Secretariat with such divisions and units as are necessary to perform the functions of the Commission. The divisions and units shall be responsible for at least the following functions:
  - a. Compliance and monitoring;
  - b. Policy making;
  - c. Development of procurement standards;
  - d. Establishment of rules and regulations;
  - e. Capacity Building;
  - f. Information dissemination and communication; and (g) Complaints, Appeals and Review.
- (2) The Executive Director shall, subject to budget limitations, engage staff and such consultants and advisers as may be required for the Secretariat to discharge its functions properly and efficiently and to carry out other general functions as set forth in this Act.
- (3) Divisions of the Commission shall be staffed by the Secretariat headed by the Executive Director based on a competitive selection process in accordance with Civil Service Agency guidelines.

17. Financing of the Commission

- (1) The activities of the Commission shall be financed by a fund consisting of:
  - (a) Money appropriated for the purposes of the Commission through the national budget process;
  - (b) Application fees paid by appellants who file complaints or requests for review with the Complaints, Appeals and Review Panel;
  - (c) Proceeds of publications by the Commission;

- (d) Grants, gifts, and donations made to the Commission but which shall not include grants, gift and donations from private sources; and
    - (e) Other sources of income for the Commission as approved by the Legislature.
  - (2) In imposing the fees and charges under subsection 1(b) and (c) of this Section, the Commission shall ensure that the charges are minimal and that the Commission shall not use any charges or fees to deter persons from making appeals to the Commission or to profit from the sale of Commission publications.
18. Accounts and Audit
- (1) The Commission shall keep proper books of accounts and proper records in relation to them. The accounts, books and records of the Commission shall be in the form prescribed by the law governing management of records for the time being in force.
  - (2) The books and accounts of the Commission shall be audited annually by the Auditor-General or by an auditor appointed or authorized by the AuditorGeneral.
19. Fiscal Year
- The fiscal year of the Commission shall be the same as the fiscal year of the Government of Liberia.
20. Annual Reports and Answerability to the Legislature
- (1) The Commission shall be answerable to the Legislature.
  - (2) The Commission shall, not later than the end of each calendar year, publish and submit to the Legislature and the President, a report including:
    - (a) The Commission's activities and operations for such fiscal year;
    - (b) A copy of the Commission's audited accounts;
    - (c) A report on the complaints, appeals and administrative reviews for the fiscal year and their outcome;
    - (d) Recommendations for improvement of procurement of specific areas of goods, works, services, disposals and the Concessions process and the planned program for the implementation of the recommendations;

- (e) Report on the annual procurement forum held by virtue of Section 5(i) in the previous fiscal year; and
  - (f) Any general or specific recommendations for improvement of the work of the Commission.
- (3) Without limiting the generality of subsections (1) and (2) of this Section, the Commission at the request of the Legislature shall provide periodic reports to the Legislature on the activities and operations of the Commission for the period so requested.

### **PART III – ENTITIES**

#### **Sub-Part 1 – Entities Generally**

21. Procuring and Concessions Entities

- (1) Any Entity to which this Act applies shall be a Procuring Entity or Concession Entity as the context may require under this Act.
- (2) Every Procuring or Concession Entity shall be responsible for procurement or Concessions carried out by the Entity.
- (3) In the performance of its functions under this Act, the Entity shall be subject to the provisions of this Act and to such other conditions as may be laid down in regulations and administrative instructions issued by the Commission in accordance with this Act.
- (4) The Head of the Entity and/or any person to whom responsibility is delegated in accordance with this Act shall be held responsible and accountable for any action taken in pursuit of his/her responsibilities.

22. Decisions of the Entity and Responsibility

- (1) The decisions of any Entity in respect of its functions under this Act shall be taken in a Corporate Manner and any internal units concerned shall contribute to the decision-making process.
- (2) The Head of an Entity shall be responsible for ensuring compliance with the provisions of this Act and shall not be absolved from accountability or responsibility because he or she delegated such functions.

23. Declaration of Procuring Entity; When Prior Commission Approval of Contract Awards is Required

- (1) In addition to the scope of Entities covered by Section 1 of this Act, the Commission may, in consultation with the appropriate authority of the Legislature, by notice on the web site of the Commission and to the affected entity, declare any entity using public funds to be a Procuring Entity.
- (2) The following actions with respect to Procuring Entities that do not comply with the Act and the regulations thereunder may be taken independently of any action authorized under Section 138 of the Act.
  - (a) If the Executive Director determines that the procurement activities of a Procuring Entity regularly and materially fail to comply with the requirements of this Act he or she shall inform the Commissioners.
  - (b) The Commissioners may thereafter direct the Procuring Entity to obtain the prior approval of the Commission before the Procuring Entity may make any award or execute any contract under the authority granted by this Act. The prior approval requirement shall continue for a period of up to one hundred twenty (120) days as determined by the Commissioners and may be renewed by the Commissioners upon a subsequent determination by the Executive Director or the Commissioners that such regular and material noncompliance continues or has reappeared.
  - (c) The prior approval requirement may not be imposed upon a Procuring Entity until the Commission have first given notice to the Head of the Procuring Entity of the circumstances supporting the imposition of the prior approval requirement and have given the Procuring Entity at least sixty (60) to take corrective action.
  - (d) Imposition of the prior approval requirement shall not take effect until fourteen (14) days after the Commission has notified the Office of the President (with a copy to the Procuring Entity) of the failure of the Procuring Entity to take sufficient corrective action in the allotted corrective action period.
  - (e) During the period that any prior approval requirement is in effect, the affected Procuring Entity, through its Procurement Committee, Procuring Unit and Bid Evaluation Panels, may continue to execute the Procuring Entity's procurement plan, as it may be amended from time to time, including, without limitation, issuing invitations to bid, requests for quotation or requests for proposals and receiving and evaluating bids and proposals. However, no award may be made or contract executed during such period by the Procuring Entity without the prior approval of the Executive Director, who shall act in



consultation with and in accordance with policies established by the Commissioners.

- (f) The Commission, through the Secretariat or other body chosen or established by the Commission, shall provide guidance and training to assist in creating in any Procuring Entity made subject to this requirement for prior approval the capacity to comply with the requirements of this Act.
- (g) If a complaint is lodged pursuant to Part VIII of this Act with respect to a decision by the Commission under this Section to approve or to reject an award or execution of a contract by the affected Procuring Entity, the Complaints, Appeals and Review Panel shall give no deference to the decision to approve or reject solely because it was the Commission which authorized the action being challenged.

24. Use of Private Sector Practices by Procuring Entities

(1) Subject to further guidelines and the approval by the Commission, a Procuring Entity may undertake procurement in accordance with established private sector or commercial practices if all the following are present:

- (a) The Procuring Entity is legally and financially autonomous and operates under commercial law;
- (b) The proposed procurement practice will ensure value for money, and will provide reasonable competition and transparency; and
- (c) The Executive Director has approved in writing the proposed procurement method after consultation with the Commissioners or pursuant to guidelines approved by the Commissioners.

(2) The authority in subsection (1) of this Section may not be exercised until the Commissioners have adopted regulations to be followed by any Procuring Entity operating under the authority of this Section.

25. Non-Application of Section 24 to Concessions

The provisions of Section 24 shall apply to procurement only and shall not under any circumstances apply to Concessions.

**Sub-Part 2 – Procurement Structures in Procuring Entities.**

26. Procurement Committees

- (1) Every Procuring Entity must establish a Procurement Committee to which this Act applies.
  - (2) A Procurement Committee shall consist of five (5) persons. The Head of the Procuring Entity or his or her deputy shall be chairperson of the Procurement Committee. The Head of the Procuring Entity shall appoint four other members of the Procurement Committee as follows:
    - (a) Two other senior officials of the Entity one of whom shall be the head of finance for the Entity,
    - (b) Subject to clause (c) below, such other qualified officials or employees of the Procuring Entity as are designated by the Head of the Entity and necessary to cause the Procurement Committee to have five (5) members.
    - (c) When procurement matters relating to a specific end-user department are under consideration, one of the additional members appointed pursuant to clause (b), above, must be a representative of that end-user department.
  - (3) The head of the Procurement Unit described in Section 29 shall also be a nonmember secretary to the Procurement Committee and either the head of the Procurement Unit or another member of the Procurement Unit designated by the head of the Procurement Unit shall be present at all meetings of the Procurement Committee at which procurement decisions are made or procurement actions are taken.
  - (4) A Procurement Committee may co-opt other non-member employees of the Procuring Entity to advise it without a voting right. A Procurement Committee seeking assistance with a particular procurement issue or with procurement procedures generally shall in the first instance consult the appropriate division of the Secretariat. If the Secretariat is unable to provide the requested assistance, a Procurement Committee may with the consent of the Head of the Procuring Entity engage the services of such consultants and advisers, or coopt persons with specialized expertise, as may be required for a particular function provided in Section 27.
27. Functions of the Procurement Committee The Procurement Committee shall:
- (a) Review and approve procurement plans in order to ensure that they support the objectives and operations of the Entity and comply with the national budget process;

- (b) Oversee all the procurement functions of the Procuring Entity set forth in Parts IV and V of this Act;
- (c) Ensure compliance of the Procuring Entity with this Act and its regulations;
- (d) Review the activities of the Procurement Unit and the Bid Evaluation Panels and provide advice and direction where necessary to ensure selection of the lowest responsive evaluated bid in accordance with the requirements of Parts IV and V of this Act;
- (e) Verify that a budget allocation is available under the public financial management law for the expected amount of any contract award and, before giving any approvals pursuant to clause (f) of this Section, ensure that a budget allocation is available in the amount of any bid or proposal recommended by a Bid Evaluation Panel;
- (f) Receive the reports and recommendations of the Bid Evaluation Panel and reject the award if not consistent with the requirements of this Act, for procurements in excess of the relevant Thresholds contained in Section 7 of the Schedule. The Head of the Procuring Entity shall perform this function for procurements within the Thresholds provided for the Head of the Procuring Entity in Section 7 of the Schedule;
- (g) Provide the Commission with quarterly reports and as required;
- (h) Confirm the bid price is reasonable for the items to be procured and is in line with available funds or, otherwise, withhold approval of award as provided in clause (f). The Head of the Procuring Entity shall perform this function for smaller procurements as provided in the Regulations promulgated by the Commission;
- (i) Oversee contract administration and the applicable financial management laws to ensure compliance with all reporting requirements under this Act;
- (j) Ensure that stores and assets are disposed of in compliance with the provisions of this Act
- (k) Review the activities of each step of the procurement cycle leading to the selection of the lowest responsive evaluated bid by the Procuring Entity; and

- (1) Give approval to the Bid Evaluation Panel or otherwise to enable the Procuring Entity or Procurement Unit to continue with the procurement process.

28. Meetings of Procurement Committees

- (1) A Procurement Committee shall meet as and when required to review a bid or perform related functions but shall in any event meet at least once every quarter.
- (2) A notice in respect of its quarterly meetings shall be given at least seven (7) days prior to the scheduled date of the meeting.
- (3) The quorum of a meeting of a Procurement Committee shall be at least four (4), comprising the chairperson or the acting head of the Entity who shall act as chairperson and at least three (3) other persons. The affirmative vote of at least a majority of the members present is required for the Committee to act.

29. Procurement Unit

- (1) A Procurement Unit is hereby established in each Procuring Entity under this Act. The Procurement Unit shall operate under the supervision of the Entity's Procurement Committee.
- (2) The Procurement Unit shall be staffed with persons trained and knowledgeable in procurement and charged with carrying out, on an ongoing basis, functions related to procurement.
- (3) The Head of the Procuring Entity shall determine the composition of the Procurement Unit, provided that every Procurement Unit shall consist of not less than two (2) officials charged with responsibility for budgeting, expenditure and administration of public procurement for the Procuring Entity.
- (4) The Head of the Procuring Entity shall ensure that the Procurement Unit is provided with adequate resources.
- (5) The functions of a Procurement Unit shall be carried out in accordance with this Act and applicable regulations established by the Commission, and shall include:
  - (a) Preparing the Entity's procurement plan as contemplated by Section 40 of this Act and updating such plan as required;

- (b) Preparing invitations to bid, requests for quotation, requests for proposals and bidding documents, including schedules and specifications;
- (c) Publishing and distributing invitations to bid, requests for quotation, requests for proposals and bidding documents;
- (d) Receiving and safeguarding bids;
- (e) Conducting bid opening procedures in accordance with Section 61 of this Act;
- (f) Performing secretarial and administrative services for the Entity's Procurement Committee;
- (g) Ensuring that the procurement procedures to be followed are in strict conformity with the provisions of the Act, its operating regulations and guidelines;
- (h) Monitoring and administering the performance of contracts;
- (i) Assessing the quality of the procured goods, works and services;
- (j) Maintain a database of all suppliers, contractors and consultants;
- (k) Maintain a profile of the past performance of suppliers, contractors and consultants with respect to their performance of contracts awarded under this Act; and

- (6) Conducting such other activities of the Procurement Entity set forth in Part IV of this Act relating to the foregoing as may be delegated and directed by the Procurement Committee or required by the regulations.

30. Bid Evaluation Panel

- (1) Each Procurement Committee shall constitute a Bid Evaluation Panel with the required expertise as and when required to evaluate bids solicited by the Procuring Entity.
- (2) A Bid Evaluation Panel shall be responsible for the evaluation of bids in accordance with the predetermined and Published evaluation criteria as outlined to bidders in the bid documents in accordance with this Act and shall prepare and submit evaluation reports and recommendations for award for the consideration of the Procurement Committee or the Head of the Procuring Entity as provided in the Schedule.
- (3) The Commission may make rules to regulate the composition and activities of Bid Evaluation Panels.
- (4) No member of the Commission or a Procurement Committee shall serve on a Bid Evaluation Panel.

31. Time for Entering into Contracts; Report to Commission of Proposed Awards; Certain Procurement Committee Actions Deemed Certifications by Head of Procurement Committee

- (1) Except in the case of emergency and with the prior approval of the Commission, the Procurement Committee shall deliver to the Commission a notice of intent to award a contract exceeding the Thresholds as established by Regulations promulgated by the Commission. No Procuring Entity shall enter into a procurement contract above the Thresholds established by Regulations promulgated by the Commission unless a minimum of fourteen (14) days have lapsed since the notification of intent to award a contract was delivered to the Commission. The Commission shall cause a notice of intent to award a contract whose contract price exceeds the Thresholds in the Regulation to be published within two (2) business days of receipt of such notice. A Procuring Entity may award a contract whose contract price is less than the Thresholds in the Regulation without notice to the Commission and passage of a minimum of fourteen (14) days as provided in this subsection (1).
- (2) If the Commission takes no action within fourteen (14) days after it receives a notification of intent to enter into a contract for contracts in excess of the Thresholds established by Regulations promulgated by the Commission, the

Procuring Entity may proceed with the award of the contract and the finalization of the procurement. If the Commission objects to the proposed award within said fourteen (14) day period, it shall return the notice to the Procuring Entity with the reasons for rejection. No award may be made until the Procuring Entity takes steps to bring the proposed procurement into compliance with this Act.

- (3) The Commissioners may authorize a Procuring Entity to execute a contract before the expiration of the notice period referenced in subsection (1) of this Section by issuing a written waiver. The Commission may request the Procuring Entity to furnish supporting documentation demonstrating compliance with the provisions of this Act.
- (4) Whenever a Procurement Committee or the Head of the Entity executes a procurement contract or causes the Commission to be notified of a proposed procurement contract pursuant to subsection (1) of this Section, the Procurement Committee or the Head of the Entity, as the case may be, is deemed to have certified to both the Commission and the Ministry of Finance that a budget allocation is available to the Procuring Entity in the amount of the proposed contract and that the bid documents complied with Section 34 of this Act. .

#### **PART IV – GENERAL PROVISIONS ON PROCUREMENT PROCEEDINGS OF PROCURING ENTITIES**

##### **32. Qualification of Bidders**

- (1) In order to participate in procurement proceedings, a bidder must qualify by meeting the criteria set by the Procuring Entity, which will normally include evidence of:
  - (a) Professional and technical qualifications;
  - (b) Equipment availability, where applicable;
  - (c) Past performance;
  - (d) After-sales service, where applicable;
  - (e) Spare parts availability;
  - (f) Legal capacity;
  - (g) Financial resources and condition; and
  - (h) Verification by the internal revenue authority of payment of taxes and social security contributions when due.

- (2) The qualification criteria set forth in subsection (1) of this Section shall be applied by examining, through investigation and collaboration with other relevant agencies, to ascertain whether or not the bidder meets the minimum qualification criteria established for the bid and not by using a point system for comparing the relative level of qualifications of participating bidders.
  - (3) The Procuring Entity shall be entitled to demand qualification documentation from potential bidders in formal prequalification proceedings, or as a required component of a bid submission.
  - (4) Any requirement established pursuant to this Section shall be set forth in the documents setting forth the prequalification requirements, if any, or in the invitation to bid, request for quotation, request for proposal or related bidding documents if there is no prequalification, and shall apply equally to all bidders without discrimination; and only these criteria stated in such documents shall be applied.
  - (5) When prequalification proceedings are held, the Procuring Entity shall:
    - (a) Provide to all bidders responding to the invitation to prequalify, prequalification documents which shall provide bidders with the information required to enable them to prepare and submit their applications for prequalification;
    - (b) Make available to each applicant the results of the assessment of the prequalification and invite all applicants that meet the minimum criteria for prequalification to bid; and
    - (c) Allow bidders adequate time to acquire, prepare and submit prequalification documents. The period so allowed shall not be less than the period allowed for bidders to submit bids under national competitive bidding and international competitive bidding respectively.
  - (6) Where prequalification proceedings are not conducted, post-qualification, in which the Procuring Entity verifies the qualifications of the bidder selected for award against the criteria stated in the invitation to bid, request for quotation, request for proposal or related bidding documents, shall be used.
  - (7) A Procuring Entity shall disqualify a bidder if it finds at any time that the information submitted concerning the qualifications of the bidder was materially inaccurate or materially incomplete.
33. Clarification and Modification of Bidding and Prequalification Documents



- (1) Bidders or prospective bidders may request a clarification of any document furnished by the Procuring Entity in connection with a prequalification proceeding or an invitation to bid, request for quotation or request for proposal within the time specified in the relevant document.
- (2) Responses to requests for clarification and responses from a pre-bid conference as well as any modification or any other clarification of any document furnished by the Procuring Entity in connection with a prequalification proceeding or an invitation to bid, request for quotation or request for proposal shall be communicated to all bidders participating in the procurement proceedings without delay, so as to allow bidders an opportunity to take the clarifications or modifications into account in preparing their submissions. If the clarification is not dispatched (by electronic mail where possible) at least one (1) week prior to the deadline for submission of bids, the Procuring Entity shall extend the deadline for submission of bids or applications to prequalify for a period sufficient to permit the bidder or applicant for prequalification to respond to the material elements of the clarification.

34. Requirements Applicable to Bid and Bidder Prequalification Documentation

- (1) All documentation used in bidding and bidder prequalifications and all submissions by bidders shall be in the English language or, in the case of bidder submissions, shall be accompanied by a certified English translation.
- (2) To the extent possible, any specifications, plans, drawings, designs and requirements or descriptions of goods, works or services shall be based on the relevant objective technical and quality characteristics and performance of the goods, works or services to be procured, provided that
  - (a) there shall be no requirement for or reference to a particular brand, trademark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, works or services to be procured and unless words such as “or equivalent” are included, and
  - (b) there shall be no requirement that named or nominated subcontractors, subsuppliers or subconsultants be utilized .
- (3) Any descriptions of the technical or quality characteristics of the goods, works or services to be procured, and requirements as to testing, packaging, marking, labeling or conformity certification, or symbols and terminology, that are irrelevant to the performance of the goods or create unjustified obstacles to participation by qualified bidders, and unnecessarily and without justification

limit competition, shall not be included or used in the prequalification documents or bidding documents.

- (4) The Procuring Entity shall where applicable prepare descriptions of procurement requirements in conformity with the applicable environmental protection legislation and regulations as well as international conventions and standards.

35. Deadline for Bids and Other Applications

The Procuring Entity shall set the deadline for submission of bids, applications for prequalification and expressions of interest so as to allow sufficient time for their preparation and submission, with a view to maximizing competition, in accordance with the minimum periods set in Section 48(4) for national open competitive bidding and Section 49(3)(b) for international open competitive bidding or as may be set forth in regulations for other methods of procurement.

36. Cancellation of Proceedings or Rejection of Bids

- (1) A bid may be rejected only in accordance with this Act and regulations made thereunder.

- (2) A Procuring Entity may:

(a) Reject all bids at any time prior to the acceptance of a bid where:

- i. There is a lack of effective competition and there is a reasonable belief that minor changes in the details of the invitation to bid, request for quotation, request for proposal or related bidding documents or increased advertising will increase the level of competition;
- ii. Some or all of the bids are not substantially compliant with the invitation to bid, request for quotation, request for proposal or related bidding documents, but there is a reasonable belief that minor changes in the details of the invitation to bid, request for quotation, request for proposal or related bidding documents will increase the number of compliant bids; or
- iii. Bid prices are substantially higher than the existing budget for the procurement, but there is a reasonable belief that minor changes in quantities, requirements or other details of the bidding documents will produce lower bids.

- (b) Cancel the procurement proceedings at any time prior to the acceptance of a bid where continuing with the procurement in its present form or a substantially similar form is not appropriate because:
  - i. The procurement need has ceased to exist or changed significantly;
  - ii. Insufficient funding is available for the procurement;
  - iii. 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;
  - iv. No responsive bids are received
  - v. There is evidence of corruption, fraud, coercion or collusion among bidders; or
  - vi. Cancellation is deemed to be in the interest of national security.
- (3) Before rejecting all bids or canceling any procurement proceedings, the Procurement Unit shall prepare a written request for approval of the rejection or cancellation for submission to the Procurement Committee, which shall clearly state:
  - (a) Detailed reasons for recommending rejection of all bids or cancellation;
  - (b) The status of the procurement proceedings, including in particular, whether bids have already been opened under bidding methods; and
  - (c) Whether new procurement proceedings (in the case of cancellation) or a request for revised bids (in the case of rejection of all bids) are recommended and, if so, the modifications recommended.
- (4) The reason for rejecting all bids, or for canceling the 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 (2) of this Section.
- (6) A Procuring Entity shall not reject all bids and invite new bids on the same bidding and contract documents solely for the purpose of obtaining lower prices.

- (7) 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.
- (8) In the event of cancellation or the rejection of all bids in accordance with subsection (2) of this Section, 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, provided that if the procurement is to be repeated, the reasons for the cancellation of the initial proceeding shall be examined and the technical specifications, contract conditions or both, may be suitably modified prior to re-bidding.

37. Public Notice of Contract Awards

The Procuring Entity shall promptly furnish the Commission notice of each contract awarded in which the price of the contract exceeds the applicable Thresholds established by Regulations promulgated by the Commission indicating the reference number used in the bidding process, the contract price, the name and address of the successful bidder, a brief description of the goods, services or work procured and the procurement method utilized in awarding the contract. The Commission shall cause this information promptly to be Published.

38. Debriefing of Unsuccessful Bidders

The Procuring Entity shall, upon the request of any unsuccessful bidder, inform the bidder of the reasons for which the bid was unsuccessful.

39. Form of Communications

- (1) Subject to this Act, documents, notifications, decisions and other communications referred to in this Act to be submitted by the Procuring Entity to a bidder or by a bidder to the Procuring Entity, shall be in writing.
- (2) The Commission may authorize Procuring Entities to use other forms of communication with bidders, potential bidders or applicants for prequalification (including electronic communication), but any such other means of communication may be used only if the method selected by the Procuring Entity : (a) preserves a record of the content of the communication, provides an adequate level of security and does not unduly restrict bidders' access to the procurement proceedings, (b) otherwise satisfies the requirements of this Act, regulations issued under this Act and other applicable legislation and (c) the Procuring Entity in fact preserves such records in a manner and for the term prescribed in law or in applicable regulations.

40. Procurement Planning

- (1) All Procuring Entities shall undertake procurement planning, with a view to achieving maximum value for public expenditure and the other objects of this Act.
- (2) For each fiscal year the Procurement Unit shall prepare a draft annual procurement plan for goods, works and services for use by the Procuring Entity in the Procuring Entity's budgeting process. Upon budget approval, the Procurement Unit shall prepare an annual procurement plan for goods, works and services in accordance with the Procuring Entity's approved programs and budget and furnish it to the Procurement Committee. The plan shall include.
  - (a) A brief description of each planned procurement contract;
  - (b) The estimated cost of each planned procurement contract;
  - (c) The procurement method to be used; and (d) Processing steps and time schedules.
- (3) After review and any revisions by the Procurement Committee, the Procurement Committee shall furnish a copy of the annual procurement plan to the Commission for approval.
- (4) A Procuring Entity shall not divide a procurement order into parts or lower the estimated contract price of a procurement order to avoid the application of the procedures for public procurement prescribed in this Act. Such Actions if carried out shall constitute contravention of this Act.
- (5) Each Procuring Entity, shall, on a quarterly basis and whenever it becomes necessary, review and update its procurement plans and notify the Commission in writing and the Minister of Finance of any material changes in its plan. An updated procurement plan shall accompany said notice to the Commission.

41. Contract Administration

- (1) The Procuring Entity shall be responsible for the administration and monitoring of contracts entered into by the Entity. The contract administration functions shall include at least the following:
  - (a) ensuring that the contractor complies with the specifications and terms of the contract;

- (b) ensuring that the contract is being performed on schedule;
- (c) ensuring that payments made to the contractor are in accordance with the terms of the contract.
- (d) determining when a contract has been successfully performed which will entitle the contractor to final payment; and
- (e) in the case of each contract awarded by the Procuring Entity, designating a contract administration officer who will have responsibility for the administration of the contract consistently with the requirements of this Act and the regulations.

42. Price Adjustment

- (1) Price adjustment is not permitted unless provided for in the procurement contract to take into account changes in economic circumstances.
- (2) If the procurement contract provides for the possibility of price adjustment, it shall stipulate: (a) the conditions, such as increases or decreases in the cost of materials, labor, transportation and energy, in which price adjustment would be permitted; (b) the formulas and indices to be referred to in order to determine whether economic conditions have altered to a significant enough degree to justify a price adjustment and to identify the amount of increase or decrease;  
  
(c) the frequency with which price adjustments may be implemented; and (d) procedures to be followed.
- (3) The procurement contract may provide that, when the application of the price adjustment formula leads to a price modification exceeding a stipulated percentage of the initial price or a stipulated percentage of the balance of the contract, the Procuring Entity may terminate the contract.
- (4) Any price variation shall be subject to approval by the respective Procurement Committee.

43. Records and Reports of Procurement

- (1) The Procuring Entity shall preserve all documentation relating to the procurement proceedings in accordance with applicable rules concerning archiving of Government documentation, but at a minimum it shall be kept for a period of six (6) years following the date of final completion of the procurement contract, or from the date of rejection of all bids or cancellation of the proceeding, as the case may be.

- (2) In addition to the documentation referred to in subsection (1) of this Section, the Procuring Entity shall prepare and maintain a summary report of the procurement proceedings, including to the extent applicable:
  - (a) A description of the object of the procurement;
  - (b) A list of the participating bidders and the qualification criteria applied
  - (c) Bid prices;
  - (d) The bid evaluation criteria;
  - (e) A summary of the evaluation of bids, if the bids were not evaluated solely on the basis of price;
  - (f) A summary of any review proceedings and decisions thereon;
  - (g) A summary of any requests for clarifications and responses thereto;
  - (h) A statement of grounds for any cancellation of procurement proceedings pursuant to Section 36;
  - (i) A statement of grounds for choice of a procurement method other than open competitive bidding or request for proposals for services;
  - (j) The successful bidder and whether any terms were changed between Publication of the bidding documents and contract award;
  - (k) Information concerning rejection of bids including identification of any bidder who was determined to be unqualified or whose bid was determined to be unresponsive to or not fully compliant with the relevant bidding documents;; and
  - (l) Such other information as may be required by the regulations made under this Act.
- (3) The Commissioners may by regulation limit the information required under subsection (2) of this Section in the case of procurement based on requests for quotations.
- (4) The Commission shall prepare generally applicable forms and formats to facilitate the preparation of summary reports required by subsection (2) of this Section and the quarterly reports required by subsection (9) of this Section.
- (5) The portion of the record referred to in clauses (a), (b), (c), (d) and (g) of subsection (2) of this Section and the bid price of the winning bidder shall, on

request in writing to the Head of the Procuring Entity, be made available to any person after a bid, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.

- (6) The portion of the record referred to in clauses (e), (h) and (i) of subsection (2) of this Section shall, on request in writing to the Head of the Procuring Entity, be made available to suppliers, contractors or consultants that submitted bids, proposals, offers or quotations, or applied for prequalification, after a bid, proposal, offer or quotation has been accepted or the prequalification list is announced or procurement proceedings have been terminated without resulting in a procurement contract, as the case may be. A summary of the evaluation of bids, as referred to in subsection (2)(e) of this Section, released pursuant to this subsection (6) shall exclude any proprietary data submitted by bidders. A supplier, contractor or consultant eliminated in a prequalification proceeding may request only the portion of the record referred to in the preceding sentence related to the prequalification procedure.
- (7) The Procuring Entity shall not disclose:
  - (a) Information, if its disclosure will:
    - i. be contrary to law, ii. impede law enforcement, iii. not be in the public interest, iv. prejudice legitimate commercial interests of the parties, or
    - v. inhibit fair competition under this Act;
  - (b) Information relating to the examination, evaluation and comparison of bids, proposals, offers or quotations, other than the summary referred to in subsection (2)(e) of this Section, to the extent permitted to be disclosed by subsection (6) of this Section.
- (8) Records and documents maintained by procuring entities on procurement shall be made available for inspection by the Commission, Anti-Corruption Commission and Auditor-General upon request; and where donor funds have been utilized for the procurement, donor officials shall also have access, upon request, to procurement files for the purpose of audit and review (other than access to proprietary data of bidders).
- (9) Procuring Entities shall forward to the Commission on a quarterly basis a report for monitoring and evaluation purposes of the contracts awarded during the



preceding quarter. The content and format of the report shall be detailed in regulations adopted by the Commissioners.

44. Debarment of Bidders, Contractors and Suppliers

- (1) The Commissioners may, subject to the conclusion of investigations performed by the Secretariat and based only on the record, exclude a bidder, contractor or supplier from participation in public procurement for a minimum period of one (1) year and a maximum period of six (6) years after:
  - (a) Consultation with the affected Procuring Entity to consider all the facts of the case;
  - (b) Reasonable notice to the bidder, contractor or supplier involved of the cause of the proposed actions;
  - (c) Reasonable opportunity to the bidder, contractor or supplier to respond to the proposed action; and
  - (d) A hearing before a hearing panel conducted to resolve any disputed questions of fact.
- (2) A person shall only be debarred from participation in procurement on the following grounds:
  - (a) Provision of material false information supplied in the process of submitting a bid;
  - (b) Collusion between the bidder and another bidder or a bidder and a public officer concerning the formulation of any part of an invitation to bid, request for quotation or request for proposal or the  
related bidding documents or supply of information in the bid proceedings;
  - (c) Connivance to interfere with the participation of competing bidders;
  - (d) Misconduct relating to the submission of bids, including corruption, collusion, price fixing, a pattern of under-pricing of bids, breach of confidentiality and any other misconduct implied under this Act or under any part of this Act;
  - (e) Non-performance of contractual obligations under a contract deemed serious enough to warrant debarment, provided that the nonperformance was not due to circumstances beyond the control of the contractor;

- (f) Conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract;
- (g) Non-settlement of tax obligations after assessment by the National Revenue Authority or the evasion of tax by any means; or
- (h) Conviction of a crime related to business or professional activities.

- (3) The Secretariat may initiate an investigation, on its own motion or at the request of a Procuring Entity or the Commissioners, as to whether a person should be debarred on any of the grounds listed in subsection (2) of this Section.
- (4) The Commission may request that the Complaints, Appeals and Review Panel constitute a hearing panel to hold a hearing to make findings as to disputed issues of fact material to the decision to debar and present such findings of fact to the Commission. However, notwithstanding Part VIII of this Act, any decision to debar a person is reserved to the Commissioners, and not the Complaints, Appeals and Review Panel or a hearing panel thereof, and a debarment decision by the Commissioners may be appealed only in a court of competent jurisdiction.
- (5) Notwithstanding the caption of this Part IV, this Section 44 also governs any proposed debarment of a person from a Concession process under Part VI of this Act. A debarment proceeding with respect to such a person shall be initiated by a request to the Commission from the Head of the relevant Concession Entity or the relevant Inter-Ministerial Concessions Committee, or may be initiated by the Commission on its own initiative.

45. Margin of Preference

- (1) A Procuring Entity may grant a Margin of Preference to Domestic Businesses, or Liberian Businesses, or Solely-Liberian Owned Businesses, as defined under this Act, in accordance with regulations adopted by the Commissioners.
- (2) The Margin of Preference shall be subject to the provisions of subsection 4 of this Section and shall be reflected in the record of the procurement proceedings.
- (3) The Commissioners shall by regulation set or adjust the minimum benchmarks for the application of the Margin of Preference as it may deem necessary.
- (4) Notwithstanding the generality of subsections (1), (2) and (3) of this Section, the regulations on the Margin of Preference shall include the provision that no bidder shall enjoy the Margin of Preference unless:
  - (a) In the case of supply of goods, the goods are manufactured in Liberia and a minimum quantity of its inputs, specified by the regulations, in terms of material or labor or both originate in Liberia; or

- (b) In the case of procurement of works, services or consultancies, the bidder is a Domestic Business or a Liberian Business and minimum quantities of the inputs, whether goods, raw materials, services, or ordinary labor, originate in Liberia.

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

### **46. Choice of Procurement Method**

- (1) Public procurement shall be undertaken by means of advertised open bid proceedings, to which equal access shall be provided to all eligible and qualified bidders without discrimination, subject only to the exceptions provided under this Part for particular methods of procurement.
- (2) It is not permitted artificially to divide procurement with the intention of avoiding the applicability of the Thresholds to procurement.
- (3) Procuring Entities may use only those methods of procurement authorized by this Act. If a Procuring Entity uses a method of procurement other than advertised open competitive bidding, it shall note in the record of the procurement proceedings the grounds for the choice of the procurement method.
- (4) For all methods of procurement other than international open competitive bidding, the Procuring Entity may stipulate in the invitation for bids, request for quotation, request for proposal or the related bidding documents that bidders must quote only in the local currency and in one freely convertible currency and payments must be made wholly in such local currency or freely convertible currency.
- (5) Where the participation of the procurement end-user or beneficiary community may result in enhancing the economy, quality or sustainability of the service to be procured, or the very objective of the project is to create employment and involvement of the beneficiary community, such end-user or community may participate in the delivery of services under procedures to be defined in the regulations.
- (6) In the cases referred to in subsection (5) of this Section, the regulations may prescribe circumstances in which procurement may be carried out by force account, in which the procurement is carried out with self-supervision, utilizing the Procuring Entity's own existing personnel and equipment or those of another Government institution.
- (7) The cases in which force account may be utilized include, separately or in combination with any activity:

- (a) That, in view of its size, nature, location or scattered locations, financing or high demobilization costs for outside suppliers, does not attract bidders, at least not at a reasonable price;
  - (b) That cannot be calculated, or determined in detail in advance or both such that, if it were carried out by a private sector entity, it would have to bear a great risk;
  - (c) Where the risk of unavoidable work interruptions is better borne by the Procuring Entity than by a private sector person;
  - (d) Where it has been demonstrated that force account is the only practical method for constructing and maintaining works under special circumstances;
  - (e) For a pilot project of a particular nature for development of a technology or work method or both that cannot yet be carried out by a supplier; and
  - (f) For works that must be carried out without disrupting existing operations by the Procuring Entity's crew familiar with those operations.
- (8) Where any procurement of goods, sub-contracted works or services is required to supplement the force account activity, that procurement shall be carried out in accordance with the relevant provisions of this Act.

47. Open Competitive Bidding

- (1) Open competitive bidding (or "open bidding") may be nationally advertised or internationally advertised, and may include a prequalification procedure or the application of a post-qualification procedure.
- (2) Open bidding may be carried out in a single stage or, when permitted under subsection (3) of this Section, in two stages.
- (3) Open bidding may be held in two stages in the following cases:
  - (a) When it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; and
  - (b) When, because of the complex nature of the goods, works or services to be procured, the Procuring Entity wishes to consider various technical or contractual solutions, and to discuss with bidders the relative merits of those variants before deciding on the final technical or contractual specifications.

- (4) Open competitive bidding shall comply with Sections 57 through 66 of this Act. Two-stage bidding will be governed by Sections 57 through 66 of this Act, to the extent applicable, and by Section 67 of this Act.

48. National Open Competitive Bidding

- (1) Except as provided in subsection (2) of this Section, in procurement proceedings in which the Procuring Entity decides that only domestic suppliers or contractors are likely to be interested in submitting bids, the Procuring Entity shall employ national open competitive bidding procedures for procurements in which the estimated contract price of the procurement does not exceed the ceiling Threshold applicable to national open competitive bidding.
- (2) The Procuring Entity is not required to employ national open competitive bidding procedures if the estimated contract price of the procurement is less than the ceiling Threshold applicable to another method of procurement permitted by this Act.
- (3) The invitation to bid shall be Published as required by this Act.
- (4) When national open competitive bidding is utilized, at least four (4) weeks shall be allowed for submission of bids in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit bids.
- (5) The Commission may by regulation establish procedures for reducing the time period required under subsection (4) of this Section on application of the Procuring Entity to the Commission and a showing by the Procuring Entity that a reduction in the time period for an individual contract or a class of contracts will not significantly reduce competition.

49. International Open Competitive Bidding

- (1) The Procuring Entity shall employ international open competitive bidding procedures when
  - (a) the estimated contract price of the proposed procurement is higher than the ceiling Threshold establish by Regulations promulgated by the Commission for national open competitive bidding unless the Commission approves the use of national open competitive bidding on application by the Procuring Entity to the Commission and a showing by the Procuring Entity that sufficient competition exists at the national level; or

- (b) there is no response to a national open competitive bidding proceeding.
- (2) Notwithstanding the Thresholds establish by Regulations promulgated by the Commission, the Procuring Entity may employ international competitive bidding whenever open competitive bidding is used and effective competition cannot be obtained unless foreign firms are invited to bid.
- (3) International competitive bidding shall be in accordance with the relevant procedures prescribed in this Act together with the following:
  - (a) The invitation to bid shall be Published as required by this Act;
  - (b) At least six (6) weeks shall be allowed for submission of bids in order to allow sufficient time for the invitation to reach candidates and to enable them to prepare and submit the bids;
  - (c) Technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade and in particular shall conform to the provisions of this Act;
  - (d) Bidders shall be permitted to express their bids, as well as any security documents to be presented by them, in their respective domestic currencies, or in a currency widely used in international trade and stated in the invitation to bid or related bidding documents; and
  - (e) General and special conditions of contract shall be of a kind generally used in international trade.

50. Restricted Bidding;

Subject to approval by the Commission for procurements exceeding the Thresholds establish by Regulations promulgated by the Commission, restricted bidding may be held in the following cases:

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

51. Procedures for Restricted Bidding

- (1) When restricted bidding is employed on the grounds referred to in Section 50(1)(a), all known suppliers capable of supplying the goods, works or services shall be invited to bid.
- (2) When restricted bidding is employed on the grounds referred to in Section 50(1)(b), the Procuring Entity shall solicit bids from at least five (5) bidders, if possible.
- (3) The Commission may by regulation provide that a Procuring Entity may establish lists of prequalified bidders for restricted bidding of specific types of goods, services or works. The regulations must provide for regular updating of each such list in a manner that gives new bidders fair opportunity to join the list and must limit the use of outdated lists. If a current list of bidders created in compliance with such regulations is applicable to a proposed restricted bidding procurement, it must first be utilized in procuring by the restricted bidding method before considering other bidders.
- (4) The procedures for bidding proceedings, as set forth in this Part (including Sections 58 through 66) shall apply to restricted bidding, except to the extent that they are modified by this Section.

52. Request for Proposals

The request for proposals method is to be used for the procurement of consultant services pursuant to the terms of Sections 68 through 71 of this Act. Requests for proposals have no other application under Parts IV and V of this Act.

53. Request for Quotations; Alternative for Small Scale Purchases

- (1) The request for quotations method may be used for the procurement of goods, works and services:
  - (a) When the procurement is for readily available commercially standard goods, not specially manufactured to the particular specifications of the Procuring Entity and the estimated contract price does not exceed the applicable Threshold;
  - (b) When the procurement is for small works and the estimated contract price does not exceed the applicable Threshold; or
  - (c) When the procurement is for services and the estimated contract price does not exceed the applicable Threshold.
- (2) The Commission may by regulation establish procedures whereby Procuring Entities may make repetitive purchases of goods or services described in clauses (a) and



(c) of subsection (1) of this Section from a list of prequalified bidders without the necessity of utilizing the request for quotations method for

each purchase. The regulations must provide for regular updating of the list in a manner that gives new bidders fair opportunity to join the list and must limit the use of outdated lists.

54. Basic Procedures for Requests for Quotations

- (1) Quotations shall be requested in writing from as many bidders as practicable, but from at least three (3) bidders.
- (2) The request shall contain a clear statement of the requirements of the Procuring Entity as to quality, quantity, terms and time of delivery, as well as any other special requirements.
- (3) Bidders shall be given adequate time to prepare and submit their quotations, but each bidder shall be permitted one quotation, which may not be altered or negotiated.
- (4) A purchase order may only be placed with the bidder that provided the lowest quotation meeting the delivery and other requirements of the Procuring Entity as stated in the request for quotations.
- (5) To the extent applicable, the procedures in Sections 58 through 66 shall apply to procurement through requests for quotations.

55. Sole Source

- (1) Public procurement by means of the sole source procurement method is permitted only in the following circumstances:
  - (a) When only one (1) supplier has the exclusive right to manufacture the goods, carry out the works or perform the services to be procured and no suitable alternative is available;
  - (b) For additional deliveries of goods by the original supplier which are intended either as replacement parts 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 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 that the circumstances which gave rise to the urgency were neither foreseeable by the Procuring Entity nor the result of dilatory conduct on its part; or

(e) When the services require that a particular consultant be selected due to his or her unique qualifications, or when it is indispensable to continue with the same consultant.

(2) Bid specifications for the procurement of goods for which a material component in fact can be satisfied by only one (1) supplier or one (1) product shall be subject to the approval requirement of clause (3) below.

(3) Use of sole source procurement on any of the grounds referred to in subsection (1) of this Section 55 shall be subject to prior approval by the Commission. When requesting approval of a sole source procurement, the Procuring Entity shall provide the Commission with a statement of facts and reasons justifying use of the requested method under the applicable provision of such subsection (1).

56. Basic Procedures for Sole Source Procurement

(1) When the Procuring Entity engages in sole source procurement on the grounds referred to in clause (a), (b), (c), (d) or (e) of Section 55(1), it shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery; and shall request submission of a bid or proposal in writing or both and shall be free to negotiate with the sole bidder.

(2) Publication of a notice of the holding of sole source procurement proceedings other than under the authority of subsection (1)(d) of Section 55 of this Act is required as provided in Section 5 of the Schedule, except in the case of an extreme emergency, at least seven (7) days prior to the award of the contract when the estimated contract price of the procurement exceeds the Threshold established by Regulations promulgated by the Commission.

57. Invitation to Bid

(1) An invitation to bid (pursuant to Sections 47 through 49 of this Act), or an invitation to prequalify (pursuant to Section 32 of this Act), shall be Published.

(2) The invitation to bid or, as the case may be, the invitation to prequalify, shall include information on:

- (a) The identity and address of the Procuring Entity;
- (b) The nature and time-frame of the procurement, including the place of delivery of goods or services, and the location of any works;
- (c) The manner of obtaining and the price (if any) of the bidding documents, or, if applicable, the prequalification documents;
- (d) The place and deadline for submission of bids, or of applications to prequalify; and
- (e) Such other matters as may be prescribed in the regulations and standard forms issued by the Commission.

58. Bidding Documents

- (1) Procuring Entities shall use standard bidding documents prepared by the Commission unless:
  - (a) the Commission has provided otherwise by regulation, or
  - (b) the Commission has on application by the Procuring Entity approved the usage of non-standard bidding documents, which approval may be limited to a single procurement or applicable to a class of procurements,
- (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, if prequalification proceedings were held, to all bidders that have been prequalified, and the price (if any) that may be charged for the bidding documents shall reflect only the cost of printing and distributing the documents.
- (3) The invitations to bid, requests for quotations, requests for proposals or the related bidding documents shall inform bidders of:
  - (a) The nature and time frame of the procurement, including but not limited to the technical specifications or drawings as the case may be, terms of reference, the contractual terms of the procurement and the manner of entry into force of the contract;
  - (b) Bidder qualification requirements if a prequalification procedure was not followed;
  - (c) Any planned site visits and pre-bid conferences;
  - (d) Instructions for preparation and submission of bids, including the deadline for submission of bids and the time and place of bid opening;

- (e) Components to be reflected in the price, the currency or currencies in which the bid price may be stated and the currency and related exchange rate to be used for comparison of bids;
- (f) The criteria and methodology for evaluation of bids and the selection of the successful bidder, which shall all be quantified in monetary terms or expressed in the form of pass or fail requirements, if possible, or, where not possible, by relative weights, provided that when considering evaluation criteria to be set forth in the invitation to bid, request for quotation, the request for proposal and related bidding documents, the Procuring Entity shall consider only the following:
  - i. The bid price, subject to any Margin of Preference applied pursuant to Section 45;
  - ii. The cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works and the terms of payment and of guarantees in respect of the goods, works or services; and
  - iii. Acceptable impact on the environment, the transfer of technology to Liberia, and the development of managerial, scientific and operational skills in Liberia;
- (g) The preference, if any, for domestic goods and contractors as outlined in regulations;
- (h) Any grouping of goods, works or services into lots and packages and the manner of evaluation of such lots and packages;
- (i) Whether alternatives to the technical or contractual specifications will be considered and, if so, how those alternatives will be evaluated;
- (j) If suppliers are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;
- (k) The required validity period of bids;
- (l) The amount and acceptable forms of any required bid, performance or other security;
- (m) The conditions of contract which will be entered into with the successful bidder;

- (n) Notice of conflict-of-interest restrictions and anti-fraud and corruption rules;
- (o) The manner in which bidders may obtain review of actions, omissions and decisions of the Procuring Entity; and
- (p) Such other matters as may be required in the regulations, manuals and standard forms prescribed by the Commission.

59. Submission of Bids

- (1) Subject to subsection (3) of this Section, a bid shall be submitted in writing, duly signed and in a sealed envelope, and bids received after the deadline for submission of bids shall be returned unopened.
- (2) Invitations for prequalification, invitations to bid, requests for quotations, requests for proposals and related bidding documents shall permit submission of applications to prequalify or bids by hand, by mail or by courier at the option of the bidder.
- (3) Subject to the policy laid down by the Commission, an invitation to bid, request for quotation, request for proposal or the related bidding documents may authorize other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured, including the prevention of the opening and reading of bids by anyone until the opening of bids at the time set in accordance with Section 61 of this Act.
- (4) Bids shall remain valid for the period of time indicated in the invitation to bid, request for quotation, request for proposal or the related bidding documents, but modification or withdrawal of a bid during the bid validity period is subject to forfeiture of the bid security.
- (5) The validity period of a bid may be deemed extended only on the basis of the agreement of the bidder concerned, and the bidder that agrees to an extension of the validity period of its bid shall also obtain a corresponding extension of the bid security, if such a security was required.

60. Bid Security

- (1) The bidding documents may require bidders to submit a bid security, which shall be applied to all bidders. Bid security requirements shall comply with any applicable regulations.
- (2) Forfeiture of a bid security may be imposed only in the event of:

- (a) A modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
- (b) Refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
- (c) Failure by the successful bidder to sign a contract in accordance with the terms set forth in the bidding documents; or
- (d) Failure by the successful bidder to provide security for the performance of the contract if required to do so by the bidding documents.

61. Bid Opening

- (1) Bids shall be opened at the time and place indicated in the invitation to bid, request for quotation, request for proposal or the related bidding documents, and the time of bid opening shall coincide with the deadline for submission of bids, or follow immediately thereafter, allowing a minimum time interval for logistical reasons.
- (2) Bidders or their representatives may attend the bid opening, where the name of the bidder, the total amount of each bid, any discounts or alternatives offered, and the presence or absence of any bid security, if required, and essential supporting documents shall be read out loud and recorded, and a copy of the record shall be made available to any bidder on request; and any documents containing details of the financial offer must be signed by each member of the bid opening team.
- (3) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the bid opening session.
- (4) Following the opening of the bids, and until the preliminary decision on the award has been notified to the successful bidder, no bidder shall make any unsolicited communication to the Procuring Entity or try in any way to influence the Procuring Entity's examination and evaluation of the bids.

*Representation of Procurement Committee at Bid Opening*

- (5) All bids shall be opened in the presence of the chairperson of the Procurement Committee or a member of the Procurement Committee designated by the chairperson.

62. Examination, Evaluation and Comparison of Bids

- (1) Following the opening of bids, the Procurement Unit shall first examine the bids in order to determine whether the bids are complete and 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 licenses 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 entity other than the prequalified bidders shall be rejected and excluded.
- (4) Bids not excluded from consideration under subsections (2) and (3) of this Section shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.
- (5) The Procurement Unit may seek clarification from any bidder to facilitate evaluation but shall neither ask nor permit any bidder to change the price or any other aspect of the bid and if a bidder amends its bid in any manner, such a bid shall be rejected and its bid security forfeited.
- (6) If there is an arithmetical error, such an error shall be rectified and the bidder notified but if the bidder refuses to accept such correction, its bid shall be rejected and the bid security forfeited.
- (7) If there is a discrepancy between figures and words, the amount in words shall prevail unless there are no words and the discrepancy is due to misplacement of a decimal point, in which case the mistake shall be rectified and the bidder notified.
- (8) In carrying out the evaluation, if there are minor deviations in any bid which did not merit rejection at the earlier stage, such minor variation shall be costed, if possible, and the evaluated cost of such a bid shall then be compared to those of other bids to determine the lowest evaluated bid.
- (9) If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall not be permitted

to correct or withdraw material deviations or reservations once bids have been opened.

- (10) If the process included a prequalification, the qualifications of the lowest evaluated bidder shall be verified again to take account of any change since the original prequalification.
- (11) If there was no prequalification, the qualifications of the lowest responsive evaluated bidder shall be checked against the criteria specified in the bidding documents; if that bid fails, the same check shall be applied to the next ranked bid.
- (12) The Bid Evaluation Panel shall prepare for the Procurement Committee or the Head of the Procuring Entity where such Procurement Committee or Head of Procuring Entity has the authority to reject a proposed contract award as provided in subsection (f) of Section 27 of this Act and Section 7 of the Schedule, an evaluation report detailing the examination and evaluation of bids and the verification of bidder qualifications pursuant to subsection (10) or (11) of this Section 62 and identifying the recommendation for award of contract in accordance with the evaluation criteria specified in the relevant bidding documents.

63. Non-Disclosure of Evaluation Details

Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision regarding which bid should be accepted, except as permitted under this Act.

64. Prohibition of Negotiations

- (1) Except as provided in Sections 56 and 71 of this Act and in subsection (2)(b) of this Section, no negotiations shall take place between the Procuring Entity and a supplier or contractor with respect to a bid submitted by the supplier or contractor.
- (2) If the lowest evaluated responsive bid exceeds the budget for the contract by a substantial margin, the Procuring Entity shall investigate the causes for the excessive cost and may:
  - (a) Request new bids; or
  - (b) Subject to approval by the Procurement Committee and compliance with any regulations and guidelines issued by the Commission, negotiate with the lowest evaluated bidder to try to obtain a satisfactory price reduction



or to obtain a reduction in scope that will result in a reduction of the contract price to an acceptable level, and upon failure to reach agreement with the lowest evaluated bidder, may negotiate in the same manner with each succeeding next lowest evaluated bidder until a satisfactory agreement is reached. Any such negotiations shall not substantially alter the terms, conditions and scope of work that formed the basis upon which the competition was held.

65. Award of Procurement Contract

- (1) The contract shall be awarded by the Procuring Entity to the bidder that is qualified and submitted the lowest evaluated responsive bid which meets the evaluation criteria as specified in the invitation to bid, request for quotation, request for proposal or the related bidding documents.
- (2) Prior to the expiry of the period of bid validity and at the time pursuant to subsection (1) of Section 31 at which the Procurement Committee forwards to the Commission the Procurement Committee's notice of intent to award a contract, the Procuring Entity shall notify the apparently successful bidder of the proposed award and shall specify the time within which the contract must be signed (see subsection (1) of Section 66).
- (3) Subsection (2) of this Section 65 does not excuse the Procuring Entity from compliance with subsection (1) of Section 31.
- (4) If the bidder whose bid has been accepted fails to sign a written contract when required to do so, or fails to provide any required security for the performance of the contract within the prescribed time limit, in addition to any other remedies, the Procuring Entity may accept the next ranked bidder from among the remaining bids that are in force.

66. Acceptance of Bid and Signature of Contract

- (1) Acceptance of a bid occurs upon issuance of a notice of proposed award to a bidder pursuant to subsection (2) of Section 65. In procurements other than sole source procurements, procurements of consultancy services or where price has been negotiated pursuant to subsection (2)(b) of Section 64 of this Act, the invitation to bid or request for quotation may require the bidder to sign a contract form included in the bidding documents. Where the bid documents require the bidder whose bid has been accepted to sign a written procurement contract conforming to the bid, the Procuring Entity and the bidder shall sign the procurement contract within thirty (30) days after the notice referred to in subsection (2) of Section 65.
- (2) A procurement contract shall come into force for a procurement requiring the execution of a contract which shall be binding on the bidder and the Procuring Entity when the contract is signed by the bidder and by the Procuring Entity subject to the requirements of Section 31 and to the remedies in Section 127 of this Act.
- (3) Contracts shall be signed by the Head of a Procuring Entity as provided in the Schedule established by Regulations promulgated by the Commission, but he or she may delegate signature of contracts below the Thresholds established by

- (1) Regulations promulgated by the Commission to the head of the Procurement Unit or other senior official of the Entity.

67. Two-Stage Bidding

Where a procurement is to be done by two-stage bidding, the invitation to bid or the related bidding documents shall, in the first stage, call upon bidders to submit initial bids without a bid price, and may solicit initial proposals relating to the technical, quality or other characteristics of the goods, works or services, as well as to contractual terms and conditions of the proposed contract, and, where relevant, to the professional and technical competence and qualifications of the bidders.

- (2) 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.
- (3) At the end of the first stage, the Procuring Entity may:
  - (a) Reject those bids which do not and cannot be changed to meet the basic requirements, minimum performance standards or required completion time or have any other weakness which makes the bid substantially non-responsive; or
  - (b) Modify the technical specifications, evaluation criteria and contract conditions, while seeking to maximize competition and articulate appropriate evaluation methodology.
- (4) 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.
- (5) 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.
- (6) The final bids shall be evaluated and compared in accordance with the criteria and methodology included in the revised bidding documents.
- (7) The procedures for bidding set forth in this Part shall apply to two-stage bidding proceedings, except to the extent that they are modified by this Section.

68. Request for Consultant's Services

- (1) For the purposes of procuring the services of a consultant, the Procuring Entity shall prepare a shortlist of, generally, three (3) to six (6) consulting firms as determined by subsections (2) and (3) of this Section and, to the greatest extent feasible, comprising consultants of the same category and similar capacity and business objectives.
- (2) When the estimated contract price of the procurement exceeds the Threshold establish by Regulations promulgated by the Commission, in order to establish the shortlist, the Procuring Entity shall seek expressions of interest by Publishing a notice and, where appropriate, placing the notice also in relevant trade publications and technical and professional journals. The Procuring Entity shall allow at least three (3) weeks for interested persons to reply to the request for expressions of interest unless the Commission permits a shorter period.
- (3) For assignments of a value lower than the Threshold establish by Regulations promulgated by the Commission, the shortlist may be established from market knowledge or other sources of information without submissions of expressions of interest but in the case of assignments which are particularly complex or require highly specialized knowledge, the public solicitation of expressions of interest provided in subsection (2) of this Section shall be utilized.
- (4) The request for proposals shall provide short listed bidders with the information necessary to enable them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the Procuring Entity including, in particular:
  - (a) Instructions for preparation and submission of proposals;
  - (b) The name and address of the Procuring Entity and the exact time and date for the submittal of the proposal;
  - (c) The name, address and contact details of the Procuring Entity to obtain clarifications on the request for proposal;
  - (d) The nature, timeframe and location of the services to be provided, terms of reference, required tasks and outputs;
  - (e) The criteria to be used in evaluating and comparing proposals, and their relative weight as compared to price;
  - (f) The contractual terms of the procurement and the manner of entry into force of the contract;
  - (g) Instructions for preparation and submission of proposals and the place and deadline for submission of proposals;

- (h) The final selection procedures to be applied;
  - (i) Notice of conflict-of-interest restrictions and antifraud and corruption rules, including the grounds for potential debarment from future participation in procurement of goods, services or works that may result from the assignment under consideration;
  - (j) Such other matters as may be prescribed in the regulations and standard documents issued by the Commission; and
  - (k) The period for which a proposal must remain valid.
- (5) The price of a proposal shall be considered by the Procuring Entity only after completion of the technical evaluation.

69. Selection Methods Based on Quality and Cost

- (1) The selection of the successful proposal shall be based upon one of the following methods:
- (a) A balancing of the technical quality of the proposal, the consultant's relevant experience and expertise of its staff, the proposed work methodology and the price of the proposal.. This method shall be used for all requirements where the estimated contract price exceeds the Threshold establish by Regulations promulgated by the Commission and may be used in other procurements where appropriate;
  - (b) The quality of the technical proposal submitted within a predetermined fixed budget. The consultant submitting the highest ranked technical proposal within the predetermined fixed budget shall be selected and invited to negotiate a contract; or
  - (c) The quality of the technical proposals having met a minimum set of criteria disclosed in the request for proposals, and then the lowest price.
  - (d) And other methods adopted through regulation
- (2) Detailed procedures shall be set forth in the regulations.

70. Selection Based on Quality

When the services are of an exceptionally complex nature or of a considerable impact on future projects or the national economy or when they may lead to the submission of proposals which are difficult to compare, the consultant may be selected exclusively on the basis of the

technical quality of his or her proposal; the use of which method shall be approved by the Procurement Committee subject to the approval of the Commission.

71. Award of Consultancy Contract

- (1) The contract to be awarded under any of the methods set forth in subsection (1) of Section 69 may be negotiated with the selected consultant but negotiations may not be simultaneously held with several consultants. The negotiations shall not substantially alter the terms, conditions and scope of work that formed the basis upon which the competition was held.
- (2) The Procuring Entity shall provide notice of its intent to award to all short listed consultants, other than the selected consultant, and to the Commission at the same time the Procuring Entity provides its notice of proposed award to the selected consultant. The provisions of Section 66 of this Act on bid acceptance and signature of contract shall apply equally to consultancy procurements.

72. Procurement Activity

Notwithstanding any procurement proceedings or activity, no Procuring Entity shall sign a procurement contract or permit a contract to come into force unless the Head of the Procuring Entity has ascertained that:

- (a) The activity has been duly budgeted for by the entity;
- (b) The budget has been properly subjected to the budget process and been duly approved; and
- (c) The budget for the activity has been provided for and approved under the national budget.

**PART VI – SPECIFIC PROCEDURES FOR PROCESSING CONCESSION AGREEMENTS**

**Sub-Part 1 – Definition and Objectives of Concession Agreements**

73. Definition

- (1) “Concession” means the grant of an interest in a public asset by the Government or its agency to a private sector entity for a specified period during which the asset may be operated, managed, utilized or improved by the private sector entity which pays fees or royalties under the condition that the Government retains its overall interest in the asset and that the asset will revert to the Government or agency at a determined time. Under this Act, the term “Concession” shall include all its variants, including but not limited to the following:

- (a) **“Build/Refurbish/Modernize-Operate-Transfer (BOT)”**: Where a private entity finances the development of infrastructure/facility/utility and operates it for a specified period  
  
after which the project is handed over to the Government/public entity free of lien or at a cost to the public entity.
  - (b) **“Build/Refurbish/Modernize-Transfer-Operate (BTO)”**: Where the Government/public entity contracts with a private entity to build or complete a facility the ownership of which is transferred to the Government/public entity on completion after which the facility is leased back to the private entity for a fixed or renewable term.
  - (c) **“Build/Refurbish/Modernize-Own-Operate-Transfer (BOOT)”**: Where the private entity obtains a franchise for a fixed period, whether exclusive or not, to develop, operate, maintain, manage and collect user fees for a public facility over a fixed period at the end of which title to the facility reverts to the public entity/Government.
  - (d) **“Build/Refurbish/Modernize-Own-Operate (BOO)”**: Where the Government/public entity either transfers ownership and responsibility for a public facility or contracts with a private entity to build, own and operate a new facility, in each case subject to terms and conditions laid down by the Government/public entity for the operation of the facility.
  - (e) **“Joint Ventures”**: Where the Government/public entity shares investment, profits, losses and control of the operations of a facility with the private entity.
  - (f) **“Partial Privatization”**: The partial disposal of Government interest to a private entity other than through the Stock Exchange.
  - (g) **“Natural Resources”**: Grants of the right to exploit for private benefit a depleting or renewable asset of the state, such as the right to mine minerals, recover petroleum resources or develop and operate an agricultural plantation when the private entity is responsible for and bears the risks of the capital investment and operating costs of the project.
- (2) The Commission may by regulation identify other business arrangements generally consistent with the foregoing categories that shall be defined as Concessions.

74. Objectives of Concessions

- (1) The objectives of every Concession shall be to promote one or more of the following:

- (a) Increased Government revenue from Concessions;
- (b) Harnessing of private sector financial, human and technical resources for economic development;
- (c) Competition in the provision of services, supplies, goods or infrastructure and reduction of monopolies;
- (d) Acceleration of the development of infrastructure, human capacity and the provision of services;
- (e) Growth of the Liberian private sector;
- (f) Partnerships between the public and private sectors;
- (g) Development of the natural and renewable resources of Liberia consistent with other national goals; and
- (h) Job creation

**Sub-Part 2 – Scope, Application and Disqualified  
Private Sector Entities**

75. Scope, Application and General Principles

- (1) This part shall apply to all activities relating to Concessions and shall in particular apply to the following:
  - (a) The implementation of Concessions, including but not limited to:
    - i. Identification and certification for Concessions; ii. Planning of the process for Concession agreements;
    - iii. Preparation of Concession bid documents;
    - iv. Invitation and evaluation of bids, negotiations and signing of Concession agreements; and
    - v. Implementation, supervision and monitoring of Concession agreements.
  - (b) The grant of Concessions of whatever form in all sectors, including but not limited to:
    - i. Mineral exploration and mining, except as provided in subsections (2) and (3) of this Section;



- ii. Fishing;
  - iii. Timber; iv. Telecommunications;
  - v. Electricity, water and other utilities; vi. Forestry; vii. Agricultural Concessions including plantations; viii. Oil exploration and extraction; and
  - ix. Development of public infrastructure with private capital, including but not limited to airports, terminals, toll roads/bridges, etc.
- (c) All Concession Entities or Government institutions and agencies legally mandated to undertake Concessions.
- (d) All private sector entities that participate in Concessions.
- (2) Notwithstanding the foregoing, Mineral Rights and Mineral Development Agreements described in this subsection and granted to or entered into with eligible persons under the Mining Law shall be deemed not to constitute the grant of Concessions subject to this Act:
- (a) A Class A Mining License, Class B Mining License, Class C Mining License, Quarry License or Prospecting License granted under the Mining Law, if, in each such case, such license was issued prior to the date this Act is first submitted to the Legislature;
  - (b) An Exploration License (i) granted under the Mining Law prior to the effective date of the Regulation on the Interim Procedures for Issuing Exploration Licenses of the Commission, Regulation 002 (“Regulation 002”) or (ii) approved under Regulation 002 prior to the date this Act is first submitted to the Legislature and granted under the Mining Law pursuant to application made to the Ministry responsible for Mines prior to the date this Act is first submitted to the Legislature;
  - (c) A Class B or Class C Mining License or a Quarry License issued under the Mining Law after the date this Act is first submitted to the Legislature to the holder of an effective Prospecting License referred to in clause (a) of this subsection, or a Class A or Class B Mining License issued under the Mining Law after the date this Act is first submitted to the Legislature to the holder of an effective Exploration License referred to in clause (b) of this subsection;

- (d) A Mineral Development Agreement entered into with the holder of an effective Exploration License referred to in clause (b) of this subsection, provided that if entered into after the effective date of this Act, such Mineral Development Agreement is negotiated in full compliance with all requirements for the negotiation of concession agreements in this Part VI and is entered into with an entity that has reasonably demonstrated that it has the technical and financial capacity to perform its obligations under such agreement;
- (e) The future grant of a Prospecting License or an Exploration License on a first-to-file basis over land included in a Non-Bidding Area the declaration for which remains in effect and covering only Minerals specified in the declaration of such area as a Non-Bidding Area;
- (f) The future grant of an Eligible Class C Mining License or an Eligible Quarry License over land included in a Non-Bidding Area (in each case covering only Minerals specified in the declaration of such area as a Non-Bidding Area) to the holder of a Prospecting License or Exploration License covering such land that (i) was issued as contemplated by clause (e) of this subsection (2) and (ii) was in full force and effect at the date of the grant;
- (g) The future grant of an Eligible Class B Mining License over land included in a Non-Bidding Area (covering only Minerals specified in the declaration of such area as a Non-Bidding Area) to the holder of a Prospecting License, Exploration License or Eligible Class C Mining License covering such land, if such Prospecting License, Exploration License or Eligible Class C Mining License (i) was issued as contemplated by clause (e) or (f) of this subsection (2) and (ii) was in full force and effect at the date of the grant;
- (h) The future grant of an Eligible Class C Mining License over land included in a Non-Bidding Area (covering only Minerals specified in the declaration of such area as a Non-Bidding Area) to the holder of an Eligible Class B Mining License covering such land that (i) was issued as contemplated by clause (g) of this subsection (2), and (ii) was in full force and effect at the date of the grant, provided that the rights under such Eligible Class B Mining License concurrently terminate with respect to such land; and
- (i) The future grant of a Class A Mining License over land included in a Non-Bidding Area (covering only Minerals specified in the declaration of such area as a Non-Bidding Area) to, and/or the entering into of a Mineral Development Agreement covering such land with, the holder of an Exploration License covering such land that (i) was issued as

contemplated by clause (e) of this subsection (2) and (ii) was in full force and effect at the date of the grant or the entering into of such agreement, provided that any such Mineral Development Agreement is negotiated in accordance with the requirements of this Part VI applicable to the negotiation of Concession agreements and is entered into with an entity that has reasonably demonstrated that it has the technical and financial capacity to perform its obligations under such agreement.

- (3) For the purposes of subsection (2) of this Section 75:
- (a) A “Non-Bidding Area” is established as to specified Minerals when (i) the Minister responsible for Mines determines, based on a reasoned recommendation of the Geological Survey Department of Liberia (or successor institution), that the available information as to the existence of such Minerals in such area indicates that there are insufficient quantities and/or qualities of such Minerals in such area to support meaningful bidding for the granting of Prospecting or Exploration Licenses for such Minerals in such area and (ii) such determination has been approved by the IMCC excluding the representation from the sector entity.
  - (b) A Non-Bidding Area may in the discretion of the Minister responsible for Mines be limited to the grant of Prospecting Licenses valid only for future Eligible Class B Mining Licenses, Eligible Class C Mining Licenses and Eligible Quarry Licenses (or any of them, alone or in combination), and may exclude Exploration Licenses and Class A Mining Licenses;
  - (c) An “Eligible Class C Mining License” is a Class C Mining License that (i) covers an area of not more than twenty-five (25) acres, (ii) no portion of which is within five hundred (500) meters of any portion of another Mining License held by the same Licensee, (iii) is exclusively for the exploitation of secondary mineral deposits, (iv) has a tenure of one (1) year renewable, (v) utilizes non-mechanized small-scale mining methods, and (vi) is otherwise subject to all of the restrictions applicable to operations under a Class C Mining License;
  - (d) An “Eligible Class B Mining License” is a Class B Mining License that (i) covers an area of not more than one hundred (100) acres, (ii) no portion of which is within five hundred (500) meters of any portion of another Mining License held by the same Licensee, (iii) is exclusively for the exploitation of secondary mineral deposits and (iv) is otherwise subject to all of the restrictions applicable to operations under a Class B Mining License;
  - (e) An “Eligible Quarry License” is a Quarry License that (i) covers an area of not more than fifty (50) acres, (ii) is exclusively for the quarrying of

- Building and Industrial Minerals and (iii) is otherwise subject to all of the restrictions applicable to operations under a Quarry License and a Class B Mining License;
- (f) A “secondary mineral deposit” means a mineral deposit formed when a primary mineral deposit is subjected to alterations through chemical and/or mechanical weathering;
  - (g) A Non-Bidding Area approved as provided in clause (a) of this subsection (3) will cease to be a Non-Bidding Area two years after the effective date of such approval unless there is a new determination by the Minister as required by such clause (a) and a new approval described in such clause (a) prior to the end of such two-year period;
  - (h) A Mineral Right granted in respect of a declared Non-Bidding Area that has not been revoked or otherwise lapsed shall remain valid in accordance with the provision of the Mining Law applicable to such Mineral Right notwithstanding the expiry of the relevant declaration; and
  - (i) Capitalized terms used in subsections (2), (3) and (4) of this Section 75 without definition in this Act have the respective meanings given in the Mining Law as in effect on the date hereof.

All other conditions in the Mining Law pertaining to mining and exploration rights shall apply insofar as they are consistent with this Act, except that no Exploration Agreement, Mineral Development Agreement or other agreement shall be required with respect to an Exploration License granted after the effective date of this Act.

- (4) Although this Part VI provides for the negotiation of definitive Concession contracts following the identification of a successful bidder, it is preferable to structure Concession bids so that the terms of the bid (a) include a definitive agreement and (b) require the successful bidder to enter into the definitive agreement following the identification of the successful bidder. If the bid is so structured, the Concession Entity may give prequalified bidders the opportunity to review and comment on the proposed form of agreement before the bid documents are finalized and released to the bidders.
- (5) A Concession bidder by its bid is deemed to have accepted the terms and conditions of the bid. A bidder shall be disqualified if, when invited to negotiations, it seeks changes in terms and conditions expressly set forth in the bid documents (including any provisions of a Concession agreement included in the bid documents that are not clearly marked as sample or illustrative provisions) or expressly contained in the bid documents submitted by the bidder. In any such case the Government may seek to enter into an agreement

with the next highest evaluated bidder as provided in Section 118(8) or may cancel the bid and rebid or postpone the project.

- (6) Except as expressly provided in this Act, Sub-Part 2 of Part III, Part IV and Part V of this Act are not applicable to the granting of Concessions under this Part VI.
- (7) Nothing in this Act shall be construed as entitling a private entity entering into an agreement with the Government for a Concession to special treatment under or exemption in whole or in part from the generally applicable laws of the Republic of Liberia, including without limitation the taxation and revenue laws of the Republic of Liberia.

76. Concession Entities

- (1) Any entity that is issued with a Certificate for Concessions in accordance with Sections 88 and 89 of this Act shall be a Concession Entity for the purposes of this Act and shall be responsible for the Concession process.
- (2) Any entity proposing to grant a Concession shall conduct the entire Concession process pursuant to the requirements of this Act.
- (3) The Head of the Concession Entity shall be held accountable and responsible for any action taken by the Concession Entity in the conduct of the Concession process and shall not be absolved from accountability for compliance with the requirements of this Act because he or she delegated the function.

77. The Entity Concession Committee

- (1) If a Concession Entity proposes to grant a Concession, the Head of the Entity shall designate an Entity Concession Committee to be responsible for the performance of the following functions:
  - (a) Take the actions necessary to request a Certificate of Concession;
  - (b) Cause to be made any required preliminary determination of the feasibility of the proposed Concession;
  - (c) Prepare a Concession Procurement Plan;
  - (d) Prepare prequalification instructions for bidders if prequalification is to be used;
  - (e) Prepare all documentation to be included in any invitation to bid;
  - (f) Arrange for publication of all required notices and the delivery of materials to be made available for bidders;

- (g) Receive and safeguard prequalification filings and bids received;
- (h) Conduct bid opening procedures in accordance with Section 110 of this Act;
- (i) Prepare plans consistent with Section 121 of this Act for the administration (including monitoring and review of performance) of any Concession contract ultimately entered into; and
- (j) Carry out such other functions relating to the proposed Concession that do not conflict with the requirements of this Act as may be conferred by the Head of the Entity.

- (2) A Concession Entity may have a single Entity Concession Committee for all Concessions, or a separate Entity Concession Committee for separate Concessions, if the Head of the Entity determines that a more appropriate allocation of entity expertise can be achieved in that way.
- (3) An Entity Concession Committee shall have at least three (3) and not more than seven (7) members, one of whom shall be designated by the Minister of Finance at the request of the Head of the Entity. A majority of the members shall be officials of the Concession Entity, and all of the members must be Government officers or employees with the skills and experience necessary to carry out the responsibilities assigned to the Entity Concession Committee. The Head of the Entity may be, or may designate an immediate deputy as, the chair of the Entity Concession Committee, but no such designation shall relieve the Head of ultimate responsibility for the discharge of the functions of the Entity Concession Committee. The Entity Concession Committee shall establish its own rules for determining the time, place and procedure of meetings, and shall act by the vote of a majority of its members.
- (4) The Procurement Committee established for an Entity under Section 26 of this Act may not function as the Entity Concession Committee for that Entity, but members of the Entity's Procurement Committee may be designated as members of an Entity Concession Committee for the Entity if they possess the requisite skills and experience.
- (5) The actions of an Entity Concession Committee under Section 77(1) of this Act are subject to approval by the Inter-Ministerial Concessions Committee established for the Concession as specified in this Part VI.
- (6) The Head of each Concession Entity shall ensure that each Entity Concession Committee formed for that Entity seeks and utilizes the assistance of other relevant Ministries and agencies of the Government with respect to the matters referred to in clauses (b) through (e) and clause (i) of subsection (1) of this Section.

78. Engagement of Advisors

- (1) A Concession Entity, an Entity Concession Committee, a Concession Bid Evaluation Panel and/or an Inter-Ministerial Concessions Committee may, where it is conducive to the national interest, engage or co-opt expert nongovernmental entities or individuals to advise on any of the processes of Concessions. Such advisors shall work with and may be invited to join meetings of such Concession Entity, Entity Concession Committee, Concession Bid Evaluation Panel or Inter-Ministerial Concessions Committee, as the case may be, for the purposes

- (2) of the specific Concession, provided that no such advisors shall have any vote in any approvals to be given.

The selection of a non-governmental advisor for the purposes of subsection (1) of this Section shall be made in accordance with the procedure for the selection of consultants set out under Sections 68 through 71 of this Act unless the services of that entity or individual are being made available on a pro bono basis or are funded by a multi-lateral agency or an international donor without a conflict of interest.

- (3) A private sector entity or individual that has participated in or assisted a person to respond to a request for expressions of interest or an invitation to bid with respect to a proposed Concession is disqualified from serving as an advisor under this Section 78 with respect to any matters related to the proposed Concession.

79. Preparation of Concession Procurement Plan

- (1) The Concession Procurement Plan shall include at least the following details:
- (a) An outline of the structure of the proposed Concession, which will normally include the type of Concession, the expected investment scope, the expected location, the expected term of the Concession agreement, the nature and timing of any payments to be made to the Government by the concessionaire (in addition to tax, royalty, customs and other payments to come due under applicable law), any payments contemplated to be made to the concessionaire or other costs to the Government as a consequence of awarding the Concession, and a summary of the overall benefits expected to accrue to the Government and to Liberia as a consequence of the investment;
  - (b) An allocation of responsibilities and deadlines for pre-implementation activities necessary for the Concession procurement process;
  - (c) Arrangements to ensure coordination with other institutions where necessary and to address barriers or bottlenecks that may arise in the course of the Concession process;
  - (d) Whether national competitive bidding under Section 96 of this Act or international competitive bidding under Section 97 of this Act will be used, and the reasons for the selection;
  - (e) A proposed due diligence plan; and



(2)

- (f) The proposed dates for the general notice of investment opportunity, request for expressions of interest, invitation to bid, due date for bids, evaluation, negotiation and all processes leading to the Concession agreement.

A Concession Procurement Plan shall be filed with the Commission and the Inter-Ministerial Concessions Committee established for the Concession prior to any publication of a request for expressions of interest or an invitation to bid (whichever is earlier). The Commission may require changes in the Concession Procurement Plan if necessary for compliance with this Act. If the Commission does not respond within twenty-one (21) days of receipt of the Concession Procurement Plan, it is deemed approved by the Commission. The Concession Entity may not proceed with a request for expressions of interest or an invitation to bid until the Concession Procurement Plan is approved by the Inter-Ministerial Concessions Committee.

#### 80. Concession Structures

There shall be established for each Concession proposed to be awarded under this Act an Inter-Ministerial Concessions Committee in accordance with Sections 81 and 82 of this Act and a Concession Bid Evaluation Panel in accordance with Section 111 of this Act.

#### 81. Composition of the Inter-Ministerial Concessions Committee

- (1) The Inter-Ministerial Concessions Committee for a particular Concession shall consist of nine (9) persons constituted on an ad hoc basis as required in accordance with subsection (3) of this Section. Any reference to “the Inter-Ministerial Concessions Committee” with respect to a specific Concession means the Inter-Ministerial Concessions Committee as constituted for that Concession.
- (2) The Inter-Ministerial Concessions Committee constituted for each Concession shall have the responsibilities set forth in Section 82(1) of this Act and elsewhere set forth in this Part VI.
- (3) The Inter-Ministerial Concessions Committee for a specific Concession shall be constituted when required by Section 83(1) of this Act and shall comprise the following:
  - (a) *The chairperson of the National Investment Commission who shall be the chairperson of the committee*
  - (b) *The Minister of Justice*

(2)

*(c) The Minister of Finance*

*(d) The Minister of Labor*

*(e) The Minister of Planning and Economic Affairs*

*(f) The Minister of Internal Affairs*

*(g) Two (2) other Ministers appointed by the President representing the collective interest of various sectors of the economy connected with the Concession*

*(h) The head of the Concession Entity*

(4) The relevant Entity Concession Committee shall designate a member to serve as the non-member secretary to the Inter-Ministerial Concessions Committee formed for the particular Concession.

82. Functions of the Inter-Ministerial Concessions Committee

(1) The Inter-Ministerial Concessions Committee constituted for a particular Concession shall perform the following functions:

(a) Review and approve, with such modifications as are deemed necessary, the Concession Procurement Plan established for the Concession under Sections 77(1)(c) and 79 of this Act prior to any request for expressions of interest; provided that the Inter-Ministerial Concessions Committee shall not approve a Concession Procurement Plan unless it has concluded that the proposed Concession is in the best interests of Liberia and that the benefits of the proposed Concession cannot be substantially achieved other than through a Concession;

(b) Ensure that the proposed Concession is consistent with any applicable annual Concessions plan prepared and approved under Section 89 of this Act;

(c) Constitute when provided for in Section 111(1) a Concession Bid Evaluation Panel for a proposed Concession;

(d) Review and approve prior to their issuance all documents to be included in a request for expressions of interest or an invitation to bid;

(e) Review the bid evaluation report prepared by the Concession Bid Evaluation Panel constituted for the Concession to ensure that procedures were in strict conformity with the criteria, the Act and relevant regulations, and take one of the actions permitted by Section 118 with respect to such evaluation report;

(f) Review and approve a recommendation by the Minister responsible for Mines to exempt an exploration right, pursuant to Section 95 hereof, from the competitive bidding provisions of this Act.

- (g) Review and approve any proposal by the Minister responsible for Mines to grant mineral rights pursuant to an exemption under Section 75 of this Act.
- (h) Take such other actions as are provided for in this Part VI.

- (2) No entity other than the Inter-Ministerial Concessions Committee set up under Sections 80 and 81 of this Act for a particular Concession shall perform the functions of the Inter-Ministerial Concessions Committee for such Concession and the purported performance of the functions of the Inter-Ministerial Concessions Committee by any other person or entity shall be void.

83. Formation and Meetings of the Inter-Ministerial Concessions Committee

- (1) The Inter-Ministerial Concessions Committee for a particular Concession shall be constituted at the instance of the Head of the Concession Entity through a written request submitted to the President, with copies to each person who is a statutory member of each Inter-Ministerial Concessions Committee concurrently with the formation of the Entity Concession Committee for the proposed Concession.
- (2) The President, on receipt of the request from the Head of the Concession Entity pursuant to subsection (1) of this Section, shall designate the persons or person specified to be appointed by the President under clause (g) of Section 81(3) of this Act to serve as members of the Inter-Ministerial Concessions Committee for a specific Concession and the chairperson of the Inter-Ministerial Concessions Committee shall convene an initial meeting of the Inter-Ministerial Concessions Committee for the purposes of such Concession.
- (3) No person or office shall have the right as a result of appointment under clause (g) of Section 81(3) of this Act to membership of the Inter-Ministerial Concessions Committee constituted for a different Concession.
- (4) When a Concession agreement is entered into, the Inter-Ministerial Concessions Committee constituted for that Concession shall be deemed dissolved.
- (5) No member of the Inter-Ministerial Concessions Committee shall delegate his or her role as a member, except that where absolutely necessary a member may send a person with the rank of Deputy Minister (or, if the member is not a Minister, his or her immediate deputy) as a proxy to represent that member at a meeting of the Inter-Ministerial Concessions Committee. The member shall be responsible for any decisions made by the proxy. A person who has been a member of the Entity Concession Committee or the Concession Bid Evaluation Panel for a particular Concession shall under no circumstances serve as a proxy for a member of the Inter-Ministerial Concessions Committee constituted for that Concession.

84. Disclosure of Interest

- (1) No member of any Inter-Ministerial Concessions Committee, Entity Concession Committee, Concession Bid Evaluation Panel or Negotiation Team, and no outside expert, consultant or other person appointed or co-opted

to assist in the Concession process, whether on a paid or a pro bono basis, may have any interest, direct or indirect, in (a) any person participating in a bid for that Concession or (b) the outcome of the Concession process, and if any of such persons has any such interest, he or she shall promptly disclose the nature of that interest to the chairperson of the Inter-Ministerial Concessions Committee and the Minister of Justice, shall withdraw from the process, and shall not take part in any deliberation or decision relating to, or provide advice with respect to, that Concession. Such disclosure and withdrawal shall be recorded in the minutes of the relevant Inter-Ministerial Concessions Committee.

- (2) A person who contravenes this Section 84 shall be guilty of misconduct and subject to removal from the body involved or from his or her appointed or coopted position, and/or suffer any penalty that may be applicable under this Act or other applicable law.

85. Quorum

The Inter-Ministerial Concessions Committee shall not be properly constituted for its work without the presence of the Chairman, the head of the concession entity and three other members.

86. Qualified Holder of a Concession

The holder of a Concession granted under this Act must be a corporation organized under the Business Corporation Act, Part I of Title 5 of the Liberian Codes Revised, Vol. II or under any successor Liberian law providing for the organization of for-profit corporations, provided that a Concession with respect to mineral or agricultural natural resources (including forestry resources) may be held by a cooperative association of individuals if (a) the association is organized under law or regulations providing that the association has continuity of life independent of changes in its membership, (b) at least [80%] of the voting and economic interests in the association are legally and beneficially owned by citizens of Liberia, and (c) such form of ownership is otherwise permitted by applicable law and regulations.

87. Inclusion In Economic Development Plan

- (1) The Minister responsible for Planning and Economic Affairs shall develop an annual concessions plan for sectors of the economy in which Concessions may be promoted. No plan is effective until approved by the Cabinet.
- (2) The role assigned the Minister responsible for Planning and Economic Affairs under subsection (1) of this Section shall only be exercised in consultation with (a) the ex officio members of each Inter-Ministerial Concessions Committee and

(b) all other Ministers and head of Entities that may be affected by the annual Concessions plan.

- (3) The head of a Concession Entity shall, prior to commencing any activity for the purpose of implementing a Concession, request the Minister responsible for Planning and Economic Affairs to issue a Certificate for Concession for the specific Concession.

88. No Concession without Certificate

- (1) Every Concession implementation process shall commence with the issue of a Certificate for Concession and no Concession shall be implemented unless the proposed project has been issued with a Certificate for Concession.
- (2) The Ministry responsible for Planning and Economic Affairs shall have the sole responsibility to issue the Certificate for Concession.

89. Criteria for the Issue of the Certificate for Concession

- (1) Prior to issuing a Certificate for Concession under Section 88 of this Act, the Ministry responsible for Planning and Economic Affairs shall ensure that:
- (a) The proposed Concession falls within the area of the economy in which Concession arrangements may be carried out in furtherance of national economic objectives and qualifies as a “Concession” under this Act.
  - (b) The proposed Concession has not already been allocated with public funds for the same purpose envisaged under the proposed project.
  - (c) The barriers or bottlenecks that need to be addressed prior to or in the course of the Concession procurement process have been clearly identified by the Concession Entity or by the Ministry responsible for Planning and Economic Affairs and brought to the knowledge of the Concession Entity.
- (2) The functions of the Ministry responsible for Planning and Economic Affairs under subsection (1) of this section with respect to a specific proposed Concession shall be performed with prior consultation with the Head of the prospective Concession Entity and with the Heads of other ministries and agencies of the Government most directly affected by the Concession. **Sub-Part 3 – The Concession Process**

90. Presentation of Concession Option to the Public

- (1) A Concession Entity shall undertake public stakeholder consultations with respect to each proposed Concession prior to the finalization of the bid documents to be included in the invitation to bid.
- (2) When the proposed bid documents are submitted to the Inter-Ministerial Concessions Committee for review as required by Section 104(3) of this Act, they must be accompanied by a list of the individuals and organizations attending the stakeholder forum held pursuant to subsection (1) of this Section, a copy of the notice of such forum published pursuant to such subsection, a summary of the information or positions presented at the forum and a description of actions taken by the Entity Concession Committee to reflect in the proposed bid documents the concerns of those attending the forum.

91. Information at the Stakeholder Forum

Not less than fourteen (14) days prior to a scheduled stakeholder forum, the Concession Entity shall Publish notice of the forum, setting forth in such notice the time and place of the forum, and shall cause copies of the notice to be posted conspicuously in several places in the county seat of each county in which the concessionaire under the proposed Concession is expected to operate. The notice shall include information about a short description of the expected location, nature, size, scope, projected timing and duration of the proposed Concession and the extent of investment of private resources proposed to be required from bidders to meet the needs of the affected community or communities. A detailed procedure shall be contained in regulations.

92. Records of the Concession Bidding Process

- (1) In furtherance of transparency and accountability each Entity Concession Committee (in the case of clauses (a) through (g) of this subsection) and each Inter-Ministerial Concessions Committee (in the case of clauses (h) through (j) of this subsection) shall deliver reasonably and promptly after the execution of any Concession contract to the Bureau of Concessions for preservation and reference purposes the documentation specified below with respect to such Concession, and such other information with respect to such Concession as may be required by regulations made under this Act:
  - (a) A description of the object of the Concession;
  - (b) If there was prequalification of bidders, a list of the bidders that sought prequalification, the qualification criteria applied, and a list of the bidders that qualified;
  - (c) The information required by Section 91(2) of this Act;
  - (d) A list of the bidders that actually submitted bids;



- (e) Copies in electronic format of the bid submissions;
- (f) Each request (if any) for bid clarification and the response thereto;
- (g) The bid evaluation criteria;
- (h) A summary of the evaluation results for prequalification submissions (if any) and for bids;
- (i) A statement of grounds for any action under Section 118 of this Act for the cancellation of the Concession bid proceedings or the rejection of all bids;
- (j) A statement of grounds for choice of national or international or sole source Concession procedures; and
- (k) a statement of any complaints and appeals filed under Section 125 or 126 of this Act and the disposition thereof.

(2)

Any portion of the record other than that referred to in clause (h) of subsection (1) of this Section is made available to any person , on request in writing to the Concession Entity , after the Concession bid ranking has been made public or after all bids have been rejected and/or the Concession process is cancelled as provided in Section 118 of this Act.

(3) The portion of the record referred to in clause (h) of subsection (1) of this

Section shall, on request in writing to the chairperson of the relevant InterMinisterial Concessions Committee, be made available to bidders that applied for prequalification or submitted bids after the prequalification list or the ranking of bids is announced, as the case may be, provided that a bidder eliminated by a prequalification proceeding may request only the portion of the record referred to in the preceding sentence related to the prequalification procedure.

(4) Notwithstanding any other provision of this Section 92, no Entity of the Government or consultant or advisor retained by the Government shall disclose to third parties:

(a) Information, if its disclosure will:

- i. Be contrary to law, ii. Impede law enforcement, iii. Not be in the public interest, iv. Prejudice legitimate commercial interests of the parties, or v. Inhibit fair competition under this Act;

(b) Information relating to the examination, evaluation and comparison of bids, proposals, offers or quotations, other than the summary referred to in subsection (1)(e) of this Section.

93. Inspection of the Records

The records required to be maintained by Section 92 of this Act shall be made available for inspection by the Commission and the Auditor-General or any person(s) duly authorized by the Commission or relevant Government authority to act on behalf of the Commission or such Government authority. Information so made available remains subject to the requirements of Section 92(4) of this Act.

94. Specific Records to Be in Writing

- (1) Without limiting the generality of this Section or any subsection of this Section, the following, if employed in the context of a particular Concession, shall at all times be in writing:
- (a) General notice of investment opportunity;
  - (b) Request for expression of interest (prequalification of bidders);
  - (c) Evaluation of bidder prequalification submissions;
  - (d) Invitation to bid;
  - (e) Concession Bid Evaluation Panel evaluation report; and
  - (f) Action(s) taken by and decisions of the Inter-Ministerial Concessions Committee provided for in this Act.

- (2) Subject to subsection (3) of this Section, all other information, instructions, notifications, decisions and other communication referred to in this Act to be submitted by the Concession Entity to a bidder or by a bidder to the Concession Entity shall be in writing.
- (3) The Inter-Ministerial Concessions Committee may authorize Concession Entities to use other forms of communication, including electronic communication, for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts and payments, provided that any such other means of communication may be used only if it (a) can preserve a record of the content of the communication, provide an adequate level of security and does not unduly restrict bidders' access to the concession proceedings, and (b) otherwise satisfies the requirements in this Act, regulations issued under this Act and other applicable legislation.

95. Competitive Bidding

- (1) Unless otherwise permitted by Section 101 of this Act, Concession bidding proceedings shall be undertaken by means of advertised open bid proceedings, to which equal access shall be provided to all eligible and qualified bidders without discrimination, except that Concession bidding shall utilize prequalification of bidders unless the relevant Inter-Ministerial Concessions Committee concludes that it is highly likely that only a small number of bidders will be interested, in which case bidder qualifications shall be evaluated post-bid.
- (2) Notwithstanding subsection (1) of this Section, the grant of license or Concession under section 75(1) b may not be subject to open competitive bidding process provided that:
  - (a) The prior express approval is obtained from the Commission [under section 102 of the Act] regarding the procedure to be employed; and
  - (b) The procedure to be used is provided for in specific regulations under legislation as may be applicable pursuant to section 75(2) of the Act.
- (3) Notwithstanding the generality of Subsection (1) and (2) of this section, bidding procedures shall not be required:
  - (a) In the case of the grant of a Concession in the form of a Reconnaissance License, a Prospecting License or an Exploration License if the commission determines, upon the recommendation of the

Minister responsible for Mines, or the Minister responsible for the sector that there is insufficient information for a viable bidding process relating to the mineral or natural resource in respect of the area over which the License is to be granted.

(b) For the issue of a Mining License to the holder of an Exploration License issued pursuant to paragraph (a) of this subsection.

(c) In the case of the grant of a class B or Class C Mining License where the commission, upon the recommendation of the Minister responsible for Mines and for stated reasons, so determines.

(4) The bidding documents shall require bidders to present the financial components of their bids in the currency specified in the bid documents (which must be a fully convertible currency customarily used in international trade) and to deliver their bids in both hard copy and in a specified readily available electronic format.

96. National Competitive Bidding

(1) National competitive bidding for Concessions may be used when:

(a) Section 97(1) does not require international competitive bidding, and

(b) the Inter-Ministerial Concessions Committee has reasonably concluded that the project is so limited in scope that it is unlikely to be of interest to foreign investors.

(2) National competitive bidding for Concessions must be used when it is concluded that the Concession falls within an area of the economy which is by law restricted to Liberians (in which case only Liberian Businesses may bid or participate in a bidding consortium).

97. International Competitive Bidding

(1) International competitive bidding must be used when one or more of the following conditions exist:

(a) The project requires international expertise;

(b) The project requires technology not available in Liberia; or

(c) The project requires capital outlay not ordinarily available in Liberia; or

Technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade and in particular shall conform to the provisions of this Act;

(2)

(3) General and special conditions of contract, if specified, shall be of a kind internationally accepted in the relevant industry.

98. Domestic and Liberian Businesses May Participate in International Competitive Bidding

In all instances of international competitive bidding, a Domestic Business or a Liberian Business that meets any generally applicable minimum criteria for participation shall, without restrictions, be qualified to participate either solely or in association with foreign entities.

99. Criteria for the Application of Margin of Preference in Concessions

(1) A Concession Bid Evaluation Panel may allow to an otherwise technically and financially qualified Domestic Business or Liberian Business a Margin of Preference.

(2) The Commission may by regulation approved by a committee of the statutory members of each Inter-Ministerial Concessions Committee establish a Margin of Preference for Concessions or particular types of Concessions that grants a price preference to the bidder who (a) commits in its bid to the highest percentage of goods manufactured in Liberia and services delivered by persons resident in Liberia in excess of a threshold that may vary by industry, and (b) sets forth in its bid reasonable ways for assuring performance of its commitment. Any such regulation shall set forth a realistic program for policing such commitments, and shall provide appropriate penalties for noncompliance including, in severe cases, an obligation to rebate to the Government the amount of the price preference granted. Notwithstanding the generality of this subsection, the Commission shall ensure that the criteria for the Margin of Preference applicable to Concessions shall, as much as possible, be consistent with the provisions of Section 45 of this Act.

(3) Regulations proposed under this Section 99 must be published for comment in the manner required for international competitive bids at least 90 days prior to any action by the Commission to approve or declare effective such regulations.

100. Restricted Competitive Bidding

Subject to the approval of the Commission, Restricted Competitive Bidding shall be employed where the Concessions Entity has pre-qualified bidders in accordance with the provisions of this Act.

101. Sole Source and Unsolicited Bids

(1) A Concession may be granted on a sole source basis only upon a determination by the Cabinet, after consultation with the Commission, that sole source

procurement is the only reasonable way of obtaining the resource controlled by the bidder and one or more of the following conditions is determined to exist:

- (a) The Concession requires specialized expertise that is available only to one specific bidder;
- (b) The Concession involves an innovation the patent for which is held by one particular bidder;
- (c) The Concession requires specialized research, or experiment that only one person is prepared to undertake; or
- (d) The Concession is in respect of strategic national interest or national defense or security and it is not in the national interest to have more than one bidder.

(2) In any such case:

- (a) the determination required by subsection (1) of this Section must be made and a copy of the determination must be published on the website of the Commission at least two weeks before any negotiations occur; and
- (b) the agreement with such sole bidder constitutes a Concession agreement that must be developed and negotiated in accordance with the provisions of this Part VI applicable to the development and negotiation of Concession agreements., beginning with the development of a Concession Procurement Plan in Section 79 through to basic due diligence as to the existence of the bidder's claimed technical and financial capacity and negotiation of the agreement as contemplated by Sections 118 through 121 of this Act, excepting those provisions that cannot rationally be applied in the absence of multiple bidders.

(3) Unsolicited bids for Concessions are subject to the provisions of this subsection (3).

- (a) A bid or proposal for a Concession provided by a person at the suggestion of a Ministry or agency of the Government that has not been approved as a sole source bid under the provisions of subsections (1) and (2) of this Section and that is not submitted in response to a formal invitation to bid issued under this Part VI is an unsolicited bid.

- (b) No Concession Entity has any obligation to evaluate, negotiate, or accept an unsolicited bid,
- (c) A Concession Entity wishing to consider an unsolicited bid shall request the formation of an Inter-Ministerial Concessions Committee that will arrange for the formation of a Concession Bid Evaluation Panel to conduct an independent assessment of the quality of the unsolicited bid and the qualifications and reputation of the bidder,
- (d) The Concession Entity may not enter into negotiations with such a bidder unless the Concession Bid Evaluation Panel has concluded that
  - (i) the bidder has the technical and financial capacity to perform its obligations under such agreement, (ii) there is no reason to believe that the terms offered by the bidder could be improved through submission of the proposal to a competitive bidding process, and (iii) the award of a Concession to that bidder would not lead to a situation in which it would be difficult or impossible for an effective competitive operation to arise;
- (e) Any agreement with the bidder shall be negotiated by a Negotiation Team in accordance with the requirements of this Part VI applicable to the negotiation of Concession agreements, excepting those provisions that cannot rationally be applied in the absence of multiple bidder.

No unsolicited bid may be accepted or accepted as a basis for negotiations until the Commission has adopted regulations implementing this subsection (3), including criteria and procedures for accepting an unsolicited bid or determining that the proposal must first be put to a competitive bid. The regulations may provide some form of preference to the original unsolicited bidder if competitive bidding is elected or required, either through a reasonable price advantage or, if the original proposal is not structured so that it can be performed only by the bidder, through requiring other bidders to conform their project proposal (general size and scope) to the bid presented by the unsolicited bidder.

#### 102. Prequalification or Qualification of Bidders

- (1) If prequalification of bidders is required, the prequalification process shall be conducted in compliance with the requirements of subsections (4) and (5) of Section 32 of this Act. Only bidders that have been prequalified shall be entitled to receive the invitation to bid and to submit bids.
- (2) The qualification criteria shall be objective in nature, shall be approved by the Inter-Ministerial Concessions Committee, and shall include at least the relevant components set forth in subsection (1) of Section 32 of this Act.
- (3) A Concession Entity may require prospective bidders to submit documentation verifying their qualification data.



- (4) All applicants who meet the minimum criteria for prequalification shall be invited to bid.
- (5) Where prequalification proceedings are not conducted, post-qualification, in which the Concession Bid Evaluation Panel verifies the qualifications of the bidder selected for award against the criteria stated in the bid documents, shall be used. The principles of this Section apply to qualification criteria set forth in the bid documents.
- (6) If a bidder wishes to have the financial, technical or other qualifications of an entity other than the bidder taken into account in the qualification process, the bidder must in its qualification submission
  - (a) set forth the qualifications of such other entities and clear statements of the contributions to the proposed Concession (financial, technical or otherwise) that each such entity is to make,
  - (b) provide an undertaking from each such other entity to the effect that (i) it has consented to be named in the bid, (ii) the statements made about it in the bid documents are true and correct, and (iii) it is prepared to participate in the transaction on the terms set forth in the submission, and
  - (c) provide the form of agreement pursuant to which such other entities will agree with the bidder to provide such contributions. The agreement must be executed if the submission is a bid, rather than a response to a request for expressions of interest.
- (7) Any change in the identity of such other entities or their proposed contributions after the bidder has been prequalified and invited to bid is subject to a written approval of the Concession Bid Evaluation Panel prior to the deadline for submission of bids. Such approval shall be denied if as a consequence of the change the bidder no longer meets the qualification criteria established for the proposed Concession, or if a substantial reduction in competition would result. Any such change after the submission of the bids shall disqualify the bidder.
- (8) Any such agreement provided pursuant to subsection (7) of this Section shall require that either (a) the bidder and each such other entity assume joint and several liability for the performance of the obligations to be undertaken by the entity becoming a party to the Concession agreement, or (b) one or more members of the group with the capacity to bear financial responsibility for all such obligations assumes the entire liability. Whichever alternative is elected, the bidder and any such other entities may agree among themselves to allocate among themselves costs actually incurred in discharging such liabilities in any manner they choose after their liabilities under such agreement are discharged.

- (9) Evaluation of prequalification submissions is to be made by the Concession Bid Evaluation Panel created pursuant to Section 111 of this Act, and the results shall be submitted to the Inter-Ministerial Concessions Committee. The Inter-Ministerial Concessions Committee shall remove a bidder from the proposed prequalified list submitted by the Concession Bid Evaluation Panel if (and only if) the Inter-Ministerial Concessions Committee makes written findings that a prospective bidder clearly lacks the legal, technical and/or financial capability to carry out the project, or the prospective bidder's prequalification submission is materially false or misleading (other than in the case of an obvious mechanical or typographical error). The resulting list of prequalified bidders shall be final.

#### **Sub-Part 4 – Concession Documents Preparation**

##### 103. Performance of Preliminary Feasibility Studies

The Inter-Ministerial Concessions Committee may require a Concession Entity to undertake preliminary or prefeasibility studies to determine the feasibility of a proposed Concession prior to completion of the related Concession Procurement Plan. Any such study shall normally be carried out with the assistance of experts retained as contemplated by Section 78 of this Act.

##### 104. Concession Bid Documents

- (1) The provisions of Section 34 of this Act are applicable to requests for expressions of interest and invitations to bid in the Concession process, subject to the additional provisions set forth below.
- (2) Prior to issuing a request for expressions of interest, the Entity Concession Committee shall submit the form of the request to the Inter-Ministerial Concessions Committee for review and approval.
- (3) Prior to issuing an invitation to bid, the Entity Concession Committee shall submit the form of the invitation to bid and the Concession bid documents to the Inter-Ministerial Concessions Committee for review and approval, and to the Ministry of Justice for review as to legal matters.

##### 105. Scope of Invitation to Bid; Bid Security

- (1) An invitation to bid for a Concession shall, at a minimum, include the following documents:
  - (a) A Concession Information Memorandum, which shall cover, but which need not be limited to, the following:

- i. The background of the proposed Concession,
- ii. Objectives of the proposed Concession,
- iii. Expected improvements or deliverables, and
- iv. Any benchmarks to be used to measure the attainment of the objectives of the proposed Concession (which may include quantitative targets and/or calendar deadlines); and (b) Instructions to bidders, which shall include the following:
  - i. An indication of whether or not there will be a pre-bid meeting and if so the date, time and venue,
  - ii. Time and venue for submission and opening of bids,
  - iii. Form of bid,
  - iv. Form of any financial proposal to be submitted separately,
  - v. Content of any legal opinions required to be submitted to establish satisfaction of the due diligence requirements set forth in Section 116(2),
  - vi. The amount and form of any required bid security,
  - vii. The amount and form (which may be definitive or illustrative) of any required performance security,
  - viii. The expected period for evaluation of submitted bids,
  - ix. The period for which a bid is to remain valid,
  - x. Criteria for examination or evaluation of bids (including but not necessarily limited to those set forth in Section 113(2), and excluding prohibited criteria identified in Section 114),
  - xi. Statement of procedures for negotiation of Concession agreement,
  - xii. Form of Concession agreement (which may be illustrative rather than definitive), or outline of principal terms of Concession agreement, as determined to be appropriate by the Inter-Ministerial Concessions Committee, provided that in either case

the provisions do not conflict with the requirements of Section 119 of this Act and comply with Section 121 of this Act, and xiii. All relevant forms necessary for preparation of bids.

- (2) The bid documents shall require that if the bidder will not itself be the party to the Concession agreement, it will guarantee the obligations of the entity established to be a party to the Concession agreement.
- (3) Forfeiture of a bid security may be imposed only in the event of:
  - (a) A modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
  - (b) Refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
  - (c) Failure by a bidder selected for negotiations in accordance with Section 118 to negotiate in good faith in accordance with the terms of its bid or to agree to terms described as “mandatory” in the bidding documents;
  - (d) Failure of the bidder to comply with the conditions precedent to the signature or effectiveness of a Concession contract negotiated by the parties within the time period agreed upon for signature or compliance; or
  - (e) Failure by the successful bidder to provide a security for the performance of the contract if required to do so by the bidding documents.

106. Publication of General Notice of Investment Opportunity, Expression of Interest and Invitation to Public

- (1) In national competitive bidding, the Concession Entity shall Publish a general notice of investment opportunity, a request for expressions of interest (unless prequalification is not required in the specific case) and a invitation to bid (notice of availability of bidding documents). The general notice of investment opportunity shall be Published at least three (3) weeks prior to the Publication of the request for expressions of interest. Bidders shall be allowed at least [three (3)] weeks to respond to the request for expressions of interest and at least [four (4)] weeks to respond to the invitation to bid.
- (2) In international competitive bidding, the Concession Entity shall Publish a general notice of investment opportunity, a request for expressions of interest (unless prequalification is not required in the specific case) and the invitation to bid (notice of availability of bidding documents). Bidders shall be allowed at least four (4)] weeks to respond to the request for expressions of interest and at least [six (6)] weeks to respond to the invitation to bid.

- (3) Notwithstanding the definition of “Publish” a general notice of investment opportunity need not be “published” in the manner required by clause (c) of such definition.

107. Publication of Regulations

The Commission may issue specific regulations or guidelines regarding any or all public notices required under this Part VI, and may expand the requirements beyond those set forth in this Part VI.

**Sub-Part 5 – Pre-Bid Meeting, Bid Submission and Opening**

108. Pre-Bid Meeting; Bidder Requests for Clarification

The Entity Concession Committee or the Inter-Ministerial Concessions Committee may require that a pre-bid conference may be organized to give prospective bidders the opportunity to seek clarification and to obtain additional information on the requirements of the Concession or clarify issues set out in the Concession bid document. A writing summarizing all clarifications or additional information provided at any such meeting shall be distributed to all bidders. Section 33 of this Act is applicable to requests by bidders for clarification and supplemental bid information and requirements as though it applied to Concession Entities, except that the time period referred to in the last sentence of such Section 33 shall be three (3) weeks.

109. Particulars of the Pre-Bid Conference

The date, time and venue of any pre-bid conference shall be specified in the invitation to bid or by notice to all bidders given by facsimile or email at least ten (10) days prior to the conference, as the case may be, and shall in any case occur not less than fourteen (14) days after the Concession bid documents first become available to bidders.

110. Submission and Opening of Bids

- (1) All responses to an invitation to bid that have been timely submitted shall be opened at the time and place scheduled in such invitation to bid and in the presence of such of the bidders, their representatives or agents who choose to attend.
- (2) The bid submission and opening shall observe the rules of bid submission and opening under Sections 59 (as they may be modified to accommodate a two envelope bidding process), 61, 62 and 63 of this Act.
- (3) In the case of two envelope bidding, the bid documents shall specify the procedure for opening of the technical and financial envelopes.
- (4) If necessary to complete the evaluation of the technical envelope any scheduled opening of a financial envelope may be postponed on notice by telephone, facsimile or email to all bidders of the new time and place for opening the financial envelope. Any such postponement shall be for at least two (2) days.

**Sub-Part 6 – Evaluation**

111. Concession Bid Evaluation Panel and Evaluations

- (1) Evaluation of responses to prequalification requests or invitations to bid shall be undertaken by a Concession Bid Evaluation Panel that is appointed for each Concession by the relevant Inter-Ministerial Concessions Committee. Any reference to a Concession Bid Evaluation Panel with respect to a specific Concession means the Concession Bid Evaluation Panel constituted for that Concession. A Concession Bid Evaluation Panel, when formed, shall establish its own rules of procedures, and shall act only through a majority vote of all of its members. The National Bureau of Concessions shall be a permanent institutional representative on all Bid Evaluation Panels. The Chairperson of a Bid Evaluation Panel shall be appointed by the relevant Inter-Ministerial Concessions Committee.
- (2) The Inter-Ministerial Concessions Committee is responsible for ensuring that each member of a Concession Bid Evaluation Panel has the training and experience appropriate for the evaluation of the prequalification submissions or bids under consideration.
- (3) A Concession Bid Evaluation Panel should normally include as regular voting members one or more qualified individuals who are not officials or employees of the Government so long as a majority of the members are officials or employees of the Government. The Inter-Ministerial Concessions Committee or the Concession Bid Evaluation Panel itself may also designate individuals or institutions to act as non-voting advisers to or observers of the deliberations of

the Concession Bid Evaluation Panel in compliance with Section 78 of this Act. A member may not designate an alternate, and if a member consistently fails to attend meetings, the chairperson or vice chairperson shall notify the Inter-Ministerial Concessions Committee, which must promptly replace the member.

- (4) For the avoidance of doubt, (a) Heads of Entities may not be members of a Concession Bid Evaluation Panel, and (b) the Minerals Technical Committee referred to in the Mining Act may not serve as a Concession Bid Evaluation panel under this Act.
- (5) Each Concession Bid Evaluation Panel is an ad hoc body and shall be deemed to be dissolved once its report is acted upon by the relevant Inter-Ministerial Concessions Committee in accordance with Section 118(1).

112. Certainty of Evaluation Criteria

No criteria shall be used for evaluation of bidders or of a bid that was not identified in the documentation made available in the request for expressions of interest or in the bid documents, provided that the evaluation criteria may be modified by notice to all bidders at least three weeks prior to the due date of the prequalification submission or the bid submission (as the case may be) in the manner contemplated by Section 33(2) of this Act.

113. Minimum Contents of the Evaluation Criteria

- (1) The evaluation criteria applicable to a request for expressions of interest (prequalification) shall take into consideration the particular requirements of the proposed Concession and the nature of the expertise required for efficient and effective implementation of the Concession.
- (2) The evaluation criteria applicable to an invitation to bid shall be designed to attain the objects of the Concession and shall include at least the following:
  - (a) Compliance of the bidder with any specific technical and financial requirements stated in the bid documents (including any required bid security);
  - (b) Technical and financial capacity of the bidder to carry out all phases of the proposed project;
  - (c) Technical feasibility of the proposal;
  - (d) Effectiveness of the methods and resources to be deployed;
  - (e) In the case of infrastructure projects for the delivery by private entities of public services or facilities that will serve the general public where the bidders are not bidding to provide contract-mandated

levels of service, the magnitude of the planned service level improvements over the Concession period;

- (f) If the Government has adopted an overall strategic objectives and national development plan, the extent to which the proposed Concession contributes to the realization of such plan;
- (g) Technology transfer;
- (h) Impact on the environment and compliance with environmental laws and regulations;
- (i) Expected effect of the Concession on national income, employment of Liberians, the communities affected by the Concessions (social impact considerations), industries and other sectors of the economy;
- (j) Direct financial benefits flowing to the Government from the award of the Concession;
- (k) Negative impacts on Government revenues of any financial concessions proposed to be granted; and
- (l) Any Margin of Preference applicable in accordance with Section 99 of this Act.

#### 114. Prohibited Criteria in Evaluation

The criteria for the selection of responsive bidders shall not at any stage include any of the following (provided that clauses (b) and (c) of this Section 114 shall not be applied to limit the ability of the Concession Bid Evaluation Panel to apply in good faith criteria reasonably designed to require actions by Concession holders to minimize adverse environmental impacts of proposed Concessions, to mitigate the adverse social impact of Concessions, and to improve the quality of life in the communities affected by their operations):

- (a) Criteria that cannot be reasonably interpreted as a condition meant to elicit the attainment of any of the principles provided for under this Act;
- (b) Criteria that are non-commercial in character and which will not lead to the attainment of the objectives of the Concession arrangement;
- (c) Ambiguous criteria the interpretation of which can be subjective;
- (d) A criterion or condition that leads to the grant of the Concession to particular persons or group of persons;
- (e) A criterion or condition designed to facilitate the selection of a known bidder in contravention of the competitive process; and



- (f) A criterion or condition that will promote the corruption of the entire or part of the Concession procurement process. **Sub-Part 7 – Post-Evaluation**

115. Evaluation Report

- (1) A Concession Bid Evaluation Panel shall seek to conclude the evaluation and submit its evaluation report to the Inter-Ministerial Concessions Committee within the period set forth in the bid documents. The Inter-Ministerial Concessions Committee may extend the period specified as necessary to enable a fair and comprehensive evaluation of the bids submitted, and shall notify all bidders of each such extension.
- (2) A Concession Bid Evaluation Panel evaluation report shall include at least the following:
  - (a) A report on the responsiveness of the bids to the requirements set out in the invitation to bid;
  - (b) Results of the technical evaluation;
  - (c) Results of the financial evaluation;
  - (d) An overall ranking of bidders, identifying any bidders to be disqualified because their bids fail to respond to mandatory requirements of the bid documents or because they have been determined in the evaluation process not to meet the minimum standards set for qualification, as set forth in the bid documents; and
  - (e) A recommendation that the bidder with the highest overall score (above any minimum level required to qualify for negotiations) be invited for negotiations.
- (3) The evaluation report shall be accompanied by a summary of the results of the due diligence performed in accordance with Sections 116 of this Act (including a discussion of how the bid evaluation was affected by the due diligence reports), to which are attached all due diligence reports obtained with respect to each bidder and, in a clearly labeled subsection, all computations required by subsection (2)(d) of Section 116 of this Act.
- (4) An evaluation report shall not give significant weight to proposals of future performance by bidders that are contingent on future events the occurrence of which is not within the bidder's control.

- (5) Due diligence may not be used to raise a bidder's ranking above the ranking awarded by the Concession Bid Evaluation Panel based solely on the submissions of the bidders, even if due diligence reveals aspects of the bidder's business or operations that would have given the bidder additional credit had they been set forth in the bidder's submission.

116. Due Diligence

- (1) The due diligence required by this Section shall be undertaken by competent persons for all bidders submitting responsive bids. If a bidder submission shows that the bidder is relying on other entities to establish the necessary financial or technical capability, as contemplated by subsections (1) and (2) of Section 113 of this Act, the due diligence must extend to the entity or entities claimed to provide the necessary technical or financial capacity. References in this Section and in Section 118 of this Act to "the bidder" shall be interpreted as applying to the bidder and each such other entity.
- (2) Due diligence shall at a minimum include the matters set forth below, and should cover such other matters as the Concession Bid Evaluation Panel determines to be appropriate in light of the nature and scope of the proposed Concession:
  - (a) Authenticity of the claims of technical and financial capability and technical experience made by the bidder;
  - (b) Verification that the bidder is not (and is not controlled by) a person disqualified under this Act or other applicable law;
  - (c) Verification of the legal ability of the bidder to carry out its bid obligations, which shall in the first instance be verified by the submission by the bidder of opinions of established law firms entitled to practice in the relevant jurisdictions regarding:
    - i. the legal organization and existence of the bidder,
    - ii. its legal authority to submit its bid and perform the obligations proposed to be undertaken pursuant to its bid,
    - iii. the submission of its bid not violating any laws, rules or regulations to which it is subject under the laws of its jurisdiction of organization or the jurisdiction in which its chief executive offices are located, or any agreements by which it is bound, and
    - iv. the corporate authority of the persons executing the bid documents to bind the bidder;

- (d) If the bids involve proposals that the Concession agreement provide adjustments, favorable to the bidder, in the tax and other fiscal obligations of the bidder at the time existing under generally applicable laws and regulations, computations of the individual and aggregate impact of those adjustments on the revenue of the Government over 25 years and, if longer, over the estimated life of the Concession (but not more than 40 years).

- (3) The Concession Bid Evaluation Panel shall solicit recommendations from the Concession Entity and other interested ministries and agencies as to the organization or organizations that will undertake due diligence. Due diligence should be performed by independent organizations that had no involvement in preparing any bid relating to the proposed Concession, are not affiliated with any bidder for the proposed Concession or any other proposed Concession of the same type, have no pattern of being retained by any bidder for the proposed Concession, and have the technical skill and experience to undertake the required due diligence. Once organizations are selected in accordance with Section 78, the Concession Bid Evaluation Panel shall organize and coordinate the due diligence to be performed. The actions required by this subsection (3) should normally take place between the time bidding documents are delivered to the prospective bidders and the submission of the bids.
- (4) Promptly after the bids are opened (the technical bids, if two-stage bidding is used), the Concession Bid Evaluation Panel shall assess the bids to determine whether additional due diligence is appropriate, inform the Inter-Ministerial Concessions Committee of its conclusions, and act on the instructions of the Inter-Ministerial Concessions Committee. Due diligence shall commence as promptly as possible after the opening of the bids, and must be completed prior to the preparation by the Concession Bid Evaluation Panel of its report under Section 115 of this Act.
- (5) If the Concession Bid Evaluation Panel concludes at any point in the evaluation process, based solely on the bid submissions, that a bidder has no realistic prospect of being considered in the top group of bidders, it may suspend due diligence on that bidder. If at a later date new information seems likely to result in that bidder being ranking among the top group of bidders, the suspended due diligence must be completed prior to ranking that bidder in the evaluation report of the Concession Bid Evaluation Panel.
- (6) The Inter-Ministerial Concessions Committee may request the performance of additional due diligence with respect to any bidder after the submission of the Concession Bid Evaluation Panel of its report under Section 115 of this Act. Unless a bidder is disqualified by the Inter-Ministerial Concessions Committee based on such additional due diligence, as contemplated by clause (b) of subsection (1) of Section 118, any new information obtained through additional due diligence shall be furnished to the Concession Bid Evaluation Panel which shall rerank the bidders on the same scale on which they were originally ranked, taking into account the new information.
- (7) Notwithstanding any due diligence performed, the conditions to the effectiveness of every Concession agreement shall include such legal opinions and representations and warranties with respect to all entities undertaking

obligations to the Government in respect of the Concession as are customary in international practice or as are appropriate to confirm the continuing accuracy of the information provided by the bidder in its bid submission or contained in the legal opinions provided by the bidder as a part of its bid submission.

- (8) The costs of due diligence shall be borne by the Concession Entity to the extent not borne by the bidders. All fees collected from prospective bidders in connection with a request for expressions of interest or an invitation to bid shall be applied by the Ministry of Finance to reimburse the Concession Entity for the costs of the due diligence.

117. Form of Contract; Role of Ministry of Justice in Developing Contract

- (1) The form of each Concession agreement shall be developed by the Concession Entity and approved by the Inter-Ministerial Concessions Committee prior to negotiations. The agreement shall be approved as to legal form by the Ministry of Justice prior to submission to the bidder, or, if and to the extent the final form of the agreement is included in the bid documents, prior to the release of the bid documents to the bidders.
- (2) The Concession agreement as executed shall be approved by the Minister of Justice as complying with the requirements of this Act and any other applicable law before submission to the President and Cabinet for approval.

118. Review of Evaluation Report; Negotiations

- (1) The Inter-Ministerial Concessions Committee shall review the evaluation report and take one or more of the following actions:
  - (a) Approve the report and the bid ranking if neither clause (b) nor clause (c) of this Subsection (1) is applicable;
  - (b) Take note of the due diligence performed and disqualify a bidder if, notwithstanding the ranking of the bidder by the Concession Bid Evaluation Panel, the due diligence demonstrates that the bidder clearly lacks the legal, technical and/or financial capability to carry out the project, or that the bidder's bid documents are materially false or misleading (other than in the case of an obvious mechanical or typographical error), and approve the report and bid ranking after giving effect to any such disqualifications; or
  - (c) Determine, with the approval of the Cabinet, that the best interests of the Government require the cancellation of the Concession bid process or the rejection of all bids, and in any such case the Inter-Ministerial Concessions Committee, without liability to any bidder:

- i. may require rebidding the project or decide that the project shall not at the time be rebid (without prejudice to restarting the Concession bid process at a later date);
  - ii. must give promptly to all bidders written notice of the cancellation or rejection and any decision to rebid the project; and
  - iii. must return any unopened bid to the bidder submitting that bid.
- (2) Neither the Head of the Concession Entity nor the Inter-Ministerial Concessions Committee shall have the power to alter an evaluation report submitted by a Concession Bid Evaluation Panel or to request changes in the ranking established by the Concession Bid Evaluation Panel. The Inter-Ministerial Concessions Committee shall consult with the Minister of Justice before taking any action referred to in subsection (1)(b) or (1)(c) of this Section.
- (3) Any disqualification of a bidder shall be in writing, shall set forth the reasons for disqualification and shall be promptly furnished to all bidders.
- (4) The Inter-Ministerial Concessions Committee shall notify the Commission and the President of the action taken by the Inter-Ministerial Concessions Committee pursuant to subsection (1) of this Section. The notice under this subsection shall contain at least the following information:
  - (a) Name of the first, second and third ranked bidders;
  - (b) Name of any bidder disqualified under subsection (1)(b) of this Section; and
  - (c) Statement of actions taken under subsection (1)(c) of this Section.
- (5) Within fourteen (14) days after notice of approval of the evaluation report by the Inter-Ministerial Concessions Committee pursuant to clause (a) or (b) of subsection (1) of this Section, the President shall appoint a Negotiation Team upon a recommendation of the IMCC for the conduct of the negotiations with the highest ranked bidder. Each Negotiation Team shall consist of the Head of the Concession Entity, the chairperson of the National Investment Commission, the Minister of Justice, the Minister of Finance, and three Persons designated by the President, two of whom shall be Cabinet members. The chairperson of a Negotiation Team shall be a Cabinet member designated by the President. Each Negotiation Team will report to and will be responsible to the President.
- (6) Each Negotiation Team shall organize a technical team to support its work. The team shall include qualified Government employees and relevant qualified legal

and technical advisers (who may include paid or pro bono international advisors) retained in accordance with Section 78 of this Act.

- (7) It is not required that all members of a Negotiation Team be present at all negotiating sessions so long as procedures are established in the particular case for keeping the members of the Negotiation Team informed and for the participation of the entire Negotiation Team in all material decisions. No such procedures shall excuse a member of the Negotiation Team from responsibility for the negotiations unless the member dissents in writing from the procedures adopted or from a specific decision of the Negotiation Team and files that writing with the President prior to the approval of the Concession agreement by the Government.
- (8) Subject to subsection (7) of this Section, negotiations shall be entered into with the highest ranked bidder indicated in the evaluation report and approved by the Inter-Ministerial Concessions Committee as contemplated by subsection (1) of this Section. In the event of the breakdown of the negotiations, the Negotiation Team shall consult with the Inter-Ministerial Concessions Committee as to the advisability of seeking to continue negotiations with the highest ranked bidder, or commencing negotiations with the next ranked bidder, or conducting competitive negotiations concurrently with both the highest ranked bidder and the next-ranked bidder or cancelling the bid process.

119. Issues to be Considered at the Negotiations

- (1) To the extent that the bid documents do not provide that contract provisions set forth in the bid documents are non-negotiable, the Negotiation Team shall take the following into account, within the context of existing laws, in its negotiations with the prospective concessionaire:
  - (a) Responsibilities of parties under the Concession
  - (b) Standards of performance including service, deadlines, safety, compliance and operating/maintenance requirements
  - (c) Contingency arrangements for identified risks
  - (d) Compliance with tax and other fiscal obligations
  - (e) Mechanisms for monitoring performance, quality of service and other project objectives
  - (f) Dispute resolution mechanisms
  - (g) Performance bonds

- (h) Monitoring/reporting
  - (i) Reporting requirements
  - (j) Social responsibility requirements
  - (k) Use of local labor
  - (l) Capacity building
  - (m) Technology transfer
  - (n) Financial components, including payment provisions, the time of payment and currency of payment
  - (o) Responsibilities for insurance, security, operation and maintenance where applicable
  - (p) Contract revision arising from material change in the conditions of the contract
  - (q) Environmental issues
  - (r) Termination provisions
  - (s) Project failure and remedies, if any
  - (t) Breach of contract/events of default
  - (u) Provision for re-entry, buy-back transfer, reversion, assignment and related issues
  - (v) Tariffs, charges, rates, fees, etc. that may be charged to third parties, where applicable and responsibility for fixing same
  - (w) Non-circumvention, confidentiality and scope of these provisions
  - (x) Ownership of intellectual property, facilities or new technologies developed
  - (y) Provisions which may survive termination of the contract (e.g. arbitration, confidentiality)
  - (z) Contract amendment process
- (2) The Inter-Ministerial Concessions Committee may expand on these issues for negotiations for any particular Concession,



but any additional requirements must have been reflected in the bid documents.

- (3) If as a result of negotiations it is proposed that the Concession agreement provide adjustments, favorable to the bidder, in the tax and other fiscal obligations of the bidder at the time existing under generally applicable laws and regulations, the Negotiation Team must with the assistance of the Minister of Finance prepare and deliver to the President (and the Legislature where approval by the Legislature is required), high and low estimates of the impact of those adjustments on the revenue of the Government over the initial twenty five (25) years of the operations of the Concession holder, together with high and low estimates of the net royalties and tax revenues likely to be receivable from the bidder of the same period, accompanied by sufficient narrative to make clear the assumptions (which must be reasonable in light of the facts and circumstances at the time) surrounding each estimate.

#### 120. Confidentiality Agreement

The Concession Entity may enter into a confidentiality agreement with a bidder invited for negotiations that restricts the bidder, the Concession Entity and the members of the Negotiation Team from disclosing information in accordance with internationally accepted standards of confidentiality in such cases. No provision of any such agreement may limit the disclosure obligations of the Government under applicable law or pursuant to international agreements or arrangements to which Liberia has subscribed, such as the Extractive Industries Transparency Initiative, or the right of the Government to disclose the final Concession agreement (including its fiscal terms), including both affirmative payment obligations and concessions from otherwise applicable fiscal obligations.

#### 121. Post-Contract Management

Every Concession agreement shall include post-award contract management arrangements, which shall at least include:

- (a) Mechanisms for monitoring performance of the terms and conditions of the agreement;
- (b) Reports to be submitted on a periodic basis and the methods for authentication of the reports;
- (c) Asset maintenance and improvement requirements; and (d) Arrangements for handling public complaints.

- (2) Copies of all reports (other than tax returns) required to be delivered to the Concession Entity or any other ministry or agency of the Government shall be delivered concurrently to the Bureau of Concessions in the same format.

122. Regulations Pertaining to Mining and Petroleum Concessions

The Commission may in consultation with the Minister responsible for mining issue regulations further clarifying and expanding upon the provisions of subsections (2) and (3) of Section 75 of this Act. The Commission may also issue such regulations as it determines to be necessary or appropriate to ensure that the issuance of licenses for mining and petroleum prospecting, reconnaissance and exploration, where not expressly exempted from the applicability of this Act, are awarded in a competitive manner in compliance with the requirements of this Act and without the grant of a monopoly to any party.

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

123. Authority to Dispose

- (1) A department with obsolete stores or unserviceable equipment and plant shall send a disposal request to the Minister of Finance.
- (2) The Minister of Finance shall if satisfied, authorize the head of the entity to convene a disposal committee comprising representatives of the entity and persons with relevant expertise and the committee shall after carrying out inspection recommend the best method of disposal in accordance with Section 124.
- (3) The committee's recommendations shall be subject to approval of the head of entity.

124. Disposal Procedures

- (1) Disposal of obsolete and surplus items consistent with applicable guidelines provided by the Commission, pursuant to the Disposal Committee shall be by transfer to the General Services Agency with or without financial adjustment, which shall undertake same by the following procedures:
  - i. Transfer to government departments or other public entities, with or without financial adjustment;
  - ii. Sale by public tender to the highest tender, subject to reserve price;
  - iii. Sale by public auction, subject to minimum acceptable price;

- iv. Destruction, dumping, or burying or such forms of disposal as appropriate.
- (2) Other than the methods of disposal under subsection 1 (i), (ii) and (iii), any form of disposal including those set out under subsection 1 (iv) shall only be done with the written approval of the Environmental Protection Agency.
- (3) The Commission may in consultation with the Minister of Finance prescribe further procedures for disposals but the Commission shall not have the power to make any guidelines or regulations in respect of subsection (1) (iv) of this section.

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

#### **125. Right to Review**

- (1) The following persons may lodge complaints under this Act:
  - (a) Any bidder who has suffered or is at the risk of suffering a loss or damage as a result of a violation of this Act or its regulations in the conduct of the procurement or concession process;
  - (b) Any person who has grounds to believe that he or she or the Entity he or she represents has been prevented from becoming a bidder; or
  - (c) Any person not referred to in clauses (a) and (b) of this subsection who has reason to believe that there has been a violation of this Act or its regulations that has adversely affected the interests of such person.
- (2) Any complaint must in the first instance be lodged with the Head of the Procuring or Concession Entity. The complaint must be filed within forty-five (45) days of the time that the person or other entity first becomes aware of the facts constituting the alleged violation and is not deemed filed unless delivered to the principal office in Monrovia of the relevant Procuring or Concession Entity during regular office hours on a business day, with a copy filed on the same day with the Executive Director of the Commission for the attention of the Complaints, Appeals and Review Panel during regular office hours. If the complaint filed with a Concession Entity includes an objection to an action of an Inter-Ministerial Concessions Committee or Concession Bid Evaluation Panel relating to a particular Concession (or proposed Concession), the Head of the Concession Entity shall be responsible for responding to the complaint as if the complaint objected to an act of the Concession Entity.
- (3) A complaint shall not be entertained unless the complainant reasonably complies with the following requirements:

- (a) Submits the complaint in writing;
  - (b) States his or her particulars and the means by which he or she may be reached, which must include a physical address in Monrovia (which may be the address of an agent for such person) to which mail or messenger deliveries may be made during regular office hours or must consent to delivery of documents and papers by email and provide an email address; and
  - (c) States in the complaint with reasonable clarity the circumstances relied upon by the complainant to establish the existence of a violation of this Act or its regulations (including identification of the provisions of this Act or the regulations relied upon to establish the occurrence of such violation of this Act or its regulations) and, where applicable, the part of the Procurement or Concession process from which the complaint arose.
- (4) Notwithstanding subsection (1) of this Section, the following may not form the subject of any complaint and no person has a right under this Act to a Complaints, Appeals and Review Panel or judicial review of any of the following:
- (a) An Entity's choice of a Procurement or Concession method unless the choice of method violated an express provision of this Act or its regulations;
  - (b) A decision by the Entity or the Inter-Ministerial Concessions Committee, as the case may be, to reject all bids or cancel a procurement or a Concession process unless the decision to reject or cancel violated an express provision of this Act or its regulations; and
  - (c) An alleged violation of this Act or its regulations occurring more than one hundred and eighty (180) days prior to the filing of the complaint.
- (5) The Head of the Procuring or Concession Entity shall upon receipt of a complaint, complying with the requirements of this Section 125, shall inform the complainant that the Commission shall publish notice of the complaint as provided in subsection (1) of Section 128 of this Act and shall cause such notice to be forwarded no later than two (2) business days following such publication by electronic mail, facsimile or hand delivery to other known bidders or prospective bidders that may be affected by the resolution of the complaint.
- (6) With respect to a complaint filed pursuant to this Section 125, the Head of the relevant Procuring or Concession Entity shall:
- (a) investigate the complaint;

- (b) reach a decision within fifteen (15) days of receipt of the complaint by the Procuring or Concessions Entity and promptly communicate the decision to the complainant and to any other bidders or prospective bidders who submitted views in writing on the appropriate resolution of the complaint by electronic mail, facsimile or hand delivery; and
- (c) promptly deliver a copy of the decision to the Executive Director of the Commission.

To give other interested parties an opportunity to comment on the complaint, no such decision shall be issued prior to ten (10) days following receipt of the complaint by the Head of the Procuring or Concession Entity.

- (7) Any decision with respect to a complaint shall be in writing and shall set forth:
  - (a) The reasons for the decision;
  - (b) A summary statement of relevant facts;
  - (c) Whether the complaint is upheld in whole or in part; and
  - (d) To the extent the complaint is upheld, the corrective measures to be taken.

126. Further Review by the Complaints, Appeals and Review Panel

- (1) Nothing in this Act or in any other law shall derogate from the right of a person filing an initial complaint complying with the requirements of Section 125 of this Act to seek review by the Complaints, Appeals and Review Panel pursuant to Section 125 of this Act of a decision on such initial complaint by the relevant Procuring or Concession Entity.
- (2) A complainant may (i) request that the Complaints, Appeals and Review Panel decide the complaint if the relevant Entity does not issue a decision within fifteen (15) days of the complaint being filed or (ii) file with the Complaints, Appeals and Review Panel an appeal of a decision of the relevant Entity. All requests for decision and appeals to the Complaints, Appeals and Review Panel under this Section 126, and all other filings or submissions relating thereto, must be filed with the Executive Director of the Commission for the attention of the Complaints, Appeals and Review Panel during regular office hours of the Commission. In the case of a request for a decision by the Complaints, Appeals and Review Panel upon the failure of the relevant Entity to respond by the due date for resolution of the complaint, the request must be filed on a business day within ten (10) days after such due date. In the case of an appeal from an adverse decision by the relevant Entity, the appeal must be filed on a business day within ten (10) days after the date of the decision of the relevant Entity. A complainant

requesting a decision on a complaint or filing an appeal under this Section must deliver a copy of the request or appeal to the relevant Entity at the location specified in subsection (2) of Section 125 of this Act at substantially the same time as filing with the Complaints, Appeals and Review Panel.

- (3) If as a result of a decision by a Procuring or Concession Entity pursuant to a complaint filed under Section 125, a bidder, other than a complainant, is excluded from the right to submit a bid or from the right to have a submitted bid considered or is denied the right to enter into a contract although it was previously entitled to bid or formally designated the winning bidder, that bidder may file an appeal with the Complaints, Appeals and Review Panel in the manner and within the time period provided in subsection (2) of this Section .
- (4) The Complaints, Appeals and Review Panel may not act on a request for decision or an appeal unless it first determines that an initial complaint was properly filed with the Head of the relevant Procuring or Concession Entity and that either (a) the response period provided for in subsection (6)(b) of Section 125 has expired without a decision of the relevant Entity or (b) that such a decision has been rendered.
- (5) The complaint forwarded to the Complaints, Appeals and Review Panel with a request for decision may not raise new claims or evidence not presented in the complaint filed under Section 125. Appeals shall state the facts and law relied upon to establish that the initial decision of the Procuring or Concessions Entity was erroneous and may not raise new claims or issues that were not within the scope of the initial complaint or the decision being appealed.
- (6) Upon receipt of a request to the Complaints, Appeals and Review Panel to decide a complaint when the relevant Procuring or Concessions Entity has failed to respond within the time provided by subsection (6)(b) of Section 125 of this Act or of an appeal, the Commission shall deliver the request or appeal to the Complaints, Appeals and Review Panel, and shall provide the relevant Entity with a copy of the request or appeal.
- (7) Each request for decision or appeal made to the Complaints, Appeals and Review Panel shall be dealt with exclusively by a specific complaint and appeal panel designated for the purpose of that request or appeal from the members of the Complaints, Appeals and Review Panel as provided in subsection (7) of Section 10 of this Act., and shall be administered in accordance with this Part and any rules of procedure established by regulations. The Secretariat shall provide such assistance to each designated complaint and review panel of the Complaints, Appeals and Review Panel as it may request in the handling of any request for decision or appeal properly before it, including research and investigation of matters of fact relevant to the request.

- (8) No designated complaint and appeal panel of the Complaints, Appeals and Review Panel may issue any decision with respect to a complaint presented pursuant to clause (i) of subsection (2) of Section 126 or an appeal presented pursuant to clause (ii) of subsection (2) of Section 126 unless it has held a hearing at which the complainant, representatives of the relevant Entity, Concession Bid Evaluation Panel or Inter-Ministerial Concessions Committee, as the case may be, and representatives of other interested bidders have been given the opportunity to appear and present testimony. Each designated complaint and appeal panel of the Complaints, Appeals and Review Panel must give not less than seven (7) days written notice of the hearing to the parties and to any interested bidders who have timely notified the Commission pursuant to subsection (9) of this Section of their desire to be heard. In addition, all such persons (and any other interested persons) must have at least seven (7) days after the completion of such hearing to provide additional evidence or legal support in writing. All oral presentations and additional written evidence shall be given under oath as to any assertions of fact contained therein. .
- (9) An interested bidder who wishes to appear at a hearing must file a notice of appearance with the Complaints, Appeals and Review Panel within seven (7) days of the publication by the Commission of the notice required by Section 128(1) of this Act of the request for decision or appeal.

127. Decisions on Complaints and Appeals

- (1) Upon a complaint and/or appeal the Complaints, Appeals and Review Panel shall under normal circumstances render its decision within forty-five (45) days after the request for review or appeal is received. That period may be extended by fifteen (15) days. If the panel does not issue a decision within the prescribed or agreed period, the complainant or appellant may proceed directly to a court of competent jurisdiction as contemplated by subsection (7) of this section 127.
- (2) Any decision by a designated complaint and appeal panel of the Complaints, Appeals and Review Panel with respect to a request for decision or an appeal presented pursuant to Section 126 shall be in writing and shall set forth:
  - (a) The reasons for the decision;
  - (b) A summary statement of relevant facts;
  - (c) Whether the complaint or appeal is upheld in whole or in part; and
  - (d) To the extent the complaint or appeal is upheld, the corrective measures to be taken.
- (3) Decisions of a designated complaint and appeal panel may be circulated among the Complaints, Appeals and Review Panel members for advice and comment

before writing and release. If a decision of a complaint and appeal panel is not unanimous, the dissenting member must issue an opinion setting forth the grounds for his or her dissent.

- (4) If a decision of a designated complaint and appeal panel of the Complaints, Appeals and Review Panel upholds the complainant's contention that a violation of the Act or its regulations has occurred, the complaint and appeal panel may direct such of the following remedies as it determines to be appropriate in accordance with such decision:
- (a) Prohibit the relevant Entity, Concession Bid Evaluation Panel or InterMinisterial Concessions Committee from acting in an unauthorized manner or from following incorrect procedures or direct the relevant Entity, Concession Bid Evaluation Panel or the InterMinisterial Concessions Committee to follow the required procedures;
  - (b) Where necessary to provide relief from the effect of the violation, require the relevant Entity, Concession Bid Evaluation Panel or Inter-Ministerial Concession Committee to resume the procurement or Concession process from a point prior in the process to the point where the violation occurred;
  - (c) If deemed necessary to ensure compliance with the Act, require that the procurement or Concession proceedings be cancelled (the decision on whether and when to restart the procurement or Concession proceedings being the responsibility of the relevant Procuring or Concession Entity); and
  - (d) If there have been violations of Section 131 or 132 of this Act, recommend action by the Commission under Section 44 of this Act and/or prosecution by the Ministry of Justice.

Notwithstanding this subsection (4), a designated complaint and appeal panel of the Complaints, Review and Appeals Panel does not have the authority to issue a decision that directs the relevant Entity, Concession Bid Evaluation Panel or Inter-Ministerial Concessions Committee to award a contract or concession to any particular person.

- (5) Where a procurement contract or concession has already been entered into in accordance with this Act and is not at the time still subject to a suspension provided in Section 129, if a decision of a designated complaint and appeal panel of the Complaints, Appeals and Review Panel upholds the complainant's contention that a violation of the Act or its regulations has occurred, a complaint and appeal panel may, after a hearing, direct any or all of the remedies set forth in clauses (a) and (d) of subsection (4) of this Section.



- (6) In addition, where a procurement or concession contract has been entered into and is not subject to a suspension provided in Section 129 and if the designated complaint and appeal panel of the Complaints, Appeals and Review Panel has found that there has been fraud in obtaining a procurement contract subject to this Act or a Concession, the Commission (in the case of a procurement contract) or the Cabinet (in the case of a Concession) may, after a hearing on disputed facts by a designated complaint and appeal panel of the Complaints, Appeals and Review Panel terminate the contract or Concession and bring an action in the name of the Government to recover any payments made thereunder. Any such termination and action is in addition to damages or any other remedies available under the terms of the procurement or concession contract, this Act or other statutes, and a decision to refrain from exercise of the termination remedy is not a defense against any other remedy that may be sought.
- (7) The decisions of a designated complaint and appeal panel of the Complaints, Appeals and Review Panel are final and binding upon all parties, subject only to review by a court of competent jurisdiction. Any party to the matter decided may bring an action under the Administrative Procedure Act to enforce the decision and this right includes the right of a prevailing party to bring an action against the losing party to enforce the decision notwithstanding any definitions in the Administrative Procedure Act.

128. Publication of Complaints and Appeals and Their Disposition

- (1) On receipt by the Commission of (a) a copy of a complaint timely filed with a Procuring or Concession Entity under subsection (2) of Section 125 of this Act, or (b) a request for decision or appeal timely filed under subsection (2) of Section 126 of this Act, the Commission shall promptly cause a notice of such filing to be published within two (2) business days of its receipt. The notice must identify the procurement or concession process with respect to which the claim is made, the complainant and the relevant Procuring or Concession Entity, and must set forth a short statement of the complainant's claim.
- (2) The decision of a designated complaint and appeal panel of the Complaints, Appeals and Review Panel must be delivered to the parties and the Commission by electronic mail, facsimile or hand delivery as soon as it becomes available. The Commission also shall promptly place the decision on its website. Neither a complaint and appeal panel nor the Complaints, Appeals and Review Panel is authorized to release the decision to the public.
- (3) In addition, the Commission shall, through its website or otherwise, make available to the public a cumulative library of Complaints, Appeals and Review Panel decisions.

129. Suspension of Procurement Proceedings; Additional Regulations

(1) Except in the case of emergency, if a Procuring or Concession Entity receives a proper complaint under Section 125 of this Act within ten (10) days or the earlier of (i) publication of a notice of the intent to award a contract for procurement subject to subsection (1) of Section 31 of this Act or (ii) publication of the notice of award as provided in Section 37 of this Act for awards over the relevant Thresholds established by Regulations promulgated by the Commission (or if, on motion by the complainant, the Complaints, Appeals and Review Panel so orders), the relevant Entity shall immediately suspend the procurement or concession proceedings for thirty (30) days if:

(a) the complaint:

- i. Is not on its face frivolous,
- ii. Contains a declaration, supported by sworn assertions as to matters of fact, that on its face demonstrates that the bidder will suffer irreparable damage if the suspension is not granted, and
- iii. Sets forth a claim, supported by sworn assertions as to matters of fact, that on its face would demonstrate that the complainant has a substantial chance of obtaining relief under this Act when the matter is considered on the merits, and

(b) the grant of the suspension will not cause disproportionate harm to the Government or other bidders.

(2) The designated complaint and appeal panel of the Complaints, Appeals and Review Panel may, on motion by the complainant and after giving the relevant Entity an opportunity to be heard, suspend the proceedings for such additional period as is required for the resolution of the complaint in accordance with Sections 125 through 128 of this Act.

(3) The Commission may adopt regulations covering the procedures for handling complaints not inconsistent with this Act and the laws regulating administrative procedures for the time being in force.

**PART IX – GENERAL PROVISIONS**

130. Code of Conduct

The Commission is authorized to compile and publish a code of conduct for the purposes of this Act consistent with the requirements of Sections 131 and 132, taking into account the National Code of Conduct.

131. Conduct of Procuring Entities, Public Officers and Their Representatives

- (1) Any public officer involved in requisitioning, planning, preparing and conducting procurement or Concession proceedings and administering the implementation of contracts shall:
  - (a) Discharge his or her duties impartially so as to ensure fair competitive access to public procurement by bidders;
  - (b) Always act in the public interest and in accordance with the object and procedures set out in this Act;
  - (c) At all times avoid conflict of interest and the appearance of conflicts of interest in carrying out his or her duties and, if a conflict of interest should arise, he or she shall immediately disclose the conflict and excuse himself or herself from any further involvement in the matter.
  - (d) Not commit or abet Corrupt or Fraudulent Practices, coercion or collusion, including the solicitation or acceptance of any inducements;
  - (e) Keep confidential the information that comes into his or her possession relating to procurement proceedings and to bids, including bidders' proprietary information; and
  - (f) Not take up a position of authority in any private concern with which he or she undertook procurement activities for a period of three (3) years after departure from the Procuring Entity.
- (2) Officers or employees of a Procuring Entity, a Concession Entity, the InterMinisterial Concessions Committee, a Concession Bid Evaluation Panel or their Close Relatives, shall not participate as bidders in the procurement or Concessions proceedings in which it is a participant.
- (3) A Procuring Entity or Concession Entity shall reject a bid if the bidder offers, gives or agrees to give an inducement and shall promptly notify the rejection to the bidder concerned, the Commission and the relevant law enforcement authorities.
- (4) A Procuring Entity or Concession Entity shall not award a contract to a bidder who is responsible for preparing the solicitation, specifications or related bidding documents for the contract or supervising the execution of a contract, or to any affiliate of such a bidder, but this subsection shall not apply to bidders who jointly or severally are complying with their obligations under a turnkey or design and build contract.

- (5) A public officer shall recuse himself or herself from any participation in a procurement or Concession 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 or she is member of the board of directors, or has a financial interest.
- (6) Any recusal under subsection (5) of this Section shall be effected immediately upon the public officer becoming aware of the submission of such a bid (and the requirement under subsection (5) of this Section shall extend to the administration and management of any procurement or Concession contract awarded to such a bidder).
- (7) All public officers and other persons involved in procurement or Concession awards shall, in accordance with this Act and other applicable legislation:
  - (a) provide full cooperation and disclosure of their interest in any matter being considered by or on behalf of the Commission to the Commission, the Auditor-General and other authorities exercising monitoring and supervisory jurisdiction over public funds pursuant to the laws of Liberia; and
  - (b) not later than sixty (60) days from assuming office and thirty (30) days after leaving office, make a declaration of their assets and liabilities in such form as the Commission may determine and the declaration shall be updated annually as well as whenever there is a substantial change in such assets and liabilities.

132. Conduct of Bidders and Suppliers

- (1) A bidder or supplier shall at all times abide by their obligations under this Act, the regulations, contracts and other instruments applicable to their conduct and activities related to procurement or Concession processes.
- (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 or Concession proceedings. Bidders shall not engage in any activity, prior to or after bid submission, designed to deprive the Procuring Entity or Concession Entity of the benefits of free and open competition, including but not restricted to collusion in bidding for opportunities, price fixing and coercive, Corrupt or Fraudulent Practices.

- (3) Bidders and suppliers who engage in coercive, Corrupt or Fraudulent Practices in connection with public procurement are subject to prosecution pursuant to this Act and other relevant legislation for the time being in force.
- (4) It shall be an offence under this Act for a private sector person who is involved in a prefeasibility study or subsequently involved as an expert in a procurement or Concession process to have any interest in any form in any bidder for that procurement or Concession process or to be associated with any such bidder (or to have any interest in any person that will supply material inputs to the successful bidder) or to use any data or information obtained for private gain or to disclose same to unauthorized persons.

133. R ecords

Written records shall be kept of the bid opening and the records shall include the following:

- (a) Minutes of the meeting including a list of all present and who shall be entitled to receive copies of the minutes of the bid opening; and
- (b) A form showing the submission or otherwise of the core requirements of request for proposals by the bidders including:
  - i. Technical and financial offers – separate envelopes, ii. Bid security as required, and
  - iii. Duly signed Form of Bid by a person authorized to sign or having a power of attorney thereof.

134. R egulations, Guidelines, Manuals and Detailed I nstructions

- (1) The Commission may issue regulations consistent with this Act and explanatory instructions, guidelines and related documents consistent with this Act and the regulations issued pursuant thereto. Regulations of the Commission must be adopted and issued by the Commissioners. Instructions and guidelines may be adopted and issued by the Commissioners or by the Executive Director under authority delegated by the Commissioners. Regulations adopted by the Commissioners do not become effective until they have been submitted to the Cabinet for review and have either been approved by the Cabinet or have lain before the Cabinet for twenty-one (21) days without disapproval by the Cabinet.
- (2) Only the Commission is authorized to prepare and issue regulations in order to fulfill the objectives of this Act and to carry out the provisions of this Act, and any regulations of any other agency of the Government that contradict or are otherwise inconsistent with any of the provisions of this Act shall, to the extent of such contradiction or inconsistency, be void.

- (3) For the purposes of this Act, and in furtherance of this Section, the Commission may make regulations, guidelines and policies consistent with the requirements of this Act, including but not limited to:
  - (a) Standard solicitations, bidding documents, contracts and other formats to be used on a mandatory basis by Procuring Entities;
  - (b) The preparation and submission of bids;
  - (c) The provision for the manner of publication of notices for procurement contract awards;
  - (d) The Margin of Preference in the evaluation of bids;
  - (e) The preparation and submission of applications to prequalify for procurement contracts;
  - (f) Detailed procedures for selection of consultants;
  - (g) The procurement process where one Entity or a specially appointed agent is to procure items on behalf of another entity;
  - (h) Amend by regulation the thresholds for procurement methods, notices and award of contracts in the manner provided in Section 139;
  - (i) Sample formats of procurement plans; and
  - (j) Any other matter connected with public procurement.
- (4) The Commission shall seek to provide standard bidding documents for each method of procurement permitted under this Act that is in common use.:
- (5) Notwithstanding any other provision of this Act, if the Commission proposes to issue instructions, guidelines, regulations or related documents affecting the matters dealt with in Part VI of this Act, it must first obtain the prior approval of a committee comprised of the ex officio members of each Inter-Ministerial Concessions Committee.
- (6) The Commissioners shall establish procedures for the publication of documents and information on the Commission's website in a manner that makes them readily available to interested members of the public.

135. Modifications

- (1) Except in cases of extreme urgency, where there will be an aggregate increase in the original amount of any existing contract by more than ten (10) percent of the original contract price, a Procuring Entity shall request the appropriate

approving authority for variation, extension or modification of contract as may be required.

- (2) Subject to subsections (3) and (4) of this Section, nothing in this Act shall derogate from an Entity's right, considering the circumstances and with the prior approval of the Commission, to vary an existing contract which has commenced by the omission of part of the contract in order to save the country from further losses.
- (3) No variation or omission of an existing contract shall occur without the prior written approval of the Commission acting in consultation with the Minister of Finance and the sectoral Ministry.
- (4) The Commission and the Minister of Finance shall at all times base their decisions on the need to curtail losses which would otherwise be incurred if part or all of the remaining part of the contract is not omitted.
- (5) It shall be an offence under this Act for part of any contract to be varied by omission with a view towards awarding it to a person other than a person selected through a competitive bidding process for the omitted parts.

136. Request for Information by the Commission

Every Procuring Entity or Concession Entity shall provide the Commission in writing with such information as the Commission may require regarding the compliance with this Act of any procurement or Concession process engaged in by the Entity.

137. Statutory Audits

- (1) The Auditor-General shall conduct annual audits of the procurement and Concession activities of Entities and shall furnish copies of reports on the audits to the Commission.
- (2) The Auditor-General or an independent entity shall at the request of the Commission also carry out specific audits of the procurement or Concession activities of Entities and compliance by successful bidders with the procurement requirements of this Act and regulations made under this Act.
- (3) The statutory audit of procurement and Concession activities may be relied upon by the Commission to institute measures under Section 134 to improve the procurement or Concession process.

138. Offences Relating to Procurement

- (1) Any person who contravenes any provision of this Act commits an offence and a person convicted by a Court of a violation of this Act shall, upon summary

conviction, be liable to imprisonment for a period not exceeding five (5) years and or a fine not exceeding One Hundred Thousand United States Dollars (US\$100,000.00). Violation of provisions of this Act may also constitute grounds for debarment.

- (2) In addition to other offences under this Act, the following shall constitute offences under this Act:
  - (a) Entering or attempting to enter into a collusive agreement, whether enforceable or not, with any other bidder; and
  - (b) Directly or indirectly influencing in any manner or attempting to influence in any manner the procurement or Concession process to obtain an unfair advantage in the award of a procurement contract or concession applicant.
- (3) The Commission may recommend for prosecution any person who in the view of the Commission has contravened in any material respect the provisions of this Act.

#### 139. Review of Thresholds

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

#### 140. Public Access

The Executive Director of the Commission shall ensure that administrative rulings of the Complaints, Appeals and Review Panel and directives of the Commission that in either case are of general application under this Act are promptly made available to the public.

#### 141. Repeals and Amendments

- (1) By the enactment of this Act, the following laws and regulations are hereby repealed, amended or otherwise affected as set out in this Section.
  - (a) The following chapters of the Act adopting a new General Business Law are hereby repealed:
    - i. Chapter 2 – by the deletion of the following portion from subsection (2) of Section 2.1 of Chapter 2 of the Act Adopting A New General Business Law viz:

*“... nor to any person who operates under a concession previously or hereafter granted by the Liberian*



*Government to the extent that such concession permits monopolization of any field of trade, commerce, business or industry.”*

- ii. Chapter 8 – Importation of Cement is hereby repealed in its entirety.
  - (b) Chapter 80 of the Executive Law, Management and Disposals of Government Property is hereby repealed in its entirety.
  - (c) The Guidelines of the Liberia National Bidding Committee for Selection of Construction Contractors and Consulting Engineers/Architectural Firms is hereby repealed in its entirety.
  - (d) Articles IV (M), IV(N), IV(O), VI and X of the act creating the Liberia Rubber Development Authority are hereby repealed.
  - (e) The Act to Reinforce the Powers of the National Bidding Committee created towards the development and upliftment of Liberian Construction Industry is hereby repealed in its entirety.
  - (f) Section 52.2(e) of the Ministry of Rural Development Act is hereby repealed.
- (2) The following laws are hereby affected as follows:
- (a) Sub-Section 88.2(5) of the Act to Amend the Public Authorities Law to create the Liberia Water and Sewer Corporation in respect of the Corporation’s capacity to grant Concessions shall be exercised in accordance with the provisions of Part VI of this Act.
  - (b) An Act Creating The National Investment Commission Repealing The Act Of Legislature Creating The Liberian Development Corporation, Transferring The Assets Of The Liberian Development Corporation To The National Investment Commission, And Transferring The Functions Of The Concession And The Investment Commission And The Secretariat Of The Said Commission To The National Investment Commission; Approved September 1979 is hereby affected by the deletion of all matters relating to Concessions from that Act except as permitted to be performed by the National Investment Commission under the provisions of Part VI of this Act.
  - (c) The Mining Law is affected as follows:

- i. Notwithstanding any provisions under the Mining Law, its interpretation, operation and application in respect of Concessions, including without limitation the award of licenses and the entering into of mineral development agreements, shall be subject to the provisions of Part VI of this Act.
  - ii. The entitlement or eligibility to mineral rights under sections 4.1 and 4.2 of chapter 4 of the Mining Law, to the extent that it leads to the grant of a mining Concession, shall be subject to the provisions of Part VI of this Act except as otherwise expressly provided in this Act.
  - iii. The powers granted the Minister responsible for Mines, Lands and Energy under sections 21.2 and 21.3 of chapter 21 of the Mining Law shall be subject to the provisions of this Act and shall only be exercised in consultation with the Commission and any regulation issued by the Minister referred to in the Mining Law in respect of Concessions shall, to the extent of any inconsistency with this Act, be void.
  - iv. Any power granted any person, body or entity in respect of mining, exploration or the extraction of any natural resource shall be exercised in accordance with Part VI of this Act.
  - v. The Minerals Technical Committee provided for under Section 3.3 of the Mining Law shall play no role in the award of any Class A Mining License that constitutes the grant of a Concession under this Act or that is issued in connection with a Mineral Development Agreement that is required to be negotiated in accordance with the requirements of Part VI of this Act.
- (d) Chapter 51 of the Executive Law: The General Services Agency, Sections 51.2(a), (b) and (c); 51.4, 51.5 and 51.6 are hereby affected by the deletion of all matters relating to the procurement, disposal and sales, supplies of assets and materials of Government agencies and institutions, subject to the provisions of this Act.
- (e) Chapter 27 of the Executive Law: Ministry of Public Works, Section 27.2 subsections (a), (b) and (c) are hereby affected subject to the provisions of this Act in respect of all matters relating to the procurement of goods, works and services.
- (f) Sections 4(f), (g) and (i) of the Act Creating the Forestry Development Authority is hereby affected subject to the provisions of this Act.

142. Transitional Provisions and Previous Acts

- (1) Notwithstanding the amendment and restatement of the original Act by this Act, any contract entered into by an Entity pursuant to the original Act shall be valid and continue to be in force as if it was made or done under this Act.
- (2) If a Procuring Entity has issued a solicitation for a procurement prior to the effective date of this Act, the procurement will continue to be governed by the original Act, except that the Procuring Entity shall comply with requirements in this Act rather than the original Act for any approvals or notices applicable to actions not yet completed when this Act becomes effective
- (3) If requests for expressions of interest for a Concession were issued prior to the effective date of this Act, the Concession process will continue to be governed by the original Act except that the Procuring Entity shall comply with requirements in this Act rather than the original Act for any approvals or notices applicable to actions not yet completed when this Act becomes effective.
- (4) Subsections (1) through (3) of the original Act remain in effect, with each reference to “this Act” therein being deemed a reference to the original Act.
- (5) Prior to the issuance of a new regulation on thresholds by the Commission, the existing thresholds in force shall remain valid and continue to be enforced.

143. Coming into Force

- (1) This Act shall become effective when it has been passed by the Legislature, signed by the President and published in handbills.
- (2) Upon the coming into force of this Act, it shall supersede any other law, regulations, guidelines, directives and such other instruments guiding public procurement and Concessions, and any such law, regulations, guidelines or instrument of any form found to be inconsistent with any provision of this Act shall, to the extent of the inconsistency, be void.

ANY LAW TO THE CONTRARY NOTWITHSTANDING