

GOVERNMENT
of
SOUTHERN SUDAN

**INTERIM PUBLIC PROCUREMENT
AND
DISPOSAL REGULATIONS, 2006**

Approved by the Council of Ministers of the Southern Sudan Parliament on June 28, 2006

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CHAPTER ONE:

PRELIMINARY PROVISIONS .

1-Title and Commencement:-

These Regulations may be cited as “Interim Public Procurement and Disposal Regulations, 2006 and shall come into force on the date of signature.

2-Repeal and Saving:-

- (i) All the Regulations pertaining to Public Procurement and disposal of Public Assets in Southern Sudan made or issued prior to these Regulations are hereby repealed.
- (ii) Any orders issued or actions taken in accordance with the provisions repeal of the Regulations in Sub-Regulation (1) above shall continue in force till repealed or amended in accordance with the Provisions of these Interim Regulations.

3-Interpretations

In these Regulations unless the Context otherwise requires the following words and expressions shall carry the meanings assigned to them.

- (i) “Consultant” means a person, natural or corporate, dealing in the provision of consultancy services;
- (ii) “Consultancy services” means services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills to study, design and organize specific projects, advise clients, conduct training or transfer knowledge;
- (iii) “Currency” includes monetary unit of account;
- (iv) “Procuring Entity” means any Procuring Entity conducting public procurement under these Regulations;
- (v) “Goods” means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves;
- (vi) “Performance Security” means a security guaranteeing the performance of a contract;
- (vii) “Procurement Contract” means a contract between the Procuring Entity and a supplier, contractor or consultant resulting from procurement proceedings;

- (viii) “Public Funds” include funds from government budget, local authority or a parastatal organization or State owned enterprises, government foundations, government Trust funds, domestic loans and foreign loans, credits and grants, guaranteed by the government, foreign aid to the State, or revenue generated from the economic activities of public entities;
- (ix) “Security” means an amount to secure the fulfillment of any obligation of a contractor, supplier or consultant, which may take the form of a financial deposit, a surety bond, or an irrevocable letter of credit;
- (x) “Service” means the furnishing of labor, time, or effort not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance; and includes consulting, professional and technical services but does not include employment agreements or collective bargaining agreements;
- (xi) “Supplier or Contractor” means any potential party or the party to a procurement contract with the Procuring Entity;
- (xii) “Tenderer” means a person or a legally constituted firm who submits a tender in a procurement contract;
- (xiii) “Tender security” means security provided to the Procuring Entity to secure the fulfillment of an obligation under these Regulations and includes arrangements such as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits and bills of exchange;
- (xiv) “Technical Services” means services, which are tendered and contracted on the basis of performance of a measurable physical output such as drilling, mapping, aerial photography, surveys, seismic investigations, maintenance of facilities or plant and similar operations;
- (xv) “User Department” means the Ministry, Department, Agency or such other institution that has budget to pay for the goods, works or services to be procured; and
- (xvi) “Works” means work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembling, installation of plants, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

4-OBJECTIVE:

- (1) The Objective of the *INTERIM PUBLIC PROCUREMENT AND DISPOSAL REGULATIONS* is to lay down procedures that would be followed by all Procuring Entities in processing public contracts and ensure that
 - (I). Public procurement is conducted in a transparent and efficient manner so as to achieve value for money;
 - (II). Contracts are awarded in a structured and collective manner and not in a discretionary manner;

- (III). All eligible tenders are given equal opportunity to provide goods, works and services via public contracts;
- (IV). Public contracts are awarded in accordance with requirements of procuring entity (budget holders) and allocated budget;
- (V). Public procurement is monitored and action taken against public officials on the one part, and on the other part, suppliers and contractors and consultants that do not comply with these public procurement regulations;
- (VI). Any stakeholder , including civil society and private sector, not satisfied with the way public procurement is conducted and/or contracts are awarded and managed can appeal for redress;
- (VII). Public confidence in the Government is enhanced; and
- (VIII). Public stores and equipment are disposed off in a transparent and rational manner.

(2). The main goal of the Public Procurement Reform is to put in place a comprehensive public procurement legislation that would, in addition to meeting the above objectives, include but not limited to public procurement policy, oversight, decentralization, institutional and organizational arrangements, mechanisms for dealing with complaints and appeals, capacity building and training and review processes. Future procurement legislation will be consistent with international standards and will provide for adequate public disclosure to enable the civil society and private sector fully participate in all aspects of public procurement. Such legislation will increase the confidence of foreign investors and enable Donors accept use of Southern Sudan public procurement systems. These *INTERIM PUBLIC PROCUREMENT AND DISPOSAL REGULATIONS* are a forerunner of such future legislation.

(3). In order to enhance the principles of economy, transparency and equal opportunity to tenders, all the contracts should, to the extent possible, be awarded on the basis of competition. The preferred procurement method will be “Open Competitive Tendering” for goods and works and “Quality and Cost Based Selection” for consultancy services.

(4). All Procurement will be processed by the Procurement Unit of the Ministry of Finance & Economic Planning. No Ministry, Department or other Government Agency shall undertake procurement unless it is designated as a Procuring Entity. The Minister of Finance will revise the list from time to time to accommodate newly approved Procuring Entities and to remove any Procuring Entity as the case may be. A Procurement Entity may delegate procurement responsibility to another Procuring Entity only with a written authority of the Minister of Finance & Economic Planning of such delegation. Where a Procuring Entity has been delegated responsibility for procurement, it must comply with all the Rules and Regulations described herein.

(5). The Interim Public Procurement and Disposal Regulations, 2006 supersede any existing procedures on processing contracts.

5-SCOPE AND APPLICATION

- (1) These regulations shall be followed for the procurement of goods, works and services, financed in whole or in part from public funds except for military hardware or in cases where the Government decides that it is in the national interest to use different procedure.
- (2) These Regulations pertain to description of requirements, invitation to tenders, preparation and award of contracts and the phases of contract management, including disposal of public assets.
- (3) These Regulations shall be followed by all the Procuring Entities currently designated responsibility for public procurement at all levels of Government, in Southern Sudan and any other Procuring Entity as may be established by the Minister of Finance and Economic Planning from time to time.
- (4) The Government of Southern Sudan (GoSS) shall establish a Policy Procurement Unit within the Ministry of finance & Economic Planning, under this Regulation. The Unit shall enhance soundness of public procurement management by establishing standards, monitoring of public procurement processes, and advising the Government on appropriate actions to be taken in cases of non-compliance, fraud and corruption and how to deal with complaints.

CHAPTER TWO:

PPROCUREMENT RULES

6-Procurement Plan and Budget

(1)A Procuring Entity shall prepare a Procurement Plan to support every program of a User Ministry, Department or Agency. The Procurement Plan shall indicate:

- (a) Contract packages,
- (b) Estimated cost for each package,
- (c) The procurement method, and
- (d) Processing steps and times.

(2). Prior to commencing procurement proceeding, a Procuring Entity shall furnish the user with the Procurement Plan, for user's information and comments if any. Such a plan must conform with the allocated Budget cycle.

(3). No procurement proceedings shall commence unless the Procuring Entity and the Ministry of Finance & Economic Planning have confirmed availability of Budget. Similarly no contract shall be signed until confirmation of Budget.

(4). Each Procuring Entity shall establish a Procurement Unit with qualified procurement personnel to undertake procurement functions on behalf of the Procuring Entity.

(5). Each Procuring Entity shall establish a Procurement Committee consisting of not less than five senior staff of the Procuring Entity. The Head of Finance shall be the Chair Person of the Committee and the Head of Procurement Unit shall be its secretary. In the first instance, the

Procurement Committee to be established in the Ministry of Finance & Economic Planning and will be headed by Under Secretary of Finance. Subject to the thresholds described in the Schedule, the Procurement Committee shall approve all procurement plans and consider each tender evaluation report and make a decision on proposed contract award prepared by the Tender Evaluation Panel. The Head of Procuring Entity shall approve all contracts below the threshold described in the Schedule without reference to Procurement Committee. The Head of Procuring Entity and members of the Procurement Committee shall be accountable and responsible for compliance with these Regulations in the award of contracts.

(6). The Procuring Committee or Procurement Unit shall form a Tender Evaluation Panel for each tender with the required expertise to evaluate tenders and assist the Procurement Committee in its work. In the performance of its functions, a Tender Evaluation Panel shall proceed according to the predetermined and published evaluation criteria specified in the tender documents for that particular contract.

(7). In the performance of its functions, a Procurement Committee shall ensure that at every stage of the procurement activity in these Regulations have been followed. The main objective of a Tender Evaluation Panel and a Procurement Committee is to ensure a structured and collective decision making in award of contracts. No contract shall be awarded without an appropriate evaluation report and approval.

(8). The Procuring Entity shall submit an update of the Procurement Plan to the User on a quarterly basis to enable the User plan for service delivery linked to such procurement. In case the User is also designated a Procuring Entity, the Procurement Unit shall submit the Procurement Plan to the Procurement Committee. In case of long range activities, such as ICT/ICB for goods and works and QCBS for consultancy assignments, the procurement plan may cover periods of up to one year from the date of the start of the proceedings ..

(9). A procurement order shall not be divided into parts to lower the value of a procurement contract to avoid these application of the regulations and approval thresholds indicated in the Schedule unless there are justified reasons for that

7- Qualification of Tenderers.

(1)- A tenderer in public procurement shall:

- (i) Possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, reliability and reputation, experience in the procurement object, and personnel to perform a procurement contract;
- (ii) Have the legal capacity to enter into a contract;
- (iii) Be solvent, not be in receivership, bankrupt or in the process of being wound up and not have its business activities suspended.
- (iv) Have fulfilled his/her obligations to pay taxes and social security contributions and any compensation due for damages caused to property or third party;
- (v) Have Directors or Officers who have not in any country been convicted of any criminal offence relating to their professional conduct or making false statements

or misrepresentations as to their qualifications to enter into a procurement contract, within a period of five years preceding the commencement of the procurement proceedings; and

- (vi) Meet such other criteria, as the Procuring Entity considers appropriate.
- (2). The Procuring Entity may require tenderers to provide appropriate documentary evidence or other information that it considers useful to satisfy that they are qualified in accordance with the criteria referred to in Sub- Regulation 7 (1) above
- (3). Any requirement established pursuant to this Regulation stated in the tender documents or other documents for invitation of proposals, shall apply equally to the tenderers.
- (4). The Procuring Entity shall evaluate the qualifications of tenderers in accordance with the criteria and regulations stated in the tender documents.
- (5). The Procuring Entity shall disqualify tenderers who submit a document containing false information for purposes of qualification.
- (6). The Procuring Entity may disqualify a Tender if it finds at any time that the information submitted concerning the qualifications of the tender was materially inaccurate or incomplete.

8-Pre-qualification Proceedings

- (i). A Procuring Entity may engage in pre-qualification proceedings to identify tenderers who are qualified prior to the submission of tenders. Pre-qualification is required for large works contracts and occasionally for complex contracts for goods. Tenderers for pre-qualification proceedings shall meet the qualification criteria of the Procuring Entity as set out in pre-qualification documents made available to each supplier or contractor that requests them.
- (ii). In order to ensure that pre-qualification is not misused, the decision on each case for pre-qualification shall be cleared with the Procurement Policy Unit of the Ministry of Finance & Economic Planning.
- (iii). The Procuring Entity shall make a decision with respect to the qualification of each supplier or contractor submitting an application to pre-qualify and in reaching that decision shall apply only the criteria set out in the pre-qualification documents.
- (iv). All Tenders that meet the criteria specified in the pre-qualification documents shall be invited to submit tenders.
- (v). The Procuring Entity shall promptly notify each supplier or contractor submitting an application to pre-qualify of whether or not he/she has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers or contractors who have been pre-qualified.
- (vi). The Procuring Entity shall upon request communicate to suppliers or contractors who have not been pre-qualified, the grounds for disqualification but the Procuring Entity is not required to specify the evidence or give the reasons for its findings.

(vii). The Procuring Entity may require a supplier or contractor who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier or contractor. The Procuring Entity shall disqualify any supplier or contractor who fails to demonstrate its qualification again if requested to do so.

9-Form of Communication

Communication between Procuring Entities and suppliers, contractors and consultants shall be in writing and communications in any other form shall be referred to and confirmed in writing.

10-Record of Procurement Proceedings

- (1) A Procuring Entity shall maintain a record of the Procurement Proceedings containing the following information
 - (i) A brief description of the goods, works or services to be procured, or of the procurement need for which the Procuring Entity invited proposals or offers;
 - (ii) The names and addresses of suppliers or contractors that submitted tenders, proposals, offers or quotations, and the name and address of the supplier or Contractor with whom the procurement contract is entered;
 - (iii) Information relating to the qualifications, or lack of qualifications of suppliers or contractors that submitted tenders, proposals, offers or quotations;
 - (iv) The price, or the basis for determining the price and a summary of the other principal terms and conditions of each tender, proposal, offer or quotation and of the procurement contract if these are known to the Procuring Entity;
 - (v) A summary of the evaluation and comparison of tenders or proposals, offers or quotations;
 - (vi) If the tenders, proposals, offers or quotations were rejected a statement to that effect and the grounds for the rejection;
 - (vii) If, in procurement proceedings involving methods of procurement other than tendering, those proceedings did not result in procurement contract, a statement to that effect and the reasons;
 - (viii) A statement of the grounds and circumstances upon which the Procuring Entity relied to justify the selection of the method of procurement used;
 - (ix) In procurement proceedings involving direct invitation of proposals for services, a statement of the grounds and circumstances on which the Procuring Entity relied to justify the direct invitation;
 - (x) A summary of any requests for clarification of the pre-qualification or invitation documents, the responses received as well as a summary of any modification of the documents; and

- (xi) A record of any complaints received from suppliers, contractors or consultants and the responses received.
2. The portion of the record referred to in Sub Regulation (1) above shall, on request, be made available to any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.
 3. The portion of the record referred to in Regulation 9 above shall, on request, be made available to suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for pre-qualification, after a tender, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.
 4. The Procuring Entity shall not be liable to suppliers, contractors or consultants for damages owing solely to a failure to maintain a record of the procurement proceedings in accordance with these Regulations.
 5. Records and documents maintained by Procuring Entities on procurement shall upon request be made available for inspection by authorized officials of the Procurement Policy Unit and the Audit Service. Where Donor funds have been used for the procurement, Donor officials shall also have access upon request to procurement files pertaining to their funds for the purpose of audit and review.

11-Rejection of Tenders, Proposals and Quotations

- (1). A Procuring Entity may reject tenders, proposals and quotations at any time prior to acceptance on economic grounds if the grounds for the rejection are specified in the tender documents or in the request for proposals or quotations.
- (2). To avoid vexatious rejection of tenders or proposals i.e., rejecting all tenders if a preferred tenderer is not winning, for contracts of procurement by open competitive tendering, the Procuring Entity shall in the first place report the matter to the Procurement Policy Unit for its information and comments. If the Procurement Policy Unit has any objections to such rejection, it shall, within seven days of receipt of such communication, inform the Procuring Entity of the objection. The Procuring Entity shall not proceed till any objection by the Procurement Policy Unit is resolved.
- (3). On resolution of any objection by the Procurement Policy Unit, the Procuring Entity shall communicate to the tenderers the grounds for rejection but justification for the rejection is not required. The Procuring Entity shall not be liable to the tenderers for such rejection of all tenders.
- (4). Notice of the rejection shall be served upon the tenderers within two days from the date the Procuring Entity decides to discontinue with the tender process.
- (5). If the decision to reject tenders is taken before the closing date, tenders received shall be returned unopened to the tenderers.

- (6). the rejection of the tender, proposal, offer or quotation with reasons shall be recorded in the procurement proceedings and promptly communicated without reasons to the supplier or contractor.

12-Entry into Force of the Procurement Contract

The manner of entry into force of the procurement contract shall be notified to the suppliers or contractors at the time of request of proposals, offers or quotations.

13-Inducements from Suppliers, Contractors and Consultants

A Procuring Entity shall reject a tender, proposal, offer or quotation if the supplier, contractor or consultant that submitted it offers, gives or agrees to give an inducement/bribe, directly or indirectly, to any current or former officer or employee of the Procuring Entity or other governmental authority.

14-Description of Goods, Works or Services

- (1). Any specifications, testing and test methods, packaging, marketing, labeling or conformity certifications, symbols and terminology description of services that **create obstacles to participation** by suppliers or contractors in procurement proceedings shall not be included or used in pre-qualification documents, invitation documents or other documents for invitation of proposals, offers or quotations.
- (2). Description of goods, works or services shall be based on objective technical and quality characteristics of the goods, works or services to be procured and there shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer, unless a precise or intelligible way of describing the characteristics of the goods, works or services to be procured does not exist, in which case, the words “or equivalent” shall be included.
- (3). Standardized trade terms, such as those stated in the INCOTERMS, shall be used in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings, and in formulating other relevant aspects of the pre-qualification documents, invitation of proposals, offers or quotations.

15-Language

The pre-qualification documents, invitation documents and other documents for invitation of proposals, offers or quotations shall be in English language.

CHAPTER THREE

METHOD OF PROCURMENT FOR GOODS AND WORKS

16-Open Competitive Tendering

(1). A Procuring Entity shall procure goods, services or works by Open Competitive Tendering except as provided otherwise in these procedures. Open Competitive Tendering shall be National Competitive Tendering (NCT) or International Competitive Tendering (ICT) as provided herein under tendering Regulations.

(2). If the Procuring Entity uses the method of procurement other than Open Competitive Tendering, it shall include in the record required a statement of the grounds and circumstances on which it relied to justify the use of that method.

17-Two-Stage Tendering

3. A Procuring Entity shall engage in procurement by Two-Stage Tendering in the case of complex contracts where it is not feasible for the Procuring Entity to formulate detailed specifications for the goods or works, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs; or where the character of the goods or works are subject to rapid technological advances.

18-Procedure for Two-Stage Tendering

(1). The invitation documents for the Two Stage Tendering:

- (a) Shall call upon suppliers or contractors to submit, in the first stage of two-Stage Tendering proceedings, initial tenders which contain their proposals without a tender price;
- (b) May solicit proposals that relate to technical, quality or other characteristics of the goods or works as well as contractual terms and conditions of supply and may stipulate the professional and technical competence and qualifications of the suppliers or contractors.

(2). A Procuring Entity may, in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected.

(3). In the second stage of the Two tendering proceedings the Procuring Entity shall invite Suppliers or Contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications.

(4). The final tenders shall be evaluated and compared in order to ascertain the successful tender as defined in Chapter Four of these Regulations..

19-Selective Tendering

Except as provided for use of Selective Tendering for contracts estimated to cost lower than the threshold for Open Competitive Tendering, a Procuring Entity may for reasons of economy and efficiency and subject to the approval of the Procurement Policy Unit, engage in procurement by means of Selective Tendering:

- (a) If goods or works are available only from a limited number of suppliers or contractors; or
- (b) If the time and cost required in examining and evaluating a large number of tenders is disproportionate to the value of the goods, works or services to be procured;
- (c) In the case of an emergency, where a limited number of tenderers could be trusted with fast execution.

20-Procedure for Selective Tendering

(1) Where a Procuring Entity engages in Selective Tendering on the grounds referred to in Regulation 19 above, it shall select in a non discriminatory manner, a number of Suppliers or contractors capable of supplying the goods, works or services to ensure effective competition, but in any case not less than three.

(2) The provisions for tendering Regulations in Chapter Four shall apply to selective tendering proceedings.

21-Request for Quotations

A Procuring Entity may engage in procurement by requesting quotations, for readily available goods whose estimated value of the procurement contract is less than the amount shown in the schedule.

22-Single-Source Procurement

A Procuring Entity may engage in Single-Source Procurement with the approval of the Procurement Policy Unit in cases where:

- (a) goods, works or services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute is available;
- (b) there is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseen circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the Procuring Entity;

- (c) owing to a catastrophic event, there is an urgent need for the goods, works or technical services, making it impractical to use other methods of procurement because of the time involved in using those methods;
- (d) A Procuring Entity which has procured goods, equipment, technology or services from a Supplier or Contractor, determines that:-
 - (i) Additional supplies need to be procured from that supplier or contractor because of standardization;
 - (ii) there is a need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the Procuring Entity;
 - (iii) the limited size of the proposed procurement in relation to the original procurement provides justification;
 - (iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision;
 - (v) where the Procuring Entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or
 - (vi) Where the Procuring Entity determines concerns of national security, and determines that single-source procurement is the most appropriate method of procurement.

23-Procedure for Single-Source Procurement

The Procuring Entity may procure the goods, works or technical services by inviting a proposal or price quotation from a single supplier or contractor based on stated technical specifications and preliminary delivery schedule.

24- Procedure for Request for Quotations

- (1). The Procuring Entity shall request for quotations from as many suppliers or contractors as practicable, but from at least three. The request for quotations shall be in writing and the quotations shall be submitted and opened at the same time.
- (2) Each supplier or contractor from whom a quotation is requested shall be informed of the place, time and method of submission of quotations and whether any elements, apart from the charges for the goods or services themselves, such as transportation and insurance charges, customs duties and taxes, are to be included in the quotations or not..
- (3). Each supplier or contractor may only give one price quotation and may not change this quotation, once the quotations are submitted and opened. No negotiations shall take place

between the Procuring Entity and a supplier with respect to a quotation submitted by the supplier.

CHAPTER FOUR

TENDERING PROCEDURES (GOODS AND WORKS)

25-National Competitive Tendering

- (1). In procurement proceedings in which the Procuring Entity decides that only domestic suppliers or contractors are likely to be interested in submitting tenders, the Procuring Entity may employ National Competitive Tendering Procedures.
- (2). The Procuring Entity is not required to employ the National Competitive Procedures if the estimated contract amount is lower than the value threshold specified in the Schedule. Foreign firms wishing to bid under National Competitive Tendering shall be allowed to tender under conditions stated in Sub Regulation (3), below.
- (3). The Procuring Entity may stipulate in the tender documents that tenderers must quote only in the local currency and payments must be made wholly in the local currency.
- (4). Tenderers shall be given adequate time for submission of tenders not less than 4 weeks from the date of notice in order to allow sufficient time for the tenderers, to prepare and submit tenders.
- (5). The invitation to tender or invitation to pre-qualify shall be published in at least one newspaper of wide national circulation in English or Arabic. The invitation may also be published in the newspapers of other national languages, national bulletins or websites, in a relevant trade publication or technical or professional journal of wide national circulation to attract competition.

26-International Competitive Tendering (ICT)

- (1). International Competitive Tendering shall be used for all large contracts above the threshold specified in the Schedule and whenever effective competition cannot be obtained unless foreign firms are invited to tender. At least four weeks for goods and six weeks for works shall be allowed for submission of tenders in order to allow sufficient time for the tenderers to prepare and submit the tenders.
- (2). Technical specifications shall, be based on international standards or standards widely used in international trade and compatible with national requirements;
- (3). Tenderers are permitted to express their tenders, 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. General and special conditions of contract shall be of a type generally used in international trade such as those included in the World Bank Standard Bid documents for International Competitive Bidding.

(4). In order to attract adequate foreign competition, the invitation to tender or invitation to pre-qualify shall be published in at least one newspaper of wide national circulation. The invitation may also be published in a newspaper of wide international circulation, websites, in a relevant trade publication or technical or professional journal of wide international circulation or in the United Nations Development Business (UNDB) Magazine.

27-Contents of Invitation to Tender and Invitation to Pre-qualify

(1). The invitation to tender shall contain the following information:

- (a) the name and address of the Procuring Entity;
- (b) the nature and quantity of the goods to be supplied, the nature and location of the works to be effected or the nature of the technical services and the location where they are to be provided;
- (c) the desired or required time for the supply of the goods or for the completion of the works, or the timetable for the provision of the services;
- (d) the criteria and procedures to be used to evaluate the qualifications of suppliers or contractors;
- (e) the means of obtaining the invitation documents and the place from where they may be obtained;
- (f) the price, if any, charged by the Procuring Entity for the invitation documents;
- (g) the currency and means of payment for the invitation documents;
- (h) the language or languages in which the invitation documents are available;
- (i) the place and deadline for the submission of tenders;
- (j) the place, date and time for the opening of tenders; and
- (k) Any other information considered relevant.

(2) An invitation to pre-qualify shall contain the information referred to in Sub Regulation (a) to (e), (g), (h) and (k) above, from the date of notice above. The time allowed for the preparation of pre-qualification applications shall not be less than four weeks.

28-Provision of Tender Documents

(1). The Procuring Entity shall provide the tender documents to suppliers or contractors in accordance with the procedures and requirements specified in the invitation to tender. No tenderer shall be denied the tender documents any time prior to the deadline date and time for submission of tenders.

(2). If pre-qualification proceedings have taken place, the Procuring Entity shall provide a set of tender documents to each supplier or contractor that has been pre-qualified on payment of price charged for those documents.

(3). The charges of the Procuring Entity for the tender documents shall reflect the cost of printing them and providing them to suppliers or contractors.

29-Contents of Tender Documents and use of Standard Tendering Documents

(1). Procuring Entities shall use the appropriate standard tender documents. In case adequate national standard documents are not available, alternative good quality tender documents may be used for the purpose such as the World Bank's Standard Bidding Documents **These documents incorporate the best international practices, and may be used, with appropriate amendments, for national needs.** (Electronic copies obtainable free of charge from World Bank offices or from the World Bank's external website <http://www.worldbank.org/procure>).

(2). The tender documents shall include,

- (a) the criteria and procedures for the evaluation of the qualifications of suppliers or contractors;
- (b) the requirements on additional documentary evidence or other information that is to be submitted by suppliers or contractors to demonstrate their qualifications;
- (c) the nature and required technical and quality characteristics, in relation to the goods, works or technical services to be procured including, but not limited to,
 - (i) Technical specifications, plans, drawings and designs,
 - (ii) the quantity of the goods;
 - (iii) any incidental services to be performed;
 - (iv) the location where the works is to be effected or the services are to be provided; and
 - (v) the desired or required time, if any when the goods are to be delivered, the construction is to be effected or the services are to be rendered;
- (d) the criteria to be used by the Procuring Entity to determine the successful tender and any criteria other than price to be used and the factors apart from price to be used to determine the lowest evaluated tender, shall, to the extent practicable, be expressed in monetary terms;
- (e) The terms and conditions of the procurement contract, as known to the Procuring Entity, and the contract form to be signed by the parties;
- (f) a statement that the characteristics of the goods, works or services, contractual terms and conditions or other requirements set out in the

invitation documents are permitted, and a description of the manner in which alternative tenders are to be evaluated and compared;

- (g) a description of the portion(s), for which tenders may be submitted where suppliers or contractors are permitted to submit tenders for only a portion of the goods, works or services to be procured;
- (h) the manner in which the tender price is to be formulated and expressed, including a statement whether the price covers elements apart from the goods, works or services, such as applicable transportation and insurance charges, customs duties and taxes;
- (i) the currency or currencies in which the tender price is to be formulated and expressed;
- (j) the language or languages in which tenders are to be prepared;
- (k) any requirements of
 - (i) the Procuring Entity connected with the issue, nature, form, amount and other principal terms and conditions of tender security to be provided by suppliers or contractors submitting tenders; and
 - (ii) Security for the performance of the procurement contract to be provided by a supplier or contractor that enters into the procurement contract, including securities such as labour and materials bonds;
- (m) A statement that a supplier or contractor can modify or withdraw his/her Tender prior to the deadline for the submission of tenders without forfeiting his/her tender security;
- (n) The manner, place and deadline for the submission of tenders;
- (o) The means by which suppliers or contractors may seek clarification of the invitation documents and a statement whether the Procuring Entity intends to convene a pre-tender meeting of suppliers or contractors;
- (p) The duration within which tenders will be in effect;
- (q) The place, date and time for the opening of tenders;
- (r) The procedures to be followed for opening and examining the tenders;
- (s) the currency that will be used to evaluate and compare tenders and either the exchange rate that will be used for the conversion of tenders into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (t) the name, functional title and address of one or more officers or employees of the Procuring Entity who are authorized to communicate directly with and to receive communications directly from a supplier or

contractor in connection with the procurement proceedings, without the intervention of an intermediary;

- (u) Any commitments to be made by the supplier or contractor outside the procurement contract, such as commitments relating to counter trade or to the transfer of technology;
- (v) A statement of the right to seek review of an unlawful act or decision of, or procedure followed by the Procuring Entity in relation to the procurement proceedings;
- (w) A statement to the effect that the Procuring Entity reserves the right to reject any or all the tenders;
- (x) any formalities that will be required once a tender has been accepted, for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by the relevant Government authority and the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval; and
- (y) Any other requirements established by the Procuring Entity under these procedures relating to the preparation and submission of tenders and to other aspects of the procurement proceedings.

30-Clarification and Modification of Tender Documents

(1). A supplier or contractor may request promptly clarification of the tender documents from the Procuring Entity. The Procuring Entity shall respond to a request by a supplier or contractor within a reasonable time before the deadline for the submission of tenders to enable the supplier or contractor make a timely submission of tender and shall without disclosing the source of the request communicate the clarification to the suppliers or contractors provided with the invitation documents.

(2). The Procuring Entity may modify the invitation documents by issuing an addendum prior to the deadline for submission of tenders. The addendum shall be communicated promptly to the suppliers or contractors provided with the invitation documents by the Procuring Entity and shall be binding on those suppliers or contractors. The Procuring Entity will also consider whether to extend the deadline for submission of tenders, in case of major modification of the tender documents.

(3). The Procuring Entity may convene a pre-tender meeting of suppliers and contractors to clarify and modify tender documents. The Procuring Entity shall prepare minutes of the meeting and any clarification given to prospective tenderers without identifying the source of the request.

(4). The minutes shall be sent promptly to the suppliers and contractors who obtained the tender documents by the Procuring Entity to enable them take the minutes into account in the preparation of their tenders.

31-Language of Tenders

Tenders shall be formulated and submitted in English language. Supporting documents and printed literature furnished by the tenderers may be submitted in another language provided that they are accompanied by an accurate translation of the relevant passages in English. Where there is a translation, the English language translation shall be used to interpret the tender.

32-Submission of Tenders

- (1). Procuring Entity shall, fix the place and a specific date and time as the deadline for the submission of tenders. The Procuring Entity may, prior to the expiry of deadline for the submission of tenders, extend the deadline.
- (2). If a Procuring Entity issues clarification or modification documents or if a meeting of suppliers or contractors is held, the Procuring Entity shall prior to the expiry of the deadline for the submission of tenders extend the deadline to give the suppliers and contractors reasonable time to take the clarifications or modifications, or the minutes of the meeting into account in their tenders.
- (3). The Procuring Entity shall, at least ten days before the tender, give notice of the extension of the deadline by a publication in the same media used to publish invitation for tenders, fax, e-mail or any other expedited written means of communication to each supplier or contractor to whom the Procuring Entity provided the tender documents or to any new prospective tenderers.
- (4). A tender shall be in writing; it must be signed and be submitted in a sealed envelope.
- (5). A tender may alternatively be submitted in any other form, for example electronically, as may be specified in the tender documents that provides a record of the contents of the tender and a similar degree of authenticity, security and confidentiality.
- (6). The Procuring Entity shall provide the supplier or contractor with a receipt on request showing the date and time when his/her tender was received.
- (7). A tender received by the Procuring Entity after the deadline for the submission of tenders shall not be opened and shall be returned to the supplier or contractor, which submitted it.

33-Period of Validity; Modification and Withdrawal of Tenders

- (1). The period of validity, for tender shall be the period specified in the tender documents.
- (2). A Procuring Entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.
- (3). A supplier or contractor may refuse the request without forfeiting his/her tender security and the effectiveness of his/her tender will terminate upon the expiry of the unextended period of effectiveness.
- (4). A supplier or contractor that agrees to an extension of the period of effectiveness of his/her tenders shall extend or procure an extension of the period of tender securities provided

by it or provide new tender securities to cover the extended period of effectiveness of his/her tender.

(5). A supplier or contractor whose tender security is not extended or that has not provided a new tender security is considered to have refused the request to extend the period of effectiveness of his /her tender.

(6). A supplier or contractor may modify or withdraw his/her tender prior to the deadline for the submission of tenders without forfeiting his /her tender security unless otherwise stipulated in the tender documents.

(7). The modification or notice of withdrawal is effective if the Procuring Entity receives it before the deadline for the submission of tenders.

34-Tender Security

(1). The Procuring Entity shall specify the principal terms and conditions of the required tender security in the invitation documents.

(2). When the Procuring Entity requires suppliers or contractors submitting tenders to provide tender security,

- (a) the requirement shall apply to each supplier or contractor;
- (b) the invitation documents shall stipulate that the issuer and confirmer of the tender security are acceptable to the Procuring Entity;
- (c) notwithstanding Sub Regulation 2 (b) above, a tender security shall not be rejected by the Procuring Entity on the grounds that the tender security was not issued by an issuer in the country, if the tender security and the issuer otherwise conform to requirements in the invitation documents;
- (d) a supplier or contractor may request the Procuring Entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a tender security before submitting a tender and the Procuring Entity shall respond promptly to the request;
- (e) Confirmation of the acceptability of a proposed issuer or of a proposed confirmer does not preclude the Procuring Entity from rejecting the tender security on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy.

(3). Any requirement on tender security that refers directly or indirectly to conduct by the supplier or contractor submitting the tender may only relate to:

- (a) withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline if stipulated in the invitation documents;
- (b) failure to sign the procurement contract if required by the Procuring Entity to do so;

- (c) Failure to provide the required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender documents.

(4). The Procuring Entity shall not make a claim to the amount of the tender security and shall promptly return or procure the return of the tender security document after whichever of the following occurs first:-

- (a) expiry of the tender security;
- (b) entry into force of a procurement contract and the provision of security for the performance of the contract, if the performance security is required by the invitation documents;
- (c) termination of the tendering proceedings without the entry into force of a procurement contract; or
- (d) withdrawal of the tender prior to the deadline for the submission of tenders.

35-Opening of Tenders

(1). Tenders shall be opened at the time specified in the tender documents as the deadline for the submission of tenders or at the deadline specified in any extension of the deadline; and at the place and in accordance with the procedures specified in the tender documents.

(2). The time for opening of the tenders shall be the same as the deadline for receipt of tenders or promptly after that deadline. All late tenders shall be rejected and shall be returned to their respective tenderers unopened.

(3). A supplier or contractor who has submitted a tender or a representative of that supplier or contractor shall be permitted by the Procuring Entity to be present at the opening of tenders.

(4). The name and address of each supplier or contractor whose tender is opened and the tender price shall be announced to those present at the opening of tenders and communicated on request to a supplier or contractor who has submitted a tender but is not present or represented at the opening of the tenders. No declaration of rejection of any tender shall be made at the tender opening.

(5). The tender price and any discount offered by the tenderers and included in the tender shall be recorded immediately in the record of tender proceedings.

36-Examination of Tenders

(1). The Procuring Entity may ask a supplier or a contractor for clarification of his/her tender in order to assist in the examination, evaluation and comparison of their tenders. No changes of the substance in the tender, including modification of the tender price and changes aimed at making an unresponsive tender responsive, shall not be sought, offered or permitted.

(2). The Procuring Entity shall correct purely arithmetical errors that are discovered during the examination of tenders. The Procuring Entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.

37-Responsiveness of Tenders

(1). A Procuring Entity may regard a tender as responsive only if it conforms to the requirements set out in the tender invitation documents. The Procuring Entity may however, regard a tender as responsive if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the invitation documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender.

(2). The deviations shall be quantified, to the extent possible, and shall be taken into account in the evaluation and comparison of tender.

(3). A Procuring Entity shall not accept a tender

(i) if the supplier or contractor that submitted the tender is not qualified;

(ii) If the supplier or contractor that submitted the tender does not accept a correction of an arithmetical error made under Sub-Regulation 1 above;

(iii) If the tender is not responsive;

(iv) In the circumstances referred to in Regulation 13 with respect to inducements from suppliers, contractors and consultants.

38-Evaluation of Tenders

(1). The Procuring Entity shall evaluate and compare the tenders that have been accepted in order to ascertain the successful tender in accordance with the procedures and criteria set out in the invitation documents.

(2). the successful tender shall be the tender with the lowest evaluated tender price. The lowest evaluated tender ascertained on the basis of criteria specified in the invitation documents. The criteria shall be objective and quantifiable and given relative weight in the evaluation procedure or expressed in monetary terms where practicable, if the Procuring Entity has so stipulated in the invitation documents.

(3). to determine the lowest evaluated tender, the Procuring Entity shall consider

(i) the tender price, subject to margin of preference if allowed;

(ii) the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provisions of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;

39-Margin of Preference

- (1). A Procuring Entity may grant a margin of preference for the benefit of tenders by domestic contractors or for the benefit of tenders for domestically produced goods or for the benefit of domestic suppliers of services. Where a procurement entity wishes to grant margin of preference, the preference shall be provided for in tendering documents for each contract.
- (2). The margin of preference shall be calculated in accordance with the procedure for evaluation of tenders as reflected in the record of the procurement proceedings;
- (3). The margin shall be applied to contracts, only to contracts, awarded on basis of International Competitive Tendering for goods (15%) and for works (7 and 1/2%). The Procurement Policy Unit shall determine the levels of the margin of preference from time to time.

40-Multiple Currency Tender Prices

When tender prices are expressed in two or more currencies, the tender prices of the total number of tenders shall be converted to the same currency using the exchange rate specified in the invitation documents for the evaluation and comparison of tenders. The exchange rate may be from a specified bank on a specified date.

41-Non-Disclosure of Tender Evaluation Details

Information relating to the examination, clarification, evaluation and comparison of tenders shall not be disclosed to suppliers or contractors or to any other person not involved officially in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted.

42-Prohibition of Negotiations with Suppliers or Contractors

- (1). Pursuant to the exception in this regulation no negotiations shall take place between the Procuring Entity and a supplier or contractor with respect to a tender submitted by the supplier or contractor.
- (2). If the lowest evaluated responsive tender exceeds the budget for the contract by a substantial margin, the Procuring Entity shall investigate the causes for the excessive cost and may:-
 - (i) Request new tenders after revising the causes for the lack of competition; or
 - (ii) Subject to the approval of the Procurement Policy Unit, negotiate a contract with the lowest evaluated tenderer to try to obtain a satisfactory contract aimed at reduction of the contract price.

43-Acceptance of Tender and Signing of a Procurement Contract

- (1). A tender that has been ascertained to be the successful tender shall be accepted and notice of acceptance of the tender shall be given within 30 working days of the acceptance of the tender to the supplier or contractor submitting the tender.

- (2). Where the tender documents require the supplier or contractor whose tender has been accepted to sign a written procurement contract conforming with the tender, the Procuring Entity and the supplier or contractor shall sign the procurement contract within 30 working days after the notice referred to in Sub-Regulation (1) above.
- (3). Where a written procurement contract is required to be signed, the procurement contract enters into force upon signature by the supplier or contractor and the Procuring Entity.
- (4). Between the time when the notice is dispatched to the supplier or contractor and the entry into force of the procurement contract, neither the Procuring Entity nor the supplier or contractor shall take any action that interferes with the entry into force of the procurement contract or with its performance.
- (5). Except as provided in Sub-Regulation (4) above, a procurement contract in accordance with the terms and conditions of the accepted tender enters into force when the notice is dispatched to the supplier or contractor that submitted the tender, if it is dispatched while the tender is in force.
- (6). The notice is dispatched when it is properly addressed or otherwise directed and transmitted to the supplier or contractor or conveyed to an appropriate authority for transmission to the supplier or contractor by registered mail, telex or email.
- (7). If the supplier or contractor whose tender has been accepted fails to sign a written procurement contract within 30 working days of receipt of the notice of acceptance or fails to provide the required security for the performance of the contract, the Procuring Entity shall select the next ranked tenderer from among the remaining tenderers that are in force, subject to the right of the Procuring Entity to reject the remaining tenders.
- (8). The notice provided for in Sub-Regulation (1) above shall be given to the supplier or contractor that submitted the successful tender.

CHAPTER FIVE

PROCEDURE FOR PROCUREMENT OF CONSULTANTS

44-Notice of Invitation of Expression of Interest and Shortlist

1. The preferred selection method is Quality and Cost Based Selection (**QCBS**). This method ensures quality and economy as well transparency and the principle of equal opportunity to consultants.
2. A Procuring Entity shall initiate competitive selection of consultants by publishing a notice inviting consultants to submit expression of interest in submitting a proposal for consultancy services. The notice shall be published in English language, for consultancy contracts above the threshold specified in the Schedule, and in at least one newspaper of wide national circulation. The notice may also be published in UNDB and relevant trade or professional publications of wide international circulation except where; the Procuring Entity decides that only national consultants are likely to be interested in submitting proposals. The

notice shall contain the name and address of the Procuring Entity and a brief description of the services to be procured.

3. Direct invitation may be used for contracts below the threshold specified in the Schedule. The Procuring Entity may, with the approval of the Procurement Policy Unit, use direct invitation in lieu of invitation for expression of interest for economic and efficiency reasons. Direct invitation would be justified in cases where the services, to be procured are available only from a limited number of consultants, are needed urgently and the time and cost required to examine and evaluate a large number of expressions of interest would be a constraint. In any case, the Procuring Entity should invite proposals from enough consultants to ensure effective competition.

45-Shortlisted Firms

(1). The Procuring Entity shall be responsible for the preparation of a short listing of consultants to be considered to participate in the selection process. The shortlist shall comprise at least 3 and not more than 6 consultants and may comprise of only national consultants, if adequate competition may be assured of the assignment.

(2). The Procuring Entity shall provide the invitation for proposals to the short listing of consultants selected on the basis of quality.

(3). The Procuring Entity shall provide the invitation for proposals to the most qualified or single sourced consultant.

46-Content of Requests for Proposals for Consultancy Services

. The Procuring Entity shall use a standard invitation for proposals and the invitation for proposals shall include

- (a) the name and address of the Procuring Entity;
- (b) the language in which proposals are to be prepared;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the Procuring Entity reserves the right to reject any or all proposals;
- (e) the criteria and procedures related to the evaluation of the qualifications of the consultants and those related to additional qualifications;
- (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;
- (g) the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
- (h) whether the Procuring Entity's seeking proposals on various possible ways of meeting its needs;

- (i) the currency in which the proposal price is to be expressed;
- (j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (k) the procedure selected to ascertain the successful proposal;
- (l) the criteria to be used to determine the successful proposal, including any relative weight of the criteria;
- (m) the currency that will be used to evaluate and compare proposals and either the exchange rate that will be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (n) a statement on alternatives to the characteristics of the consulting services, contractual terms and conditions or other requirements set out in the invitation for proposals if permitted and a description of the manner in which the alternative proposals are to be evaluated and compared;
- (o) the name, functional title and address of one or more officers or employees of the Procuring Entity who are authorized to communicate directly with and to receive communications directly from consultants in connection with the procurement proceedings, without the intervention of an intermediary;
- (p) the means by which consultants may seek clarification on the invitation for proposals and a statement whether the Procuring Entity intends to convene a meeting of consultants; and
- (q) The terms and conditions of the consultancy contract as known to the Procuring Entity and the contract form to be signed by the parties.

47-Criteria for the Evaluation of Proposals

(1). The Procuring Entity shall establish criteria to evaluate the proposals and determine the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of proposals.

(2) The consultants shall be notified of the criteria in the invitation for proposals and the criteria may deal with the following:

- (a) the qualifications, experience, reputation, reliability and professional and managerial competence of the consultant and the personnel to be involved in providing the services;
- (b) the effectiveness of the proposals submitted by the consultants in meeting the needs of the Procuring Entity;

- (c) the proposal price, including any ancillary or related costs; and
 - (i) the extent of participation by nationals and encouragement of employment;
 - (ii) the transfer of technology; and
 - (iii) the development of managerial, scientific and operational skills;

(3). A Procuring Entity may grant additional points for participation by nationals who are key staff in foreign and national firms, and these points shall be calculated in accordance with the procedure established in the request for proposals.

48-Clarification and Modification of Invitation for Proposals

(1). A consultant may request clarification of the invitation for proposals from the Procuring Entity and where such a request is made the Procuring Entity shall

- (a) respond to the request within 7 working days from the date of receipt of the request if the request is received by the Procuring Entity within 14 working days prior to the deadline for the submission of proposals; and
- (b) where the request is made later than 14 days prior to the deadline for the submission of proposals, respond promptly and early enough to enable the consultant make a timely submission of his/her proposal and shall, without identifying the source of the invitation, communicate the clarification to the other consultants to whom the Procuring Entity has provided the invitation for proposals.

(2). A Procuring Entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals. The procuring Entity may also consider whether to extend the date line for the submission of offers.

(2). The addendum shall be communicated promptly before the deadline for the submission of proposals to the shortlisted consultants to whom the Procuring Entity has provided the request for proposals and shall be binding on those consultants.

(3). If the Procuring Entity convenes a pre-proposal meeting of consultants, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the request for proposal and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly before the deadline for the submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into account in preparing their proposals.

49-Choice of selection Procedure

. The Procuring Entity shall use the selection procedure provided for in regulation 50, below that has been notified to consultants in the invitation for proposals. The Procuring Entity shall include in its records a statement of the grounds and circumstances on which it relied to justify the use of a selection procedure.

50-Conditions for use of other Methods of Selection of Consultants

(1). A Procuring Entity may with approval of the Procurement Policy Unit select consultants by Quality-Based Selection for the following types of assignments:

- (a) complex or highly specialized assignments, where it is difficult to define precise terms of reference and the required input from the consultants;
- (b) Assignments that have a high downstream impact where the objective is to have the best experts; and
- (c) Assignments that can be carried out in substantial different ways where proposals will not be comparable.

(2). A Procuring Entity may use selection under a fixed budget approved by the Procurement Policy Unit where the assignment is simple and can be precisely defined.

(3). A Procuring Entity may use least-cost selection procedures for small value assignments subject to the value threshold in Schedule 1 and where the assignment is of a standard or routine nature and well-established practices and standards exist. Examples of the latter case are engineering services, audits, accounting, banking, etc.

(4). A Procuring Entity may use selection based on consultants' qualifications for small value assignments subject to the value threshold in the Schedule where the need to prepare and evaluate competitive proposals is not justified.

(5). The Procuring Entity may with the approval of the Procurement Policy Unit select consultants by inviting proposals from a single consultant where there is:

- (a) only one eligible consultant;
- (b) an emergency situation; or
- (c) A follow-up assignment.

51-Receipt of Proposals

(1). The Procuring Entity shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment but shall normally not be less than four weeks.

(2). To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes.

(3). After the closing date and time for the submission of proposals, the appropriate proposal evaluation panel of the Procuring Entity shall open the technical proposals immediately after the deadline for the submission of proposals. The financial proposals shall remain sealed until they are opened publicly.

52-Evaluation of Proposals

- (1). The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals should not have access to the financial proposals until the technical evaluation is concluded.
- (2). The evaluation shall be carried out in conformity with the provisions in the invitation for proposals.

53-Selection Procedure where Price is a Factor

- (1). Where the Procuring Entity uses the procedure in this section; it shall make in the invitation for proposals a threshold on the quality and technical aspects of the proposals. Prior to proceeding with evaluation, the evaluation panel shall establish points for each category of items to be evaluated, and give relative weight and manner of application to fit into those criteria set out in the invitation for proposals. *(For example experience may have 10 points; the panel may decide experience over 5 years ... 4 points, below 5 years....2 points, in the region3 points, in the country.... 3 points; the best firm could collect the 10 points).*
- (2). The Procuring Entity shall notify the consultants whose proposals did not meet the minimum qualifying marks. And where non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed and within a period of 14 working days after the decision has been taken by the Procuring Entity.
- (3). After completion of the evaluation of technical proposals, price proposals of firms that attained a rating at or above the threshold specified in Sub-Regulation (1) above will be opened in the presence of representatives of the shortlisted firms who may wish to attend the opening.
- (4). At the financial proposal opening, the name of the consultant, the quality scores and the proposed prices shall be read aloud and recorded. The Procuring Entity shall prepare the minutes of public opening of financial proposals, which shall be part of the evaluation report and shall retain this record.
- (5). The Procuring Entity shall compare the prices of the proposals that have attained a rating at or above the threshold. The successful proposals shall be
 - (i) The proposals with the best-combined evaluation in terms of the criteria made under Regulation 47 above.
 - (ii) The proposals with the lowest price in the case of least-cost selection; and
 - (iii) The consultants that submitted the highest ranked technical proposals within the budget;
- (6). The consultants with the winning proposals shall be invited for negotiations, which shall focus mainly on the technical proposals.
- (7). The proposed unit rates for staff-months and reimbursables shall not be negotiated unless there are exceptional reasons.

54-Selection Procedure where Price is not a Factor

- (1) Where the Procuring Entity uses the Quality-Based Selection, selection based on consultant's qualifications or Single-Source Selection, it shall engage in negotiations with consultants in accordance with this Regulation.
- (2). The Procuring Entity shall invite for negotiations on the price of its proposal, the consultant that has attained the best rating. The Procuring Entity shall inform the consultant with the best rating that it is terminating the negotiations if it becomes apparent to the Procuring Entity that the negotiations with that consultant, will not result in a procurement contract.
- (3). The Procuring Entity shall, if negotiations with the consultant with the best rating fails, invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the Procuring Entity shall invite the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.

55-Confidentiality

The Procuring Entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants. A party to the negotiations shall not reveal to any other person any technical, price or other information relating to the negotiations without the consent of the other party.

CHAPTER SIX

MISCELLANEOUS PROVISIONS

56-Right to Review

- (1). Any supplier, contractor or consultant that claims to have suffered, or that may suffer loss or injury due to a breach of a duty imposed on the Procuring Entity by these Regulations or Contract may seek review in accordance with this Regulation.
- (2). Any person that considers him or herself a stakeholder in public procurement and claims to have experienced a breach of a duty imposed on the Procuring Entity by these Regulations may seek review in accordance with this Regulation immediately before or after the recognition of the breach. No frivolous or vexatious complain shall be attended by the Procuring Entity.
- (3). A decision by the Procuring Entity under Regulation 27 to reject tenders, proposals, offers or quotation, selection of a procurement procedures shall not be subject to review.

57-Review by Procuring Entity

- (1). A complaint shall, in the first instance, be submitted in writing to the Head of the Procuring Entity. The Procuring Entity shall first try to resolve a complaint by mutual agreement with the complainant.

- (2). If the resolution of the complaint is unsuccessful the Head of the Procuring Entity shall, within thirty days after the submission of the complaint, issue a written decision, copied to the Procurement Policy Unit.
- (3). The decision shall state the reasons for the decision and if the complaint is upheld in whole or in part, indicate the corrective measures that are to be taken.
- (4). If the Head of the Procuring Entity does not issue a decision by the time specified in sub-Regulation (2), above the complainant shall be entitled to submit the complaint to the Procurement Policy Unit.
- (5). The Procurement Policy Unit shall review the complaint and within 30 days of receiving such a complaint, make a decision on it. This decision shall be communicated to the procuring Entity and the complainant. The decision of the Procurement Policy Unit shall be final. In this case, the Procurement Policy Unit shall advise Government steps required to deal with the subject matter. The recommendation of the Procurement Policy Unit may be but not limited to suspension of procurement proceedings, termination of contract, criminal proceedings be taken against erring parties, surcharge, suspension or dismissal of erring officials of the Procuring Entity and any other appropriate remedies.
6. Any decision by the Procurement Policy Unit and the Procuring Entity under this Chapter and the grounds and circumstances shall be made part of the record of the procurement proceedings
- (7) In case of dispute arises between the Parties to a Procurement Contract, the Laws of Southern Sudan shall apply.**

58- Disposal of Public Assets

1. The Head of a Procuring Entity shall convene a Board of Survey not less than five members comprising representatives of Departments with unserviceable, obsolete or surplus stores, plants and equipment. The Board shall report on the assets subject to technical report on the same, and then recommends the best way of disposal. This shall be after the officer in charge has filled the Board of Survey form.
2. The Head of the Procuring Entity shall follow the recommendations of the Board of Survey and the assets shall be disposed off as recommended.
3. Where assets become unserviceable for reasons other than fair wear and tear, such as through accident or expiry, a set procedure established by the Board for handling losses shall be followed before the assets are boarded and disposed off.

59-Disposal Regulations

Disposal of obsolete and surplus items shall be by:

- (a) transfer to government departments or other public entities, with or without financial adjustment;

- (b) sale by public tender to the highest tenderer, subject to reserve price;
- (c) sale by public auction, subject to a reserve price; or
- (d) Destruction, dumping, or burying as appropriate.

60-AMENDMENT:-

These Interim Regulations may be amended by the Council of Ministers of the Government of Southern Sudan on the recommendation of the Minister of Finance and Economic Planning

61-Interim Provision:-

These Regulations shall be signed by the Minister of Finance and Economic Planning upon approval by the Council of Ministers of the Government of Southern Sudan.

Issue under my hand this _____ day of April, 2006 A.D

Arthur Akuien Chol
The Minister
Ministry of finance and Economic Planning

THE SCHEDULE (all figures in US\$)

A. THRESHOLDS FOR USE OF PROCUREMENT METHODS AND APPROVAL OF CONTRACTS

	Type of contract	Contract Value (Threshold)	Procurement Method	Authority approving proposed contract award
1.	Goods	Less than 20,000	Quotations	Head of Procuring Entity
		20,000-150,000	NCT	Procurement Committee
		Over 150,000	ICT	Procurement Committee
2.	Works	Less than 50,000	Selective Tendering	Head of Procuring Entity
		50,000-300,000	NCT	Procurement Committee
		Over 300,000	ICT	Procurement Committee
3.	Consultancy Services (Individuals)	Less than 2,000	Comparison of Qualifications	Head of Procuring Entity
		Over 2,000	Comparison of Qualifications	Procurement Committee
4.	Consultancy Services (Firms)	Less than 10,000	Comparison of Qualifications	Head of Procuring Entity
		10,000-50,000	Quality and Cost Based Selection and Least Cost Selection ¹	Procurement Committee
		Over 50,000	Quality and Cost Based Selection and Least Cost Selection ²	Procurement Committee

The authority to sign all GoSS contracts is vested with the Minister of Finance and Economic Planning who will delegate this authority to the respective Under Secretaries of the Ministries and Heads of State Governments. The Under Secretaries and Heads of State Governments shall delegate the same authority to the respective Heads of Departments, Units and Counties. Any further delegation of authority will have to be approved by the Minister of Finance and Economic Planning on the advice of the Procurement Policy Unit/MOF&EP.

¹ Direct short listing

² Advertisement for expression of interest required

B. APPROVALS BY THE PROCUREMENT POLICY UNIT

	Type of contract	Contract Value (Threshold)	Procurement Method to be approved	Remarks
1.	Goods, works and services	All values	Single Source	
2.	Goods and works	All values	Pre-qualification	
3.	Goods	Over 20,000	Selective Tendering	
4.	Works	Over 50,000	Selective Tendering	
5.	Consultancy Services (Firms)	All values	Quality Based Selection	