

**LAWS OF SOUTH SUDAN**

**PUBLIC PROCUREMENT  
AND  
DISPOSAL OF ASSETS ACT, 2018**



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# LAWS OF SOUTH SUDAN

## PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS ACT, 2018

In accordance with the provisions of Articles 55(3)(b), 110(n), and 85(1) of the Transitional Constitution of the Republic of South Sudan, 2011 (amended 2018), the Transitional National Legislative Assembly, with the assent of the President of the Republic of South Sudan, hereby enacts the following:

### CHAPTER I

#### PRELIMINARY PROVISIONS

##### Section 1: Title and Commencement

This Act shall be cited as the “Public Procurement and Disposal of Assets Act, 2018” and shall come into force on the date of its signature by the President.

##### Section 2: Repeal and Savings

Any provisions of existing legislation which are governed by this Act are hereby repealed; provided that:

- (a) all actions taken, proceedings, orders and regulations made or issued there under, including the Interim Public Procurement and Disposal Regulations, 2006 except to the extent they are repealed or amended or otherwise inconsistent with the provisions of this Act, shall remain in force and effect;
- (b) any pending Procurement Process that has been formally initiated in accordance with the Interim Public Procurement and Disposal Regulations, 2006 prior to the commencement of this Act shall continue to be conducted, until such Process culminates in an Award or is cancelled, in accordance with the provisions of this Act.

### Section 3: Purpose

The purpose of this Act is to provide for the legal framework establishing and governing an open, transparent, accountable, and efficient system of Public Procurement and Disposal of Assets for all Government Institutions and related entities.

### Section 4: Authority and Application

- (1) This Act is drafted in accordance with the provisions of Articles 52 and 180, read together with the provisions of Schedule (A), paragraphs (34), (38), (39), (41) and (47), and the provisions of Schedule (C), paragraph (17), of the Transitional Constitution of the Republic of South Sudan, 2011 (as amended 2015 and 2018), and the provisions of Sections 12(1) and 34 of the Public Financial Management and Accountability Act, 2011, which grants the National Government the authority to manage the budgeting and expenditure of Public Funds, and in compliance with the East African Community (EAC) Public Procurement Laws and international best practices.
- (2) This Act shall apply to Public Procurement and disposal of assets by Government Institutions and entities at all levels of government in South Sudan for which Public Funds are budgeted and utilized, with respect to:
  - (a) Procurement Planning and processing,
  - (b) Inventory and Assets Management,
  - (c) Disposal of Assets, and
  - (d) Contract management.
- (3) This Act shall not apply in the following circumstances:
  - (a) when a Government Institution provides Supplies, Works or Services to another Government Institution and entities;
  - (b) when professional services are governed by statutory remuneration rules and regulations;
  - (c) recruitment of individuals as employees of a Government Institution in accordance with the law and administrative procedures of the Government or the institution;
  - (d) Procurement of shares, securities, bonds, equities or other financial instruments, but shall not exclude the Procurement of brokerage firms.

(4) A Procuring Entity operating under competitive market conditions may apply to the Authority for permission to use alternative Procurement systems.

(5) Where any provision of this Act conflicts with any Legislation of the Republic of South Sudan, this Act shall prevail in matters of public procurement and disposal of assets.

(6) Conflict with International Agreements:

where any provision of this Act conflicts with any obligations of the Republic of South Sudan arising from a treaty, agreement or other conventions ratified by South Sudan of which South Sudan is a party, the terms of the treaty or agreement shall prevail.

(7) Where the Republic of South Sudan is required under the terms of any treaty or agreement to which it is a party, to contribute from its resources in any form to any procurement activities within South Sudan, either in part or wholly, jointly or separately, procurement through such contributions shall be:

(a) in discrete activities where possible;

(b) subject to the applicable provisions of this Act;

(c) a treaty or agreement referred to in paragraph (a) which contains provisions favourable to citizens and local contractors, and full advantage shall be taken of these in the interest of promoting domestic capacity development;

(8) Where procurement to which paragraph (7)(a) favours an external beneficiary:

(a) the procurement through contributions made by South Sudan, shall be under taken in South Sudan through contractors registered in South Sudan, and

(b) all relevant insurances shall be placed with companies registered in South Sudan and goods shall be transported in carriages registered in South Sudan.

## Section 5: Interpretations

In this Act, unless the context otherwise requires:

- “Accounting Officer”** means a person designated as part of his/her official duties in accordance with Public Financial Management and Accountability Act 2011;
- “Asset”** means land, property and buildings, capital assets that have monetary value and are shown on the balance sheets of Government Institutions, current assets, cash, accounts receivable, fixed assets, equipment, both fixed and moveable, and Supplies, including inventory and stock;
- “Authority”** means the South Sudan Public Procurement and Disposal of Assets Authority established under this Act;
- “Award”** means a decision taken by a Public Procurement Committee to mandate a Successful Bidder to enter into a Contract with the concerned authority.
- “Board”** means the Board of the Authority;
- “Bid”** means an offer to provide or to acquire Supplies, Works, or Services, or any combination, and shall include Pre-Qualification submissions and applications, as well as quotations and proposals in response to requests for quotations and proposals, respectively;
- “Bid documents”** means any advertisement by which eligible Providers or Contractors are invited to submit Bids to provide or acquire Supplies, Works, or Services, or any combination;
- “Bidder”** means a physical person or legal entity that has validly submitted a Bid in response to a Bid Notice, or an application to pre-qualify or an expression of interest, if applicable;
- “Bidding Documents”** means tender or solicitation documents, or any other documents issued by the Procuring Entity, including any amendments thereto, that set out the terms and

conditions of the given Procurement Process or Pre-Qualification proceedings, including requests for quotations and proposals;

**“Competent Authority”** means a Government Institution with powers of provisions to implement a recommendation made under this Act;

**“Consultancy Services”** means Services of an intellectual or advisory nature provided by a practitioner who is skilled and qualified in a particular field or profession, or a firm consisting of such practitioners;

**“Contract”** means an agreement between a Procuring Entity and a Provider or Contractor at the end of a Procurement Process, on the basis of an Award;

**“Contractor”** means a Provider or supplier of Works, or Services, or any combination;

**“Corrupt Practice”** means soliciting, offering, giving, receiving, anything of value in order to influence the action of a public official in a Public Procurement and Disposal of Assets process or in the execution of a Contract;

**“Defence and National Security Institutions”** includes the South Sudan Organised Forces, the National Security Service and National Security Committee as provided in the Transitional Constitution of the Republic of South Sudan, 2011 (amended 2018);

**“Disposal”** means the discard of an Asset through sale or other procedure in accordance with this Act, of obsolete, unserviceable or surplus Assets;

**“Disposal Process”** means the successive stages in the Disposal cycle, including planning, choice of procedure, measures to solicit Bids, examination and evaluation of those Bids and Award;

**“e-Procurement”** means the process of procurement through electronic medium such as the internet or other information and communication technologies;

- “Emergency”** means circumstances which are urgent, unforeseeable and not caused by dilatory conduct of a Government Institution;
- “Foreign Provider”** means a Provider or Contractor whose business is not registered in South Sudan;
- “Fraudulent Practice”** includes a misrepresentation of facts in order to influence a Procurement or Disposal Process or the execution of a Contract to the detriment of the Government Institution, and includes collusive practices among Bidders, prior to or after Bid submission, designed to establish Bid prices at artificial non-competitive levels and to deprive the Government Institutions of the benefits of free and open competition;
- “Goods”** means Supplies or merchandise;
- “Government Institution”** means a public body at any government level in South Sudan, including Public Corporations;
- “Industry Standards”** mean those standards defined and codified by internationally recognized professional associations and bodies in their respective fields and include best practices;
- “Minister”** means the national minister responsible for finance and economic planning;
- “Ministry”** means the national ministry responsible for finance and economic planning;
- “National Institution”** means a Government Institution of the National Government in South Sudan;
- “National Provider”** means a Provider or Contractor registered in South Sudan and owns majority shares by South Sudanese;
- “Pre-Qualification”** means identification of potential bidders prior to solicitation, Providers or Contractors that are qualified, and shall include invitations for expressions of interest from Providers of Consultancy Services in accordance with of this Act;
- “Procurement”** means the acquisition or purchase, rental, lease, hire-purchase, license, tenancy, franchise, concession,

(4) A Procuring Entity operating under competitive market conditions may apply to the Authority for permission to use alternative Procurement systems.

(5) Where any provision of this Act conflicts with any Legislation of the Republic of South Sudan, this Act shall prevail in matters of public procurement and disposal of assets.

(6) Conflict with International Agreements:

where any provision of this Act conflicts with any obligations of the Republic of South Sudan arising from a treaty, agreement or other conventions ratified by South Sudan of which South Sudan is a party, the terms of the treaty or agreement shall prevail.

(7) Where the Republic of South Sudan is required under the terms of any treaty or agreement to which it is a party, to contribute from its resources in any form to any procurement activities within South Sudan, either in part or wholly, jointly or separately, procurement through such contributions shall be:

- (a) in discrete activities where possible;
- (b) subject to the applicable provisions of this Act;
- (c) a treaty or agreement referred to in paragraph (a) which contains provisions favourable to citizens and local contractors, and full advantage shall be taken of these in the interest of promoting domestic capacity development;

(8) Where procurement to which paragraph (7)(a) favours an external beneficiary:

- (a) the procurement through contributions made by South Sudan, shall be under taken in South Sudan through contractors registered in South Sudan, and
- (b) all relevant insurances shall be placed with companies registered in South Sudan and goods shall be transported in carriages registered in South Sudan.

## Section 5: Interpretations

In this Act, unless the context otherwise requires:

- “Accounting Officer”** means a person designated as part of his/her official duties in accordance with Public Financial Management and Accountability Act 2011;
- “Asset”** means land, property and buildings, capital assets that have monetary value and are shown on the balance sheets of Government Institutions, current assets, cash, accounts receivable, fixed assets, equipment, both fixed and moveable, and Supplies, including inventory and stock;
- “Authority”** means the South Sudan Public Procurement and Disposal of Assets Authority established under this Act;
- “Award”** means a decision taken by a Public Procurement Committee to mandate a Successful Bidder to enter into a Contract with the concerned authority.
- “Board”** means the Board of the Authority;
- “Bid”** means an offer to provide or to acquire Supplies, Works, or Services, or any combination, and shall include Pre-Qualification submissions and applications, as well as quotations and proposals in response to requests for quotations and proposals, respectively;
- “Bid documents”** means any advertisement by which eligible Providers or Contractors are invited to submit Bids to provide or acquire Supplies, Works, or Services, or any combination;
- “Bidder”** means a physical person or legal entity that has validly submitted a Bid in response to a Bid Notice, or an application to pre-qualify or an expression of interest, if applicable;
- “Bidding Documents”** means tender or solicitation documents, or any other documents issued by the Procuring Entity, including any amendments thereto, that set out the terms and

conditions of the given Procurement Process or Pre-  
Qualification proceedings, including requests for  
quotations and proposals;

**“Competent Authority”** means a Government Institution with powers of  
provisions to implement a recommendation made  
under this Act;

**“Consultancy Services”** means Services of an intellectual or advisory nature  
provided by a practitioner who is skilled and qualified  
in a particular field or profession, or a firm consisting  
of such practitioners;

**“Contract”** means an agreement between a Procuring Entity and a  
Provider or Contractor at the end of a Procurement  
Process, on the basis of an Award;

**“Contractor”** means a Provider or supplier of Works, or Services, or  
any combination;

**“Corrupt Practice”** means soliciting, offering, giving, receiving, anything  
of value in order to influence the action of a public  
official in a Public Procurement and Disposal of  
Assets process or in the execution of a Contract;

**“Defence and National  
Security Institutions”** includes the South Sudan Organised Forces, the  
National Security Service and National Security  
Committee as provided in the Transitional  
Constitution of the Republic of South Sudan, 2011 (  
amended 2018);

**“Disposal”** means the discard of an Asset through sale or other  
procedure in accordance with this Act, of obsolete,  
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**“Disposal Process”** means the successive stages in the Disposal cycle,  
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**“e-Procurement”** means the process of procurement through electronic  
medium such as the internet or other information and  
communication technologies;

- “Emergency”** means circumstances which are urgent, unforeseeable and not caused by dilatory conduct of a Government Institution;
- “Foreign Provider”** means a Provider or Contractor whose business is not registered in South Sudan;
- “Fraudulent Practice”** includes a misrepresentation of facts in order to influence a Procurement or Disposal Process or the execution of a Contract to the detriment of the Government Institution, and includes collusive practices among Bidders, prior to or after Bid submission, designed to establish Bid prices at artificial non-competitive levels and to deprive the Government Institutions of the benefits of free and open competition;
- “Goods”** means Supplies or merchandise;
- “Government Institution”** means a public body at any government level in South Sudan, including Public Corporations;
- “Industry Standards”** mean those standards defined and codified by internationally recognized professional associations and bodies in their respective fields and include best practices;
- “Minister”** means the national minister responsible for finance and economic planning;
- “Ministry”** means the national ministry responsible for finance and economic planning;
- “National Institution”** means a Government Institution of the National Government in South Sudan;
- “National Provider”** means a Provider or Contractor registered in South Sudan and owns majority shares by South Sudanese;
- “Pre-Qualification”** means identification of potential bidders prior to solicitation, Providers or Contractors that are qualified, and shall include invitations for expressions of interest from Providers of Consultancy Services in accordance with of this Act;
- “Procurement”** means the acquisition or purchase, rental, lease, hire-purchase, license, tenancy, franchise, concession,

public private partnership or any other contractual means, of any type of Supplies, Works or Services by, or on behalf of, a Government Institution;

**"Procurement Committee"** means the committee provided for under this Act;

**"Procurement Process"** means the successive stages in the Procurement cycle including planning, choice of procedure, measures to solicit Bids, examination and evaluation of those Bids, Award, execution of Contract, and contract management;

**"Procurement Unit"** means a unit established by a Procuring Entity in accordance with this Act;

**"Procuring Entity"** means a Government Institution designated to engage in Procurement in accordance with this Act;

**"Provider"** means a natural person or legal entity that is a potential party or any party to the Procurement Process with the Procuring Entity;

**"Public Corporation"** means a Public enterprise or Corporation established by the Act of the Assembly; and includes a legal entity or business that is the beneficiary of a transfer or subvention of any Public Funds;

**"Public Funds"** means money or financial Assets in the custody or under the control of any spending agency in accordance with the Public Financial Management and Accountability Act, 2011;

**"Security"(caution money)** means an amount of money or declaration to secure the fulfilment of any obligation of a Bidder or Contractor, which may take the form of a financial deposit, bank draft, guarantee, surety bond or irrevocable letter of credit and may include advance, Bid or performance security;

**"Services"** means an object of a Procurement Process other than Works and Supplies, and includes professional, non-professional and commercial types of services as well as Supplies and Works which are incidental to, but not exceeding the value of, those services;

- “Specifications”** means the description of the subject matter of a Procurement or Disposal Process in accordance with Industry Standards, adopted and approved by the Directorate after consultation with the National Bureau of Standards, or other appropriate trade associations and professions, the use of which shall be mandatory in all Bidding Documents;
- “Standstill Period”** means the period provided in this Act, during which the Procuring Entity cannot accept the Successful Bid and during which Bidders can challenge, the decision so notified;
- “State”** means one of the states of South Sudan as provided in the Transitional Constitution of the Republic of South Sudan, 2011 (amended 2018);
- “State and Local Institution”** means a Government Institution at the State or Local Government Level in South Sudan;
- “Successful Bid”** means the Bid that best satisfies the evaluation criteria provided in the Bidding Documents, as provided in this Act;
- “Supplies”** means goods, raw materials, products, equipment or objects of any kind and description in solid, liquid or gaseous form, or in the form of electricity, or intellectual and proprietary rights, as well as Works or Services incidental to the provision of those Supplies where the value of the works or services does not exceed the value of the Supplies;
- “User Department”** means any directorate, department, division, branch or section of a Government Institution, including any project unit working under the authority of the Government Institution, which initiates Procurement and Disposal requirements and is the end user of the object of the Procurement or Disposal Process;
- “Works”** means any work associated with the construction, reconstruction, demolition, repair, or renovation of a building or structure, on the surface or underground, on and underwater, and includes the preparation, excavation, erection, assembly, installation, testing

and commissioning of any plant, equipment or materials, decoration and finishing, turnkey projects, build own and operate projects and transfer projects or any arrangement of this nature, or any other form of private and public partnerships or joint development activities, all or any of which may include management, maintenance, testing, commissioning and training; as well as Supplies or Services incidental to those works where the value of the incidental Supplies or Services does not exceed the value of the works.

## CHAPTER II

### FUNCTIONS AND POWERS OF THE AUTHORITY

#### Section 6: Establishment of the Authority

There is established a "South Sudan Public Procurement and Disposal of Assets Authority" which is referred to as the "Authority" in this Act.

#### Section 7: Objectives of the Authority

The objectives of the Authority are to:

- (a) regulate and monitor Public Procurement and Disposal of Assets in South Sudan and to advise Government Institutions on issues relating to Procurement;
- (b) ensure the application of fair, competitive, transparent, accountable, non-discriminatory and value for money Public Procurement and Disposal of Assets standards and practices;
- (c) harmonise the Public Procurement and Disposal of Assets policies, systems and practices at all levels of government in South Sudan,
- (d) ensure that Procuring Entities are staffed at appropriate levels in order to efficiently and effectively manage Procurement activities, and

- (e) ensure that procurement contracts are granted to qualified business women, youth and persons with disabilities.

## **Section 8: Functions of the Authority**

(1) The functions of the Authority are to:

- (a) formulate policies and standards on Public Procurement and Disposal of Assets and to ensure compliance by all parties to Procurement and Disposal Processes;
- (b) provide advisory services to Government Institutions on Public Procurement and Disposal of Assets policies, principles and practices;
- (c) monitor and report on the performance of the Public Procurement and Disposal of Assets systems in South Sudan and advise on desirable changes;
- (d) monitor classified procurement information, including that of specific items of security organs and make recommendations to the Council of Ministers;
- (e) adopt international training standards in Public Procurement and Disposal of Assets in consultation with Competent Authorities;
- (f) prepare, update and issue authorised versions of standardised Bidding Documents, procedural forms and any other attendant documents to Procuring Entities;
- (g) ensure that any deviation from the use of the standardised Bidding Documents, procedural forms and any other required documents is effected only after the prior, written approval of the Authority;
- (h) issue of the regulations made under this Act;
- (i) issue guidelines under this Act;
- (j) organize and maintain a system for the publication of data on Public Procurement and Disposal of Assets opportunities, Awards and any other information of public interest as may be determined by the Authority;
- (k) maintain a register of Providers of Supplies, Works, and Services;
- (l) conduct periodic review and inspections of the records and proceedings of the Procuring Entities to ensure full and correct application of this Act;
- (m) adopt, adapt and update common Specifications standards, the use of which shall be mandatory for all Procuring Entities;
- (n) determine, develop, introduce, maintain and update related system-wide data-bases and technology;
- (o) develop policies and maintain an operational plan on capacity building for procurement officers in all Procuring Entities, both for institutional and human resource development;

- (p) agree and advise on a list, which shall be reviewed annually, of Works, Services and Supplies in common use by more than one Procuring Entity which may be subject to common Procurement or Disposal Processes;
  - (q) establish and maintain institutional linkages with entities with professional and related interest in public procurement and disposal;
  - (r) undertake procurement and disposal research and surveys nationally and internationally;
  - (s) undertake any activity that may be necessary for the execution of its functions;
  - (t) receive and address complaints from a Bidder;
  - (u) administer and enforce compliance with all the provisions and the regulations made under this Act; and
  - (v) Coordinate the management and deployment of procurement officers in Procuring Entities, in accordance with the Public Financial Management and Accountability Act, 2011.
- (2) Each administrative unit of the Authority, in accordance with applicable law, shall act independently to ensure separation of duties.

#### **Section 9: Powers of the Authority**

- (a) In the exercise of its regulatory functions, the Authority shall have the power to:
- (b) require any information, documents, records and reports in respect of any aspect of a Public Procurement and Disposal of Assets Process where a breach, wrongdoing, mismanagement or collusion has been alleged, reported or proven against any Procuring Entity or Provider;
- (c) summon witnesses, call for the production of books of accounts, plans, documents, examine witnesses and parties concerned on oath;
- (d) commission or undertake investigations and institute Public Procurement and Disposal of Assets, Contract and performance reviews;
- (e) cause to be inspected any Public Procurement or Disposal of Assets transaction to ensure compliance with an Award by a Procuring Entity;
- (f) act upon complaints by Procuring Entities, Providers and any other entity or person in respect of any party to a Procurement or Disposal activity in accordance with the procedure set out in this Act;
- (g) establish an office in all States in order to assist each State Government and Local Government to establish a sound Public Procurement and Disposal of Assets system to ensure compliance with the principles and provisions of this Act;

- (a) other powers as provided in this Act.

### Section 10: Recommendations of the Authority

- (1) The Authority may recommend to a competent authority, where there are persistent or serious breaches of this Act or regulations made under this Act:
  - (a) the suspension of officers concerned with the Procurement or Disposal process;
  - (b) the replacement of a member of a Procurement Committee or Procurement Unit, as the case may be;
  - (c) the disciplining of the Accounting Officer; or any officer involved in the Procurement or Disposal Process; or
  - (d) the temporary transfer of the Procurement and Disposal function of a Procuring Entity to an independent procurement agency or another Procuring Entity.
- (2) A competent authority shall respond in writing to the Authority's recommendations under subsection (1) within a period prescribed by regulations made under this Act.
- (3) Where the competent authority rejects the Authority's recommendations under subsection (1), the Authority shall:
  - (a) communicate its recommendations and all related supporting documentation to the relevant law enforcement and oversight agencies for their action; and
  - (b) request for any other appropriate action within the power of the competent authority.
- (4) The competent authority shall respond in writing to the Authority's recommendations within a period prescribed by the regulations made under this Act.
- (5) The Authority may make recommendations on periodic review of this Act and for the Minister to issue revised thresholds, under conditions prescribed by regulations made under this Act.
- (6) The Authority shall, in its Annual Performance Evaluation Report, include:
  - (a) its audited findings and complaints investigated;
  - (b) its recommended corrective measures in each case;
  - (c) the response of the:
    - (i) respective competent authority, and

- (ii) Relevant law enforcement and oversight agencies; and
- (d) any remedial measures taken.

### **Section 11: Composition of the Board**

- (1) The governing body of the Authority shall be the Board consisting of:
- (a) a non-executive Chairperson, who shall be a competent person, knowledgeable and experienced in Procurement and public service;
  - (b) a representative of the Ministry of Justice;
  - (c) five persons appointed for their knowledge and experience in Procurement and the public service, of whom two shall represent public sector interests and three shall represent the broad cross section of the private business community and professional associations; and
  - (d) Executive Director of the Authority.
  - (e) The members of the Board shall be persons of high personal probity, appointed by the President on recommendation of the Minister and subject to the approval of the National Legislative Assembly.

### **Section 12: Tenure of Members of the Board**

With the exception of the Executive Director, the Board members shall have tenure of four years and may be reappointed for only one additional term.

### **Section 13: Loss of Membership of the Board**

A person shall cease to be a member of the Board in any of the following grounds:

- (a) inability to perform the functions of the office by reason of infirmity of mind or body;
- (b) proven misconduct;
- (c) bankruptcy or insolvency;
- (d) conviction of an offence involving fraud or dishonesty;
- (e) failure to attend three consecutive meetings without reasonable cause;
- (f) resignation by written notice to the Minister;
- (g) Death.

#### **Section 14: Functions of the Board**

- (1) Subject to this Act, the Board shall have the control and supervision of the Authority.
- (2) It shall also be the responsibility of the Board to provide such policy guidance and advice as will secure the efficient implementation of the functions of the Authority and enhance the overall performance of the Authority.

#### **Section 15: Conditions of Service of the Board Members**

The Board, in consultation with the Minister, shall determine the terms and conditions of service of the members of the Board with approval of the Council of Ministers.

#### **Section 16: Filling of Vacancies**

- (1) Upon the removal of a member of the Board in accordance with this Act:
  - (a) if the member removed is the Chairman, the members of the Board shall elect one of their members to act as the Chairman until such time as a new Chairman is appointed in accordance with Act; or
  - (b) the Chairman shall arrange to have another person appointed to the Board in accordance with of this Act.
- (2) A member of the Board appointed in accordance with this Act shall hold office for the remainder of the term of the removed member of the Board and shall, subject to this Act, be eligible for re-appointment.

#### **Section 17: Meetings of the Board**

- (1) The Board shall hold its first meeting on such date and at such place as the Minister, after consultation with the Board, may determine, and, thereafter, the Board shall meet for the dispatch of business at such time and place as the Chairman may decide, but not less than once every two months.
- (2) The Chairman shall preside over meetings of the Board; in his absence, the members present shall elect one of their members to preside.

- (3) The quorum at a meeting of the Board shall be four, including the Executive Director.
- (4) Each member, including the Executive Director, shall have one vote, but in the case of an equality of votes, the Chairman shall have a casting vote.
- (5) The Board may at any time co-opt any person to provide special or additional technical knowledge or advice or otherwise assist the Board at any of its meetings, but the person co-opted shall not vote on any matter for decision by the Board.
- (6) All acts, matters or things authorised or required to be done by the Board shall be decided at a meeting where a quorum is present and the decision is supported by the votes of at least four members, including the Chairman.
- (7) Unless otherwise required by a member of the Board, any proposal circulated among all members and agreed to in writing by a two-thirds majority of all members shall be of the same force, or effect as a decision made at a duly constituted meeting of the Board, and shall be incorporated in the minutes of the next succeeding meeting of the Board.
- (8) The Board shall cause minutes of all its meetings to be taken by the Secretary to the Board, signed by the Chairman and kept in the proper form as a public document.
- (9) Subject to this Act, the Board may adopt other procedures to regulate its meetings.

#### **Section 18: Disclosure of Interest**

- (1) A member of the Board who has any interest, direct or indirect, in any matter to be considered by the Board shall disclose the nature of such interest to the Board, which shall be recorded in the minutes of the Board, and such member shall not take part in any deliberation and decision of the Board relating to that matter.
- (2) A member who contravenes this Section shall be guilty of misconduct and liable to be removed from the Board.

## **Section 19: Powers of the Board**

In the discharge of its function under this Act, the Board may:

- (1) direct the Executive Director to furnish it with any information, report or other document which the Board considers necessary for the performance of its functions;
- (2) give instructions to the Executive Director in connection with the management and performance of the functions of the Authority;
- (3) On the recommendation of the Executive Director, approve such organisational structures as the Executive Director may consider necessary for the efficient discharge of the functions of the Authority.

## **Section 20: Secretariat of the Authority**

- (1) The Authority shall have a secretariat which shall provide administrative, secretarial and other support for the Authority and the Administrative Review Committee;
- (2) The secretariat shall be headed by the Executive Director who shall be appointed by the President upon the recommendation of the Minister and approval of National Legislative Assembly, subject to such terms and conditions as the President may determine; and shall have such structures and organisation as the Authority may determine as necessary for the efficient performance of its functions;
- (3) In addition to the Executive Director, the secretariat shall have such other staff as are required for the efficient performance of the Authority;
- (4) As head of the secretariat, the Executive Director shall be responsible to the Board for:
  - a) the day-to-day management of the affairs of the Authority and the Administrative Review Committee;
  - b) the administration, organisation and control of the other staff of the Authority;
  - c) the management of the funds and the property of the Authority; and

- d) the performance of such other functions as the Board may determine.
- (5) The other staff of the Authority shall be appointed by the Board upon such terms and conditions as shall be determined by the Board.
- (6) The Authority shall be subject to the requirements of the Public Financial Management and Accountability Act, 2011.

### **Section 21: Reporting Method**

- (1) Within three months after the end of each financial year, the Executive Director shall submit to the Board an Annual Performance Evaluation Report in respect of that year's activities, which shall include:
  - (a) financial statements and the Annual Management Plan;
  - (b) an evaluation of the operations of the Authority and the Procuring and Disposing Entities; and
  - (c) any other information the Board may direct.
- (2) The Annual Performance Evaluation Report approved by the Board shall be sent to the Minister and the Auditor-General not less than six months after the end of the year to which the report relates and the Minister shall, as soon as possible, but not later than two months of receipt of the report thereof lay the report before the National Legislative Assembly, or at the next sitting of National Legislative Assembly, whichever comes first.

### **Section 22: Complaints Review Committee**

- (1) The Authority shall establish a Complaints Review Committee for the purpose of conducting independent administrative review of complaints and challenges to procurement decisions in accordance with Act.
- (2) The Complaints Review Committee shall:
  - (a) consist of five members appointed by the Minister, in accordance with the regulations made under this Act, from among eminent South Sudanese with a background in Procurement from any of the following fields:
  - (b) business community;
  - (c) academia;
  - (d) the legal profession;
  - (e) engineering and architecture; and

- (f) other relevant fields; and
- (3) have a term of three years, which may be renewed for a subsequent identical term.

## CHAPTER III

### PROCURING ENTITIES

#### Section 23: Procuring Entity

- (1) For the purpose of this Act, a Procuring Entity must have:
  - (a) an Accounting Officer as defined in this Act;
  - (b) a Procurement Committee as provided in this Act;
  - (c) a Verification and Acceptance Committee in accordance with of this Act; and
  - (d) a Procurement Unit as provided in this Act.
- (2) In addition, each Procuring Entity shall convene, on an *ad hoc* basis, Evaluation Committees as provided in this Act.

#### Section 24: Functions of a Procuring Entity

- (1) A Procuring Entity shall be responsible for the management of all Public Procurement and Disposal of Assets activities within its approved budget;
- (2) Notwithstanding the provision of sub-section one (1) above, the Authority shall have power to transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent in the event of delay or in such other instances as may be prescribed.

#### Section 25: Functions of the Accounting Officer

- (1) The Accounting Officer of a Procuring Entity shall have overall responsibility for the execution of Public Procurement and Disposal of Assets Processes in the Procuring Entity and, in particular, shall be responsible for:
  - (a) establishing a Procurement Committee in accordance with this Act;
  - (b) causing to be established a Procurement Unit staffed at an appropriate level;

- (c) managing the Procurement budget and plan without undue influence from other public officials and politicians;
  - (d) appointing the Evaluation Committee for each Procurement Process;
  - (e) advertising Bid Notices;
  - (f) based on recommendations made by the Procurement Committee communicate Award decisions;
  - (g) certifying the availability of funds to support the Public Procurement and Disposal of Assets activities;
  - (h) signing Contracts on behalf of the Procuring Entity;
  - (i) investigating complaints by Providers or Bidders;
  - (j) submitting a copy of any complaints and reports of the findings to the Authority; and
  - (k) ensuring that the implementation of the awarded Contract is in accordance with the terms and conditions of the Award.
- (2) In exercising these functions, the Accounting Officer shall not approve retrospective Public Procurements and Disposals of Assets.
- (3) The Accounting Officer shall appoint a Verification and Acceptance Committee whose duty shall be to verify and accept delivery of Supplies, Works and Services in consultation with the contract managers.

#### **Section 26: Membership of Procurement Committee**

- (1) A Procurement Committee shall be composed of five members, to be appointed by the Accounting Officer, and shall be chaired by the head of administration and finance of the Procuring Entity.
- (2) The head of the Procurement Unit shall act as the secretary to the Procurement Committee.
- (3) A Procurement Committee may co-opt advisers to assist it in the discharge of its functions.
- (4) The Accounting Officer shall inform the Authority of the composition of the Public Procurement and Disposal of Assets Committee and the qualifications of its members not later than fourteen days from the date of its appointment.
- (5) Members of the Public Procurement and Disposal Committee shall be appointed with regard to the technical competence, skills required for the

discharge of the functions of the Public Procurement and Disposal of Assets Committee and having proven integrity.

- (6) The members of a Public Procurement and Disposal of Assets Committee shall have a term of two years, which may be renewed for a subsequent identical term.

### **Section 27: Functions of a Procurement Committee**

A Public Procurement and Disposal of Assets Committee shall be responsible for:

- (a) reviewing and approving the recommendations from the Evaluation Committee;
- (b) approving Bidding and Contract Documents;
- (c) approving Public Procurement and Disposal of Assets methods;
- (d) ensuring that the best practices in relation to Public Procurement and Disposal of Assets are strictly adhered to by Procuring Entities;
- (e) monitoring and compliance with this Act;
- (f) ensuring implementation of the Code of Ethical Conduct in Business provided in this Act, or as subsequently issued by the Authority;
- (g) preparing and submitting reports on Public Procurements and Disposal of Assets undertaken in the Procuring Entity to the Authority, as prescribed by the regulations made under this Act; and
- (h) liaising directly with the Authority on matters within its jurisdiction.

### **Section 28: Powers of a Public Procurement and Disposal of Assets Committee**

(1) A Procurement Committee shall:

- (a) authorise:
  - (i) the choice of a Public Procurement and Disposal of Assets method;
  - (ii) Bidding Documents before issue;
  - (iii) technical, financial or combined evaluation reports;
  - (iv) contract documentation in line with the authorised evaluation report; and
  - (v) any amendment to an awarded Contract; and

- (b) authorize an Award in accordance with applicable Public Procurement and Disposal of Assets method.
- (2) No person shall exert undue influence on a member of a Public Procurement and Disposal of Assets Committee in exercising the Committee's functions;
- (3) A Public Procurement and Disposal of Assets Committee shall not approve any Public Procurement and Disposal of Assets retrospectively.

### **Section 29: Public Procurement and Disposal of Assets Unit**

- (1) Each Procuring Entity shall establish a Public Procurement and Disposal of Assets Unit that reports directly to the Accounting Officer.
- (2) Public Procurement and Disposal of Assets Units shall be staffed at an appropriate level with trained and qualified procurement officers, as prescribed by the Authority.
- (3) All Public procurement and Disposal of Assets officers in Public Procurement and Disposal of Assets Units shall be employees of the Authority and shall be subject to transfers to any other Procuring Entity as may be determined by the Authority.

### **Section 30: Functions of a Public Procurement and Disposal of Assets Unit**

A Procurement Unit shall:

- (a) manage all Public Procurement and Disposal of Assets activities of the Procuring Entity, except adjudication and the award of Contracts;
- (b) support the functioning of the Public Procurement and Disposal of Assets Committee;
- (c) implement the decisions of the Public Procurement and Disposal of Assets Committee;
- (d) liaise directly with the Authority on matters within its jurisdiction;
- (e) act as a secretariat to the Public Procurement and Disposal of Assets Committee;
- (f) prepare the plan of Public Procurement and Disposal of Assets activities of the Procuring Entity based on inputs from the User Departments;
- (g) recommend Public Procurement and Disposal of Assets methods;

- (h) check and prepare statements of requirements;
- (i) prepare and issue Bidding Documents;
- (j) prepare Bid Notices;
- (k) maintain a list of pre-qualified Providers;
- (l) prepare Contract documents;
- (m) issue approved Contract documents;
- (n) maintain and archive records of Public Procurement and Disposal of Assets Processes;
- (o) prepare quarterly reports for the Public Procurement and Disposal of Assets Committee;
- (p) coordinate the Public Procurement and Disposal of Assets activities of the User Departments of the Procuring Entity; and
- (q) prepare any other such reports as may be required from time to time.

### **Section 31: Powers of a Public Procurement and Disposal of Assets Unit**

A Public Procurement and Disposal of Assets Unit shall have the power to:

- (a) recommend the composition of Evaluation Committees for the approval of the Public Procurement and Disposal of Assets Committee;
- (b) seek independent advice from the Authority as may be necessary in the discharge of its functions;
- (c) ensure compliance with this Act and the regulations made under this Act, and best practices;
- (d) manage Bid and Pre-Qualification submissions and make recommendations on them to the Public Procurement and Disposal of Assets Committee;
- (e) provide Bid clarifications; and
- (f) receive Bids.

### **Section 32: Role of the User Department**

- (1) The User Department of a Procuring Entity shall perform the following:
  - (a) liaise with and assist the Procurement Unit throughout the Public Procurement and Disposal of Assets Process to the point of Award;
  - (b) initiate, or provide technical input and Specifications to, Procurement and Disposal requirements and forward them to the Procurement Unit;
  - (c) provide input into the technical evaluation of Bids received as required by the Public Procurement and Disposal of Assets Unit;
  - (d) report any departure from the terms and conditions of an awarded Contract to the Public Procurement and Disposal of Assets Unit;
  - (e) forward details of any required amendments to Contracts to the Procurement Unit for action;
  - (f) participate as a member in the Verification and Acceptance Committee for each Procurement Process relevant to such User Department;
  - (g) maintain and archive records of contracts management; and
  - (h) prepare any reports required for submission to the Public Procurement and Disposal of Assets Unit, the Public Procurement and Disposal of Assets Committee or the Accounting Officer.
  
- (2) The User Department shall prepare a work plan for Public Procurement and Disposal of Assets based on the approved budget, which shall be submitted to the Public Procurement and Disposal of Assets Unit for implementation.

### **Section 33: Evaluation Public Procurement and Disposal of Assets**

#### **Committee**

- (1) All evaluations shall be conducted by an Evaluation Public Procurement and Disposal of Assets Committee, which shall report to the Procurement Committee or head of the user department;
  
- (2) The membership of the Evaluation Public Procurement and Disposal of Assets Committee shall be recommended by the Public Procurement and Disposal of Assets Unit, in accordance with regulations made under this Act, and approved by the Accounting Officer.
  
- (3) The number of the members of the Evaluation Public Procurement and Disposal of Assets Committee shall depend on the value and complexity

of the subject matter of the Procurement, but shall in all cases be a minimum of three members.

- (4) The members shall be of an appropriate level of seniority and experience, depending on the value and complexity of the object of the Procurement.
- (5) Members of the Evaluation Public Procurement and Disposal of Assets Committee may be external to the Procuring Entity, where the required skills or experience are not available within the Procuring Entity or where members are indisposed or have a conflict of interest.
- (6) All members of the Evaluation Public Procurement and Disposal of Assets Committee shall sign the Code of Ethical Conduct in Business provided under this Act, or such Code subsequently issued by the Authority
- (7) The meetings of the Evaluation Public Procurement and Disposal of Assets Committee and the conduct of the evaluation shall be executed in accordance with the regulations made under this Act.

#### **Section 34: Independence of Functions and Powers within Procuring**

##### **Entities**

Subject to the provisions of this Act, the Accounting Officer, the Public Procurement and Disposal of Assets Committee, the Public Procurement and Disposal of Assets Unit, the Acceptance and Verification Committee and the Evaluation Public Procurement and Disposal of Assets Committee shall act independently and without undue influence in relation to their respective functions and powers.

#### **Section 35: Independent Public Procurement and Disposal of Assets Agents**

- (1) Where it is deemed that there is lack of technical capacity, and subject to the regulations made under this Act and the prior approval of the Authority, a Procuring Entity may engage the services of an independent Public Procurement and Disposal of Assets agent.
- (2) On deciding to invite an independent procurement agent, a Procuring Entity shall:

- (a) secure prior written assurance of the Accounting Officer that funds have been budgeted and are available to pay in full and on time for such services;
  - (b) obtain those services from independent Public Procurement and Disposal of Assets agents pre-qualified by the Authority ; and
  - (c) follow the procedure laid down by the Authority in the regulations.
- (3) The regulations made under this Act shall detail the required qualifications of independent Public Procurement and Disposal of Assets agents, the process for qualifying independent Public Procurement and Disposal of Assets agents, and grounds for disqualifying independent procurement agents.
  - (4) Independent Public Procurement and Disposal of Assets agents are required to comply with the provisions of this Act in the same manner as a Procuring Entity.

#### **Section 36: Defense and National Security Institutions**

- (1) For the avoidance of doubt, Defence and National Security Institutions shall comply with this Act, subject to the provisions of this section;
- (2) Defence and National Security Institutions shall manage their Public Procurement and Disposal of Assets on the basis of a dual list, covering items subject to open and restricted Public Procurement and Disposal of Assets methods, provided the security institutions liaise with the Ministry of Finance and Planning;
- (3) The items on the restricted list must be of such a sensitive nature that the Public Procurement and Disposal of Assets method must be restricted in order to protect essential national security interests;
- (4) Defence and National Security Institutions shall comply with the categorization of items on the classified (restricted) and unclassified (open) as determined by the Council of Ministers according to Section 24 (3) of Public Financial Management and Accountability Act, 2011;
- (5) The restricted items shall be subject to a classified audit and submitted to the Transitional National Legislative Assembly in the reports of the Ministry and other Procuring Entities as prescribed in the Public Financial Management and Accountability Act, 2011.

## CHAPTER IV

### BASIC PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS RULES

#### Section 37: Communications in Public Procurement and Disposal of Assets

- (1) Any document, notification, decision or any other information generated in the course of a Public Procurement and Disposal of Assets Process and communicated as required by this Act, including in connection with challenge and appeal proceedings under this Act or in the course of a meeting, or forming part of the record of Public Procurement and Disposal of Assets Processes under this Act, shall be in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference;
- (2) Without prejudices to sub-Section (1) above, e-procurement (information and communication technology) may be used in procurement and disposal of assets proceedings, such as:
  - (a) publication of notices;
  - (b) submission and opening of tenders;
  - (c) tender evaluation;
  - (d) requesting for information on the tender or disposal process;
  - (e) dissemination of laws, regulations and directives;
  - (f) digital signatures; or
  - (g) as may be prescribed by regulations.

#### Section 38: Participation by Providers and Contractors

- (1) Candidates shall participate in procurement proceedings without discrimination except where participation is limited in accordance with this Act and the regulations;
- (2) Subject to sub-section one (1) above the Minister shall in consideration of economic and social development factors, prescribe preferences and or reservations in public procurement and disposal of assets;
- (3) The preferences and reservations referred to in sub-section (2) shall:
  - i. be non-discriminatory in respect of the targeted groups;

- ii. allow competition among the eligible providers or contractors;
- iii. be monitored and evaluated;
- iv. works, services and goods, or any combination thereof;
- v. identified regions; and
- vi. such other categories as may be prescribed.

(4) The preferences and reservations shall apply to;

- i. persons such as disadvantaged groups, Small and medium enterprises;
- ii. women, youth and people with disabilities;

(5) Applying the preferences and reservations under this section,

- i. exclusive preferences shall be given to citizens of South Sudan if the funding is 100% from the government of South Sudan;
- ii. the amounts are below the prescribed threshold; and
- iii. a prescribed margin of preference may be given in the evaluation of bids to candidates offering manufactured goods, mining, and extraction grown in South Sudan.

### **Section 39: Qualifications of Providers and Contractors**

(1) Providers or Contractors shall meet the following criteria:

- (a) that they have the necessary technical and environmental qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and the personnel to perform the Contract;
- (b) that they meet ethical and other standards applicable in South Sudan;
- (c) that they have legal capacity to enter into the Contract;
- (d) that they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;
- (e) that they have fulfilled their obligations to pay taxes and other social contributions in South Sudan;
- (f) that they have not, and the directors and members of senior management with decision-making authority for such organization have not, been convicted of any criminal offence related to their professional conduct or for engaging in Fraudulent or Corrupt Practices in order to enter into a Contract within a period of ten years preceding the commencement of the Public Procurement and Disposal

of Assets Process, or have not been otherwise disqualified pursuant to administrative suspension or debarment proceedings.

(2) Any requirement established pursuant to this Act shall be set out in the Pre-Qualification documents, if any, and in the Bidding Documents, and shall apply equally to all Providers or Contractors; and

(3) A Procuring Entity:

1. shall disqualify a Provider or Contractor if it finds at any time that the information submitted concerning the qualifications of the Provider or Contractor was false or constituted a misrepresentation;
2. other than in a case to which subparagraph 1 applies, may not disqualify a Provider or Contractor on the ground that information submitted concerning the qualifications of the Provider or Contractor was inaccurate or incomplete in a non-material respect, unless such Provider or Contractor fails to remedy such deficiencies promptly upon request by the Procuring Entity.

#### **Section 40: Description of the Subject Matter of Public Procurement and**

##### **Disposal of Assets**

- (1) Bidding Documents shall set out a detailed description of the subject matter of the Procurement Process that will be used in the examination of Bids, including the minimum requirements that Bids must meet in order to be considered responsive, and the manner in which those minimum requirements are to be applied.
- (2) Other than as provided in this Act, no description of the subject matter of a Public Procurement and Disposal of Assets Process that may restrict the participation of Providers or Contractors in or their access to the Procurement Process, including any restriction based on nationality, shall be included or used in the Pre-Qualification Documents, if any, or in the Bidding Documents.
- (3) To the extent practicable:
  - (a) the description of the subject matter of the Public Procurement and Disposal of Assets Process shall be objective, functional and generic, and shall set out the relevant technical, quality and performance characteristics of that subject matter; and

- (b) there shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the subject matter of Public Procurement and Disposal of Assets provided that words such as "or equivalent" are included.

#### **Section 41: Evaluation Criteria and Procedures**

- (1) The evaluation criteria relating to the subject matter of the Public Procurement and Disposal of Assets Process shall include:
  - (a) price;
  - (b) the cost of operating, maintaining and repairing Supplies or construction, the time for delivery of Services, completion of construction or provision of Services, the characteristics of the subject matter of Public Procurement and Disposal of Assets Process, such as the functional characteristics of Services or construction and the environmental characteristics of the subject matter, the terms of payment and of guarantees in respect of the subject matter of the Public Procurement and Disposal of Assets Process;
  - (c) where relevant in Public Procurement Processes conducted in accordance with this Act, the experience, reliability and professional and managerial competence of the Provider or Contractor and of the personnel to be involved in providing the subject matter of the Procurement Process.
- (2) In addition to the criteria set out in sub-section(1) above, the evaluation criteria may include:
  - (a) criteria that the regulations made under this Act or other provisions of the laws of South Sudan authorise or require to be taken into account; or
  - (b) a margin of preference for the benefit of National Providers or domestically produced Supplies, or any other preference, if:
    - (i) authorised or required by the regulations made under this Act or other provisions of applicable law;
    - (ii) such margin of preference has been calculated in accordance with the regulations made under this Act, but in no case should exceed fifteen percent (15%).

- (3) To the extent practicable, all non-price evaluation criteria shall be objective, quantifiable and expressed in monetary terms.
- (4) The Procuring Entity shall set out in the Bidding Documents:
  - (a) whether the Successful Bid will be ascertained on the basis of price or of price and other criteria;
  - (b) all evaluation criteria established pursuant to this section, including price as modified by any preference;
  - (c) the relative weights of all evaluation criteria; and
  - (d) the manner of application of the criteria in the evaluation procedure.
- (5) In evaluating Bids and determining the Successful Bid, the Procuring Entity shall use only those criteria and procedures that have been set out in the Bidding Documents, and shall apply those criteria and procedures in the manner that has been disclosed in those Bidding Documents.

#### **Section 42: Estimation of the Value of the Public Procurement and**

##### **Disposal of Assets**

A Procuring Entity shall neither divide its Public Procurement and Disposal of Assets nor use a particular valuation method for estimating the value of Procurement so as to limit competition among Providers or Contractors or otherwise avoid its obligations under this Act.

#### **Section 43: Language of Documents**

- (1) The Pre-Qualification or Bidding Documents shall be formulated in English.
- (2) Applications to pre-qualify, if any, and Bids may be formulated and presented in English, or in any other language permitted by the Pre-Qualification or Bidding Documents, as applicable.

#### **Section 44: Manner, Place and Deadline for Submitting Bids**

- (1) The manner, place and deadline for presenting Bids shall be set out in the invitation to pre-qualify and the Pre-Qualification documents, if any, and the Bid Notice and Bidding Documents;
- (2) Deadlines for presenting Bids shall be expressed as a specific date and time and shall allow sufficient time for Providers or Contractors to prepare and present their Bids, taking into account the reasonable needs of the Procuring Entity;
- (3) If the Procuring Entity issues a clarification or modification of the Pre-Qualification or Bidding Documents, it shall, prior to the applicable deadline for submission of Bids, extend the deadline if necessary or as required under this Act, in order to afford Providers or Contractors sufficient time to take the clarification or modification into account in their Bids;
- (4) Notice of any such extension shall be given promptly to each Provider or Contractor that was provided the Pre-Qualification or Bidding Documents.

#### **Section 45: Clarifications and Modifications of Bidding Documents**

- (1) A Provider or Contractor may request a clarification of the Bidding Documents from the Procuring Entity, if such request is made within the timeframe established in the Bidding Documents, in which case the Procuring Entity shall:
  - (a) respond within five working days; and
  - (b) without identifying the source of the request, communicate the clarification to all Providers or Contractors to which the Procuring Entity has provided the Bidding Documents.
- (2) At any time prior to the deadline for presenting Bids, the Procuring Entity may, for any reason, modify the Bidding Documents by issuing an addendum, which shall be communicated promptly to all Providers or Contractors to which the Procuring Entity has provided the Bidding Documents and shall be binding on those Providers or Contractors.
- (3) If, as a result of a clarification or modification issued in accordance with this Act, the information published when first soliciting the participation of Providers or Contractors in the Procurement Process becomes

materially inaccurate, the Public Procuring and Disposal of Assets Entity shall cause the amended information to be published in the same manner and place in which the original information was published, and shall extend the deadline for presentation of Bids as provided for in this Act.

#### **Section 46: Clarification of Bids**

- (1) At any stage of the Public Procurement and Disposal of Assets Process, the Procuring Entity may ask a Bidder for clarifications of its qualification information or of its Bid.
- (2) The Procuring Entity shall correct purely arithmetical errors that are discovered during the examination of Bids and shall give prompt notice of any such correction to the relevant Provider or Contractor.
- (3) No substantive change to qualification information, and no substantive change to a Bid (including changes aimed at making an unqualified Bidder qualified or an unresponsive Bid responsive), shall be sought, offered or permitted.
- (4) No negotiations shall occur between the Procuring Entity and a Bidder regarding qualification information or Bids, nor shall any change in price be made pursuant to a clarification that is sought under this Act.

#### **Section 47: Bid Securities**

- (1) When the Procuring Entity requires Bidders to provide Bid Security:
  - (a) the requirement shall apply to all Bidders;
  - (b) such Bid Security may not exceed two percent of the value of the subject matter of the Public Procurement and Disposal of Assets Process;
  - (c) the Bidding Documents may stipulate that the issuer of the Bid Security, as well as the form and terms of the Bid Security, must be acceptable to the Procuring Entity;
  - (d) prior to presenting a Bid, a Bidder may request the Procuring Entity to confirm the acceptability of a proposed issuer of a Bid Security, to which the Procuring Entity shall respond promptly;
  - (e) confirmation of the acceptability of a proposed issuer does not preclude the Procuring Entity from rejecting the Bid Security on

the ground that the issuer has become insolvent or has otherwise ceased to be creditworthy;

- (f) the Procuring Entity shall specify in the Bidding Documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required Bid Security; any such requirement that refers directly or indirectly to the conduct of the Bidder may relate only to:
    - (i) withdrawal or modification of the Bid after the deadline for presenting Bids, or before the deadline if so stipulated in the Bidding Documents;
    - (ii) failure to sign a Contract if so required by the Bidding Documents; and
    - (iii) failure to provide a required Security for the performance of the Contract after an Award or to comply with any other condition precedent to signing the Contract specified in the Bidding Documents.
- (2) The Procuring Entity shall make no claim to the amount of the Bid Security, and shall promptly return, or procure the return of, the security document after the earliest of the following events:
- (a) the expiry of the Bid Security;
  - (b) the entry into force of a Contract and the provision of Security for the performance of the Contract, if such a Security is required by the Bidding Documents;
  - (c) the cancellation of the Public Procurement and Disposal of Assets Process; or
  - (d) the withdrawal of a Bid before the deadline for presenting Bids, unless the Bidding Documents stipulate that no such withdrawal is permitted.

#### **Section 48: Pre-Qualification Proceedings**

- (1) The Procuring Entity may engage in Pre-Qualification proceedings, to which the provisions of this Act shall apply and which shall include the preparation of a shortlist in response to an invitation to submit expressions of interest in a request for proposal;
- (2) An invitation to pre-qualify shall be published in the publication identified in the regulations made under this Act;

- (3) The invitation to pre-qualify shall include the following information:
  - (a) the name and address of the Procuring Entity;
  - (b) a summary of the principal required terms and conditions of the Contract to be entered into in the Public Procurement and Disposal of Assets Process;
  - (c) criteria and procedures to be used for ascertaining the qualifications of Providers or Contractors, in conformity with this Act;
  - (d) means of obtaining the Pre-Qualification documents;
  - (e) the price, if any, to be charged for the Pre-Qualification documents and, subsequently, the Bidding Documents, including the means and currency of payment;
  - (f) the language or languages in which the Pre-Qualification documents and, subsequently, the Bidding Documents are available; and
  - (g) the manner, place and deadline for presenting applications to pre-qualify and, if already known, Bids.
- (4) The Procuring Entity shall provide a set of Pre-Qualification documents to each Provider or Contractor that requests them in accordance with the invitation to pre-qualify and that pays the price, if any, charged for those documents, which price shall reflect only the cost of providing them to Providers or Contractors;
- (5) The Pre-Qualification documents shall include the following information:
  - (a) instructions for preparing and presenting Pre-Qualification applications;
  - (b) any documentary evidence or other information that must be presented by Providers or Contractors to demonstrate their qualifications;
  - (c) the name, functional title and address of one or more officers or employees of the Procuring Entity who are authorised to communicate directly with and to receive communications directly from Providers or Contractors in connection with the Pre-Qualification proceedings; and
  - (d) any other requirements that may be established by the Procuring Entity in conformity with this Act and the regulations made under this Act;
- (6) Clarifications to Pre-Qualification documents may be made and responded to in the same manner provided in this Act;
- (7) The Procuring Entity shall take a decision with respect to the qualifications of each Bidder, and shall apply only the criteria and procedures set out in the invitation to pre-qualify and in the Pre-Qualification documents;
- (8) Only Bidders that have been pre-qualified are entitled to participate further in the Procurement Process;

- (9) The Procuring Entity shall promptly notify each Bidder whether or not it has been pre-qualified.

#### **Section 49: Cancellation of the Public Procurement and Disposal of Assets Process**

- (1) The Procuring Entity may cancel the Public Procurement and Disposal of Assets Process:
  - (a) at any time prior to the acceptance of the Successful Bid and shall not open any Bids after taking such decision; and
  - (b) after the Successful Bid was accepted, in the circumstances referred to in this Act.
- (2) Upon cancellation of a Public Procurement and Disposal of Assets Process, the Procuring Entity shall:
  - (a) promptly communicate its decision to cancel the Public Procurement and Disposal of Assets Process to all Bidders;
  - (b) provide the reasons for the decision, upon request of a Bidder;
  - (c) publish a notice of the cancellation in the same manner and place in which the Bid Notice was published; and
  - (d) return any unopened Bids to the respective Bidders.
- (3) Unless the cancellation of the Public Procurement and Disposal of Assets Process was a consequence of irresponsible or dilatory conduct on the part of the Procuring Entity, the Procuring Entity shall incur no liability, solely by virtue of its invoking sub-section (1) above, towards Bidders.

#### **Section 50: Exclusion of Providers and Contractors from the Procurement Process**

- (1) A Procuring Entity shall exclude a Provider or Contractor from the Public Procurement and Disposal of Assets Process if:
  - (a) the Provider or Contractor has engaged in Fraudulent or Corrupt Practices in relation to such Procurement Process; or
  - (b) the Provider or Contractor has an unfair competitive advantage or a conflict of interest in violation of the laws of South Sudan.

- (2) Any such decision of the Procuring Entity and the reasons therefore shall be promptly communicated to the Provider or Contractor concerned.

### **Section 51: Acceptance of the Successful Bid and Entry into Force of the Contract**

- (1) The Procuring Entity shall accept the Successful Bid unless:
- (a) the Bidder presenting the Successful Bid is disqualified in accordance with this Act;
  - (b) the Public Procurement and Disposal of Assets Process is cancelled in accordance with this Act; or
  - (c) the Bidder presenting the Successful Bid is excluded from the Procurement Process in accordance with this Act.
- (2) The Procuring Entity shall promptly provide each Bidder with a notice of its decision to accept the Successful Bid, which shall contain:
- (a) the name and address of the Bidder presenting the Successful Bid;
  - (b) the price in the Successful Bid and, if applicable, a summary of other characteristics and relative advantages of the Successful Bid; and
  - (c) the duration of the Standstill Period, which shall run from the date of signature of the notice under this paragraph to all Bidders, as set out in the Bidding Documents, and in accordance with the regulations made under this Act.
- (3) Upon expiry of the Standstill Period, or where there is none, promptly after the Successful Bid was ascertained, the Procuring Entity shall dispatch the notice of acceptance of the Successful Bid to the relevant Bidder;
- (4) Except as provided in this Act, a Contract in accordance with the terms and conditions of the Successful Bid enters into force upon the date of signature of the notice of acceptance, provided that the notice is dispatched while the Bid is still in effect;
- (5) If the value of the subject matter of the Procurement Process is above the threshold for Request for Quotations provided in this Act, the Bidder with the Successful Bid and the Procuring Entity shall sign a Contract conforming to the terms and conditions of the Successful Bid after the Ministry of Justice has reviewed the Contract;

- (6) If the Ministry of Justice has not completed its review of the Contract within the time specified in the Bidding Documents, the period of effectiveness of the Bid or the Bid Security shall not be extended, unless the Bidder agrees to such extension in accordance with this Act;
- (7) If the Bidder with the Successful Bid fails to sign any Contract as required, or fails to provide any required Security for the performance of the Contract, the Procuring Entity may either:
  - (a) cancel the procurement; or
  - (b) decide to select the next Successful Bid from among those remaining in effect, in accordance with the criteria and procedures set out in this Act and in the Bidding Documents.

### **Section 52: Public Notice of Awards**

- (1) Upon the entry into force of the Contract, the Procuring Entity shall promptly publish notice of the Award of the Contract, specifying the name(s) of the Provider(s) or Contractor(s) to which the Contract was awarded and, in the case of Contracts, the Contract price.
- (2) Subsection (1) above is not applicable to Awards where the Contract price is less than the threshold amount set out in the regulations made under this Act; the Procuring Entity shall publish a cumulative notice of such awards from time to time but at least once a year.
- (3) The regulations made under this Act shall provide for the manner of publication of the notices required under this Act.

### **Section 53: Confidentiality**

- (1) In its communications with Providers or Contractors or with any person, the Procuring Entity shall not disclose any information if:
  - (a) its non-disclosure is necessary for the protection of essential national security interests; or
  - (b) if its disclosure would:
    - i. be contrary to law;
    - ii. impede law enforcement;
    - iii. prejudice the legitimate commercial interests of the Providers or Contractors; or

iv. impede fair competition, unless disclosure of that information is ordered by a competent court, and in such case, subject to the conditions of such an order.

(2) Except when explicitly permitted by this Act, the Procuring Entity shall treat Bids in such a manner as to avoid the disclosure of their contents to competing Providers or Contractors or to any other person not authorised to have access to this type of information.

#### **Section 54: Record of Procurement Processes**

(1) Using such standardised forms and documents as issued by the Authority, the Procuring Entity shall maintain for seven years a record of each Public Procurement and Disposal of Assets Process that includes the following information:

- (a) a brief description of the subject matter of the Public Procurement and Disposal of Assets;
- (b) the names and addresses of Bidders and the name(s) and address(es) of the Bidder with which a Contract is entered;
- (c) a statement of the reasons and circumstances relied upon by the Procuring Entity for the decision as regards means of communication and any requirement of form;
- (d) in the Procurement Process in which the Procuring Entity, in accordance with this Act, limits participation of Providers or Contractors, a statement of the reasons and circumstances relied upon by the Procuring Entity for imposing the limitation;
- (e) if the Procuring Entity uses a method of Procurement other than open competitive bidding, a statement of the reasons and circumstances relied upon to justify the use of such other method;
- (f) if the Procurement Process is cancelled, a statement to that effect and the justifying reasons and circumstances;
- (g) if no Standstill Period was applied, a statement of the justifying reasons and circumstances;
- (h) in the case of a challenge or appeal under this Act, a copy of the complaint and of all decisions taken in the relevant appeal proceedings and the reasons there for;
- (i) a summary of any requests for clarification of the Pre-Qualification or Bidding Documents, the responses thereto, as well as a summary of any modification of those documents;
- (j) information relative to the qualifications, or lack thereof, of Bidders, including in Pre-Qualification proceedings;

- (k) if a Provider or Contractor is excluded from the Public Procurement and Disposal of Assets Process pursuant to this Act, a statement to that effect and the justifying reasons and circumstances;
  - (l) a copy of the notice of the Standstill Period given in accordance with this Act;
  - (m) if the Procurement Process resulted in the Award of a Contract in accordance with this Act, a statement to that effect and of the reasons therefore;
  - (n) the Contract price and other principal terms and conditions of the Contract; where a written Contract has been concluded, a copy thereof;
  - (o) for each Bid, the price and a summary of the other principal terms and conditions;
  - (p) a summary of the evaluation of Bids, including the application of any preference pursuant to this Act, and justifying reasons and circumstances for any rejection of Bids; and
  - (q) other information required to be included in the record in accordance with the provisions of this Act or the regulations made under this Act.
- (2) The portion of the record referred to in paragraphs (a) to (h) of subsection one (1) above shall, on request, be made available to any person after the Successful Bid has been accepted or the Procurement Process has been cancelled;
- (3) Subject to subsection (4) below, the portion of the record referred to in paragraphs (l) to (p) of subsection (1) above shall, after the decision on acceptance of the Successful Bid has become known to them, be made available, upon request, to Bidders;
- (4) The provisions of this Act shall apply to the disclosure of the documentary record of a Public Procurement and Disposal of Assets Process;
- (5) The Procuring Entity shall record, file and preserve all documents relating to Procurement Processes according to the regulations made under this Act or other applicable law.

### **Section 55: Public Procurement and Disposal of Assets Planning**

- (1) Government Institutions shall plan their Public Procurement and Disposal of Assets activities annually and shall:
- (a) use Single-Source Public Procurements and Disposals of Assets only if no other method is available;

- (b) aggregate its requirements wherever possible, both within the Procuring Entity and between Procuring Entities, to obtain value for money and reduce Public Procurement and Disposal of Assets costs;
  - (c) make use of framework contracts, as prescribed in the regulations, wherever appropriate to provide an efficient, cost effective and flexible means to procure Supplies, Works, or Services that are required continuously or repeatedly over a set period of time;
  - (d) not split Public Procurement and Disposal of Assets Processes to defeat the use of appropriate Public Procurement and Disposal of Assets methods;
  - (e) integrate its Procurement budget with its expenditure programme; and
  - (f) integrate the Disposal of Assets both listed and unlisted in its Asset Register as well as in its income and expenditure budget.
- (2) All National Institutions shall submit a Public Procurement and Disposal of Assets plan to the Authority for information as part of the budget framework, which shall include anticipated Procurements and the respective method of Public Procurement and Disposal of Assets.
- (3) A National Institution shall review and update its plans quarterly with a report detailing progress on implementation and reasons for any modifications.
- (4) All State and Local Government Institutions shall follow procedures for procurement planning as prescribed by regulations made under this Act.

## **Section 56: Initiation of Public Procurement and Disposal of Assets and**

### **Confirmation of Funding**

- (1) All Public Procurement and Disposal of Assets requirements shall be documented prior to the commencement of any Public Procurement and Disposal of Assets Process;
- (2) Public Procurement and Disposal of Assets Processes shall only be initiated or continued on the confirmation that funding, in the full amount over the required period, is available, or will be made available at the time the contract commitment is made, in accordance with the thresholds and procedures established by the Ministry;

(3) All Public Procurement and Disposal of Assets requirements shall be approved by the Accounting Officer, or any other authorised officer, prior to the commencement of any Public Procurement and Disposal of Assets Process;

(4) Any Public Procurement and Disposal of Assets Process initiated contrary to this section shall be null and void.

### **Section 57: Code of Conduct**

(1) A code of conduct for officers or employees of Government Institutions shall be issued by the Authority and shall address the prevention of conflicts of interest in Procurement and, where appropriate, measures to regulate matters regarding personnel responsible for Procurement, such as declarations of interest in particular Procurements, screening procedures and training requirements.

(2) For the avoidance of doubt, each member of a Procuring Entity or other person involved in any manner in a Procurement Process on behalf of a Government Institution, shall disclose any interest in any Provider or Contractor and shall not participate or attempt to influence by any manner any Procurement Process in which such Provider or Contractor may participate.

(3) All persons referred to subsection (2) shall sign the Code of Ethical Conduct in Business provided in the Regulations.

(4) All Providers or Contractors of Supplies, Works, or Services shall be required to sign a declaration of compliance with those Codes of Conduct.

## **CHAPTER V**

### **METHODS OF PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS**

#### **Section 58: Methods of Public Procurement and Disposal of Assets**

(1) The Procuring Entity may conduct Procurement Processes by means of:

(a) open competitive tendering;

- (b) selective tendering;
  - (c) request for quotations;
  - (d) request for proposals;
  - (e) single-source;
  - (f) framework agreements; and
  - (g) low value Procurement.
- (2) Except as otherwise provided for in this section, a Procuring Entity shall conduct Procurement through open competitive tendering;
- (3) The Procuring Entity may engage in selective tendering in accordance with Part II of this Chapter if:
- (a) the subject matter of the Procurement Process, by reason of its highly complex or specialised nature, is available only from a limited number of Providers or Contractors;
  - (b) the time and cost required to examine and evaluate a large number of Bids would be disproportionate to the value of the subject matter of the Procurement Process; or
  - (c) there is insufficient time, in case of an Emergency, and there are a limited number of Providers or Contractors that could be trusted with fast execution.
- (4) A Procuring Entity may engage in a request for quotations in accordance with Part III of this Chapter for the Procurement of readily available Supplies or Services that are not specially produced or provided to the particular description of the Procuring Entity and for which there is an established market, so long as the estimated value of the subject matter of the request for quotations is less than the threshold amount set out in the Regulations.
- (5) The Procuring Entity may engage in a request for proposals in accordance with Part IV of this Chapter where the subject matter of the Procurement is Consultancy Services or a combination of Supplies and Consultancy Services.
- (6) A Procuring Entity may engage in single-source Procurement in accordance with the provisions of Part V of this Chapter in the following exceptional circumstances:
- (a) the subject matter of the Procurement Process is available only from a particular Provider or Contractor, or a particular Provider or Contractor has exclusive rights in respect of such subject matter, such

- that no reasonable alternative or substitute exists, and the use of any other Procurement method would therefore not be possible;
- (b) in case of Emergency, where there is an urgent need for the Supplies, Works or Services and engaging in another method of Procurement is impractical;
  - (c) owing to a catastrophic event, there is an extremely urgent need for the subject matter of the Procurement, and engaging in any other method of Procurement would be impractical because of the time involved in using those methods;
  - (d) the Procuring Entity, having procured Supplies, equipment, technology or Services from a Provider or Contractor, determines that additional Supplies must be procured from that Provider or Contractor for reasons of standardisation or the need for compatibility with existing Supplies, equipment, technology or Services, taking into account the effectiveness of the original Procurement in meeting the needs of the Procuring Entity, the limited size of the proposed Procurement in relation to the original Procurement, the reasonableness of the price and the unsuitability of alternatives to the Supplies or Services in question; or
  - (e) if a Defence or National Security Institution and the Authority agree that the use of any other method of Procurement is not appropriate for the protection of essential national security interests in accordance with of this Act.
- (7) A Procuring Entity may engage in Low Value Procurement in accordance with Part VI of this Chapter where the subject matter of the Procurement is within the threshold provided in the regulations.

## **PART I: OPEN COMPETITIVE TENDERING**

### **Section 59: Solicitation in Open Competitive Tendering**

- (1) A Bid Notice in open competitive tendering shall be published in at least one national newspaper of wide circulation in South Sudan and internationally, unless as otherwise provided in subsection (3) below;
- (2) The provisions of this section shall not apply where the Procuring Entity engages in Pre-Qualification proceedings in accordance with this Act;
- (3) The Procuring Entity shall not be required to cause the Bid Notice to be published internationally in a national competitive tendering where:

- (a) the Procuring Entity decides, with the approval of the Authority, that only National Providers are likely to be interested in submitting Bids; or
  - (b) the estimated value of the subject matter of the Procurement Process is within the threshold provided in the regulations, in which case, at least four weeks shall be allowed for submission of Bids by Provider or Contractors.
- (4) The Procuring Entity shall cause the Bid Notice to be published as in subsection (1) above by using international competitive tendering, when:
- (a) the estimated value of the subject matter of the Procurement Process is greater than the threshold provided in the regulations; or
  - (b) effective competition cannot be obtained unless Foreign Providers are invited to participate in such Procurement Process, in which case, at least six weeks shall be allowed for submission of Bids by Providers or Contractors.
- (5) The Bid Notice shall contain the following information:
- (a) the name and address of the Procuring Entity;
  - (b) a summary of the principle required terms and conditions of the Contract to be entered into in the Procurement Process;
  - (c) a summary of the criteria and procedures to be used for ascertaining the qualifications of Bidders, and of any documentary evidence or other information that must be submitted by Bidders to demonstrate their qualifications, in conformity with the regulations;
  - (d) means of obtaining the Bidding Documents;
  - (e) the price, if any, to be charged for the Bidding Documents, including the means and currency of payment;
  - (f) the language or languages in which the Bidding Documents are available; and
  - (g) the manner, place and deadline for presenting Bids.
- (6) The Procuring Entity shall provide the Bidding Documents to:
- (a) each Provider or Contractor that responds to the Bid Notice in accordance with the procedures and requirements specified therein; or
  - (b) if Pre-Qualification proceedings have been engaged in, each Bidder has been pre-qualified and pays the price, if any, charged for the Bidding Documents.
- (7) The price that the Procuring Entity may charge for the Bidding Documents shall reflect only the cost of providing them to Providers or Contractors, and may not exceed the maximum amount prescribed in the Regulations made under this Act.

## Section 60: Contents of Bidding Documents

The regulations made under this Act shall specify details of the contents of the Bidding Documents, which shall include the following:

- (a) instructions for preparing Bids;
- (b) the criteria and procedures, in conformity with the provisions of this Act, that will be applied in the ascertainment of the qualifications of Bidders;
- (c) a detailed description of the subject matter of the Procurement Process, in conformity with this Act;
- (d) the terms and conditions of the Contract, to the extent known, and the Contract form, if any, to be signed by the parties;
- (e) the manner in which the Bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the Procurement itself;
- (f) any requirements with respect to the issuer and the nature, form, amount and other principle terms and conditions of any Bid Security;
- (g) if a Bidder may not modify or withdraw its Bid prior to the deadline for presenting Bids without forfeiting its Bid Security, a statement to that effect;
- (h) the manner, place and deadline for presenting Bids;
- (i) the period of time during which Bids shall be in effect;
- (j) the manner, place, date and time for the opening of Bids;
- (k) the criteria and procedure for evaluating Bids in accordance with this Act;
- (l) the name, functional title and address of one or more officers or employees of the Procuring Entity who are authorised to communicate directly with and to receive communications directly from Providers or Contractors in connection with the Procurement Process;
- (m) any formalities that will be required once a Successful Bid has been accepted for a Contract to enter into force in accordance with this Act;
- (n) any other requirements established by the Procuring Entity in conformity with this Act and the regulations made under this Act.

## Section 61: Submission of Bids

- (1) Bids shall be submitted in the manner, at the place, and by the deadline specified in the Bidding Documents.
- (2) A Bid shall be submitted in writing, and signed, and:
  - (a) if in paper form, in a sealed envelope; or
  - (b) if in any other form, according to requirements specified by the Procuring Entity in the Bidding Documents, which ensure at least a

similar degree of authenticity, security, integrity and confidentiality.

- (3) The Procuring Entity shall preserve the security, integrity and confidentiality of a Bid, and shall ensure that the contents of the Bid are examined only after its opening in accordance with this Act.
- (4) A Bid received after the deadline for presenting Bids shall not be opened and shall be returned unopened to the concerned Bidder.

#### **Section 62: Period of Effectiveness of Bids**

- (1) Bids shall be in effect for the period of time specified in the regulations made under this Act.
- (2) Prior to the expiry of the period of effectiveness of Bids, the Procuring Entity may request Bidders to extend the period for an additional specified period of time, which requires that a Bidder may refuse without forfeiting its Bid Security.
- (3) Bidders that agree to an extension of the period of effectiveness of their Bids shall extend the period of effectiveness of their Bid Securities or provide new Bid Securities to cover the extended period of effectiveness of their Bids, or otherwise be deemed to have refused the request to extend the period of effectiveness of its Bid.

#### **Section 63: Opening of Bids**

- (1) Bids shall be opened at the time, place and in accordance with the manner and procedures specified in the Bidding Documents.
- (2) All Bidders, or their representatives, shall be permitted to participate in the opening of Bids.
- (3) The name and address of each Bidder whose Bid is opened and the Bid price shall be announced to those persons present at the opening of Bids.
- (4) No decision regarding the disqualification or rejection of any Bid shall be taken in the Bid opening session.

#### Section 64: Examination and Evaluation of Bids

- (1) Subject to subsection (2) below, the Procuring Entity shall regard a Bid as responsive if it conforms to all requirements set out in the Bidding Documents;
- (2) The Procuring Entity may regard a Bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the Bidding Documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the Bid; any such deviations shall be quantified, to the extent possible, and appropriately taken into account in the evaluation of Bids;
- (3) The Procuring Entity shall reject a Bid:
  - (a) if the Bidder is not qualified;
  - (b) if the Bidder does not accept a correction of an arithmetical error made pursuant to this Act;
  - (c) if the Bid is not responsive; or
  - (d) in the circumstances referred to in this Act;
- (4) The Procuring Entity shall evaluate the Bids that have not been rejected in order to ascertain the Successful Bid, as defined in subsection (5) below, in accordance with the criteria and procedures set out in the Bidding Documents;
- (5) The Successful Bid shall be:
  - (a) where price is the only criterion, the Bid with the lowest responsive price;
  - (b) where there are prices and other award criteria, the most advantageous Bid ascertained on the basis of the criteria and procedures for evaluating Bids specified in the Bidding Documents in accordance with Section 58 of this Act; and
  - (c) where the bidder has satisfied the criteria set out in Section 41 of this Act (financial and technical proposals).
- (6) The Procuring Entity shall communicate the summary results of the bidding process to all the bidders.

## **Section 65: Prohibition of Negotiations with Bidders**

No negotiations shall take place between the Procuring Entity and a Bidder with respect to such Bidder's Bid, except as otherwise provided in this Act.

## **PART II: SELECTIVE TENDERING**

### **Section 66: Solicitation in Selective Tendering**

- (1) The Procuring Entity may engage in Procurement by means of selective tendering:
  - (a) where the subject matter of procurement process, by reason of its highly complex or specialized nature, is available only from a limited number of Providers or Contractors, as specified in Section 38 of this Act, it shall solicit Bids from all Providers and Contractors from which the subject matter of the Procurement Process is available;
  - (b) where the time and cost required to examine and evaluate a large number of bids would be disproportionate to the value of the subject matter of the procurement process; or
  - (c) where there is insufficient time in case of an emergency, and there are limited number of Providers or Contractors that could be entrusted with fast execution;
  
- (2) On the ground specified in sub-Section 1 of this Section it shall select in a non-discriminatory manner, a sufficient number of Providers or Contractors to ensure effective competition, but at least three (3).

### **Section 67: Rules for Selective Tendering**

The provisions of Section 58 of this Act shall be applicable to open competitive tendering, except for selective tendering proceedings.

## **PART III: REQUEST FOR QUOTATIONS**

### **Section 68: Solicitation in Request for Quotations**

Where the Procuring Entity engages in Procurement by means of request for quotations in accordance with this Section of the Act, it shall request quotations from as many Providers or Contractors as practicable.

## **Section 69: Rules for Requests for Quotations**

- (1) Quotations must be submitted in writing in the format prescribed in the regulations made under this Act.
- (2) Each Bidder is permitted to give only one price quotation and is not permitted to change its quotation, and no negotiations shall take place between the Procuring Entity and a Bidder with respect to the latter's quotation;
- (3) The Successful Bid shall be the lowest-priced quotation meeting the needs of the Procuring Entity as set out in the Bidding Documents.

## **PART IV: REQUEST FOR PROPOSALS**

### **Section 70: Solicitation in Request for Proposals**

- (1) For the purposes of procuring Consultancy Services, the Procuring Entity may invite participation of Providers or Contractors by:
  - (a) publishing an invitation to submit expressions of interest in the same manner provided in this Act, as appropriate, as a result of which a shortlist of no more than six Providers shall be prepared, to which the request for proposals shall be submitted in accordance with Section (a);  
or
  - (b) engaging in direct solicitation under the conditions set out in subsection (2) below.
- (2) The Procuring Entity may engage in direct solicitation in request for proposals proceedings if:
  - (a) the subject matter to be procured is available only from a limited number of Providers or Contractors, provided that the Procuring Entity solicits Bids from all those Providers or Contractors;
  - (b) the time and cost required to examine and evaluate a large number of Bids would be disproportionate to the value of the subject matter to be procured, provided that the Procuring Entity solicits Bids from a sufficient number of Providers or Contractors to ensure effective competition; or
  - (c) the Procurement Process involves classified information, provided that the Procuring Entity solicits Bids from a sufficient number of Providers or Contractors to ensure effective competition.
- (3) The invitation to participate in the request for proposals shall include:
  - (a) the name and address of the Procuring Entity;

- (b) a detailed description of the subject matter of the Procurement Process, in conformity with this Act;
  - (c) the terms and conditions of the Contract, to the extent known, and the Contract form, if any, to be signed by the parties;
  - (d) the criteria and procedures to be used for ascertaining the qualifications of Providers or Contractors and any documentary evidence or other information that must be presented by Providers or Contractors to demonstrate their qualifications, in conformity with this Act;
  - (e) criteria and procedures for opening the Bids and for examining and evaluating the Bids in accordance with Section 41 of this Act, including the minimum requirements with respect to technical, quality and performance characteristics that Bids must meet in order to be considered responsive in accordance with of this Act, and a statement that proposals that fail to meet those requirements will be rejected as non-responsive;
  - (f) means of obtaining the Bidding Documents;
  - (g) the language or languages in which the Bidding Documents are available; and
  - (h) the manner, place and deadline for presenting Bids.
- (4) The Procuring Entity shall issue the request for proposals:
- (a) in the case provided in subsection (a), to each shortlisted Provider or Contractor; or
  - (b) in the case provided in subsection(2) above, to each Provider or Contractor selected by the Procuring Entity.

### **Section 71: Rules for Request for Proposals**

- (1) The request for proposals shall include, in addition to the information referred to in Sections 69, the following information:
- (a) instructions for preparing and presenting proposals, including instructions to Providers or Contractors to present simultaneously to the Procuring Entity proposals in two envelopes: one envelope containing the technical, quality and performance characteristics of the proposal and the other envelope containing the financial aspects of the proposal;
  - (b) the currency or currencies in which the proposal price is to be formulated and expressed;
  - (c) the manner in which the proposal price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the Procurement Process;
  - (d) the means by which, pursuant in this Act, Providers or Contractors may seek clarifications of the request for proposals, and a statement as to

- whether the Procuring Entity intends, at this stage, to convene a meeting of Providers or Contractors;
- (e) the name, functional title and address of one or more officers or employees of the Procuring Entity who are authorised to communicate directly with and to receive communications directly from Providers or Contractors in connection with the Procurement Process;
  - (f) any formalities that will be required once the Successful Bid has been accepted for a Contract to enter into force as provided in this Act; and
  - (g) any other requirements that may be established by the Procuring Entity in conformity with this Act and the regulations made under this Act.
- (2) The request for proposals shall specify the applicable selection methodology from among one of the following:
- (a) selection based on quality and cost, which can be based either:
    - (i) on the technical quality of the proposal, the Bidder's experience and the experience of its staff, the proposed work and method, as well as the price of the proposal; or
    - (ii) on the quality of the technical proposal submitted within a predetermined fixed budget; or
    - (iii) on the best financial proposal submitted by those Bidders that have obtained an acceptable technical score pre-disclosed in the request for proposals; or, alternatively,
  - (b) selection based solely on the technical quality of the proposal, when the Consultancy Services are of an exceptionally complex nature, or will have 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.
- (3) Before opening the envelopes containing the financial aspects of the proposals, the Procuring Entity shall examine and evaluate the quality of the technical proposal in accordance with the criteria and procedures specified in the request for proposals;
- (4) The proposals, the technical aspects of which fail to meet the relevant minimum requirements in the request for proposals, shall be considered to be non-responsive and shall be rejected on that ground, and a notice of rejection and the reasons for the rejection, together with the unopened envelope containing the financial aspects of the proposal, shall be promptly dispatched to each respective Bidder whose proposal was rejected;
- (5) The Procuring Entity shall rank each responsive proposal in accordance with the criteria and procedure for evaluating proposals as set out in the request for proposals in subsection (2) above, and shall:

## CHAPTER VI

### ADMINISTRATIVE REVIEW

#### Section 77: Administrative Review

A Bidder may seek administrative review for a Procuring Entity's omission or breach of this Act or the regulations made under this Act, or of the Bidding Documents.

#### Section 78: Review by Accounting Officer

- (1) A complaint by a Bidder against a Procuring Entity shall first be submitted in writing to the Accounting Officer within ten working days from the date the Bidder first became aware of the circumstances giving rise to the complaint.
- (2) On receiving a complaint, the Accounting Officer shall make a decision in writing within ten (10) working days indicating the corrective measures to be taken, if any, including the suspension of the proceedings where the Accounting Officer deems it necessary and giving reasons for the decision.
- (3) Where the Accounting Officer does not make a decision within the period specified in subsection (2) above; or the Bidder is not satisfied with the decision of the Accounting Officer; the Bidder may make a complaint to the Authority within ten (10) working days from the date of communication of the decision by the Accounting Officer, or lapse of the deadline for the Accounting Officer to make a decision.

#### Section 79: Review by the Authority

- (1) Upon receipt of a complaint, the Authority shall promptly give notice of the complaint to the respective Procuring Entity, suspending any further action thereon by the Procuring Entity until the Authority has settled the matter.
- (2) The Authority shall, unless it dismisses the complaint:
  - (a) prohibit a Procuring Entity from taking any further action; or

- (b) annul in whole or in part an unlawful act or decision made by the Procuring Entity.
- (3) Before taking any decision on a complaint, the Authority shall notify all interested Bidders of the complaint and may take into account representations from the Bidders and from the respective Procuring Entity and disposing entity.
- (4) The Authority shall issue its decision within twenty one (21) working days after receiving the complaint, stating the reasons for its decision and remedies granted, if any.
- (5) Any further appeal shall be referred to the High Court.

## CHAPTER VII

### MISCELLANEOUS PROVISIONS

#### **Section 80: Protection from Prosecution**

No action shall lie against any member or staff of the Authority or a Procuring Entity for any act or omission done in good faith in the execution of such person's duties under this Act.

#### **Section 81: Suspension of Providers**

A Provider or Contractor that does not comply with this Act, or the regulations made under this Act, shall be suspended by the Authority from engaging in any public Procurement and Disposal of Assets activity for a period to be determined by the Authority on a case by case basis.

#### **Section 82: Offences and Penalties**

A person commits an offence if:

- (a) without reasonable excuse fails or refuses to give information, or produce any document, records or reports required under this Act;

- (b) without reasonable excuse refuses to answer summons or refuses to produce any books of accounts, plans or give evidence as required under this Act;
- (c) contrary to this Act, interferes with or exerts undue influence on any officer or employee of the Authority or a Government Institution in the performance of such officer's or employee's functions or powers under this Act; or
- (d) connives or colludes to engage in Fraudulent or Corrupt Practices and upon conviction; is liable to a fine:
  - i. not less than an amount of South Sudanese Pounds (SSP) equivalent to US Ten (10) thousand dollars; but not exceeding an amount SSP equivalent to twenty (20) thousand US dollars or imprisonment not exceeding three years or both for an individual; and
  - ii. not less than an amount of SSP equivalent to five hundred (500) thousand US dollars for a corporate body.

### Section 83: Regulations

- (1) The Minister shall, on the recommendation of the Authority and the approval of Parliament, issue regulations for the implementation of the provisions of this Act;
- (2) The regulations made under subsection (1) above may include and not limited to the following:
  - (a) standard bidding documents, request for proposals and other forms to be used on a mandatory basis for procuring entities;
  - (b) the preparation and submission of tenders;
  - (c) the manner of publication of the notice of awards;
  - (d) reservations and margin of preferences in the evaluation of bids;
  - (e) the preparation and submission of application to pre-qualify for bids;
  - (f) detailed procedures for selection of consultants and agents;
  - (g) procurement proceedings on the basis of nationality;
  - (h) the procurement proceeding when one entity or specially appointed agent is to procure items on behalf of another entity;
  - (i) the amendment of the thresholds for the procurement methods and award of contracts under sample forms of procurement plans;
  - (j) sample periodic procurement reporting forms;

- (k) print and electronic media acceptable for publication in compliance with this Act; and
- (l) any other matter connected to this Act.

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Assent of the President of the Republic of South Sudan

In accordance with the provision of Article 85 (1) of the Transitional

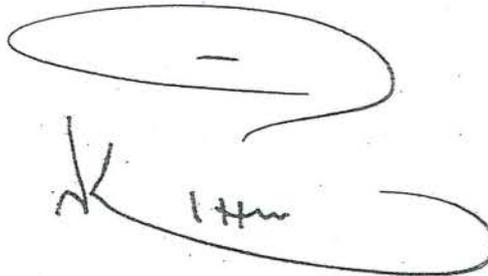
Constitution of the Republic of South Sudan, 2011.

I, Gen. Salva Kiir Mayardit, President of the Republic of South Sudan, hereby

Assent to the **PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS,**

**ACT, 2018** and sign it into law.

Signed in Juba this 26 Day of the Month of  
April in the year 2019



**Gen. Salva Kiir Mayardit**

**President**

**Republic of South Sudan**

**RSS - Juba.**

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