

LAWS OF SOUTH SUDAN

The Public Procurement and Disposal Bill, 2011

(Draft 4)

**Reviewed Draft Text
Directorate of Legislation
Ministry of Justice
Date:24th /10 /2011**

LAWS OF SOUTH SUDAN

PUBLIC PROCUREMENT AND DISPOSAL BILL, 2011

ARRANGEMENT OF SECTIONS

CHAPTER I PRELIMINARY PROVISIONS

1. Title and Commencement
2. Repeal and Savings
3. Purpose
4. Authority and Application of the Bill
5. Interpretation

CHAPTER II PUBLIC PROCUREMENT IN SOUTH SUDAN

6. The Scope of Public Procurement Bill
7. Exemptions and Exclusions

CHAPTER III GENERAL PROVISIONS

8. The Application and Practice of Public Procurement
9. Procurement Communications
10. Restrictions on Domestic Procurement
11. Basic Eligibility Requirements for Suppliers
12. Qualification or Pre-Qualification of Suppliers
13. Pre-Qualification Conditions of Use and Proceedings
14. Description of the Subject Matter and the Terms and Conditions of the Procurement Contract.
15. Bid Evaluation Criteria
16. Groups of Suppliers
17. Language
18. Manner, Place and Deadline for Submitting Applications to Pre-Qualify or Bids
19. Clarifications and Modifications of Bidding Documents
20. Cancellation of Procurement
21. Abnormally Low Bids
22. Debarment and Exclusion from Procurement for Misconduct, Falsification or Conflict of Interest
23. Acceptance of Successful Bid and Entry into Force of Contract
24. Public Notice of Procurement Contracts

25. Confidentiality
26. Procurement Records

CHAPTER IV PROCUREMENT PLANNING AND INITIATION

27. Annual Procurement Planning
28. Advanced Information on possible future Procurement
29. Procurement Needs Assessment
30. Confirmation of Funds Availability
31. Initiation of Procurement Procedure

CHAPTER V PROCUREMENT PROCEDURES AND CONDITIONS ON THEIR USE

32. Procurement Procedures
33. General Rules Applicable to the Selection of a Procurement Method
34. Conditions on the Use of Restricted Tendering, Request for Quotations and Request for Proposals
35. Conditions on Use of Two-Stage Tendering;
36. Conditions on the Use of Urgent and Emergency Procurement
37. Conditions on the Use of Single Source Procurement (Direct Contracting)

CHAPTER VI INVITATION METHODS AND CONDITIONS ON THEIR USE

38. Invitation in Open Tendering and Two-Stage Tendering
39. Invitation in Restricted Tendering, Request for Quotations, and Single-Source Procurement
40. Invitation in Proceedings Involving Request for Proposals

CHAPTER VII OPEN TENDERING

41. Open Tendering
42. Procedures for Inviting Bids
43. Contents of Bid Invitation Notice
44. Provision of Bidding Documents
45. Contents of Bidding Documents
46. Submission of Bids
47. Period of Effectiveness of Bids; Modification and Withdrawal of Bids
48. Opening of Bids
49. Examination and Evaluation of Bids
50. Prohibition of Negotiations with Suppliers or Bidders

**CHAPTER VIII
OTHER PROCUREMENT METHODS**

- 51. Request for Information (RFI)
- 52. Expression of Interest (EOI)
- 53. Minimal Value Procurement (MV)
- 54. Petty Cash (PC)
- 55. Requests for Quotation (RFQ)
- 56. Requests for Proposals (RFP) (Advisory / Consultancy Services)
- 57. Single-Source Procurement (SSP)
- 58. Restricted Tendering (RT)
- 59. Two-Stage Tendering (2ST)
- 60. Design Contest
- 61. Urgent Procurement
- 62. Emergency Procurement
- 63. Safeguard for Urgent and Emergency Tendering

**CHAPTER IX
PROCUREMENT NEGOTIATIONS**

- 64. Engaging in Negotiations

**CHAPTER X
CLASSIFYING AND VALUING PROCUREMENT CONTRACTS**

- 65. Determining the Type of Contract which contains Mixed Elements
- 66. Calculating the Estimated Value of a Goods Contract
- 67. Calculating the Estimated Value of a Services Contract
- 68. Calculating the Estimated Value of a Works Contract

**CHAPTER XI
BID VALIDITY, BID SECURITY AND CONTRACT PERFORMANCE SECURITY**

- 69. Bid Validity
- 70. Bid Security
- 71. Forms of Bid Security
- 72. Forfeiture of Bid Security
- 73. Contract Performance Security
- 74. Cost variations during the Contract

**CHAPTER XII
PROCUREMENT INSTITUTIONS AND OFFICIALS**

- 75. Separation of Duties and Functions
- 76. Procurement Division

77	Functions and Responsibilities of Procurement Division
78	Procurement Committees
79	Bid Opening Committees
80	Bid Evaluation Committee
81	Functions and Authority of Tender Review Committee
82	Contract Compliance Teams
83	Legal Services
84	Administration Services
85	Specialized Procurement Commission
86	Central Procurement Unit
87	Advice and Assistance
88	Responsibilities at an Authorized Procuring Entity
89	General Responsibilities
90	Ministry Monitoring and Supervisory Responsibilities
91	Revising Contract Value Levels Specified in Annex A
92	Establishment of the Public Procurement Regulatory Authority
93	Establishment of the Procurement Compliance Unit
94	Organization of the Procurement Compliance Unit

CHAPTER XIII REVIEW PROCEEDINGS

95	Right to Review
96	Review by an authorized Procuring Entity
97	Review by the Procurement Compliance Unit
98	Rules Governing the Review Proceedings of the Procurement Compliance Unit
99.	Suspension of Procurement Proceedings
100.	Judicial review

CHAPTER XIV OFFENCES AND PENALTIES

101	Unlawful Influence, Retribution, Restraining Competition, Procurement Fraud
102	Penalties

CHAPTER XV MANAGEMENT AND DISPOSAL OF ASSETS

ACQUISITION OF ASSETS

103.	Management Accountability
104.	Responsibilities

RECORDING OF ASSETS

105.	Recording of Assets
106.	Asset Registries
107.	Investment Registries

- 108. Land and Property Assets
- 109. Stores and Equipment
- 110. Loans of Assets or Stores and Equipment
- 111. Rents, Lease and Loan of Assets
- 112. Depreciation
- 113. Annual Accounts

**CHAPTER XVI
SALE, RENTAL OR DISPOSAL OF ASSETS**

- 114. Disposal
- 115. Initiation of Sale, Rent or Disposal Requirements
- 116. Management of Bids and Offers
- 117. Sale by Public Auction
- 118. Sale by Sealed Public Bidding
- 119. Other Types of Disposal
- 120. Revenue from the Sale of Assets
- 121. Transfer of Ownership

**CHAPTER XVII
MISCELLANEOUS**

- 122. Amendment of Schedules
- 123. Procurement Transition Phase
- 124. Assumptions and Considerations
- 125. Regulation

SCHEDULES

(ANNEX A1)
THRESHOLD TYPES FOR PROCUREMENT METHODS

(ANNEX A2)
THRESHOLD VALUES FOR PROCUREMENT METHODS

(ANNEX B)
TIME LIMITS TO RESPOND TO TENDER ADVERTISEMENT

(ANNEX C)
PROCUREMENT FRAUD

LAWS OF SOUTH SUDAN

THE PUBLIC PROCUREMENT DISPOSAL BILL, 2011

In accordance with the provisions of Article 55(3) (b) read together with Article 85(1) of the Transitional Constitution of South Sudan, 2011, the National Legislature, with the assent of the President of the Republic of South Sudan, hereby enacts the following:

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement.

This Bill may be cited as the *Public Procurement and Disposal Bill, 2011* and shall come into force on the date of its signature by the President.

2. Repeal and Savings.

The Interim Public Procurement and Disposal Regulations, 2006 and all rules issued and procedures set in accordance with the provisions of the repealed Regulation are hereby repealed; *provided that*, any pending procurement proceeding that has been formally initiated under such repealed regulations prior to the commencement of this Bill shall continue to be conducted in accordance with such regulations until such proceedings culminate in a contract award or cancelled, as the case may be.

3. Purpose.

The purpose of this Bill is to provide a regularly framework for establishing and governing an open, transparent and rigorous system of public procurement and to provide rules and procedures based on effective budgetary and expenditure controls and reporting requirements and designed to ensure the proper and highly efficient use and expenditure of public fund, Furthermore the Bill is to provide procedures and controls to prevent and penalize procurement fraud and other procurement contraventions.

4. Authority and Application.

This Bill is drafted in accordance with the provisions of **Article (52)**, read together with the provisions of **Schedule (A) paragraphs (39) and (47)** and the provisions of **Schedule (C), paragraph (17) of the Transitional Constitution of the Republic of South Sudan, 2011**, and the provisions of section 12(1) and 34, of the Public Financial Management and Accountability Bill, 2011, which grants the National Government the authority over commerce, trade and commercial

regulation formulation of financial and economic policies and planning, and to engage in the types of activities provided for in this Bill.

5. Interpretation:

In this Bill, unless the context otherwise requires, the following words and expressions, shall bear the meanings assigned to them respectively:

“Assets” means items of land, property and buildings, capital assets, which have monetary value shown in the company balance sheets. Current assets, fixed assets, and stock items and goods. Which exclude Propriety rights, public securities, public domain, public liabilities.

“Bid” means a tender, a proposal, or an offer or a quotation submitted by a person or organisation, to contract with the Government Organisations, in response to invitation made by the Unit with respect to a potential contract for the provision of goods, works and or services. Which is non-negotiable.

“Bidder” means a person or group of persons who offer to perform a function or undertake to discharge an obligation, or to provide goods, works or a service at a specified price generally against formal tender documents or have submitted such a Bid, and to include offers made during an auction, or offers made by contractor(s) to supply or build a project at a given price.

“Bidding Document” means any document developed by the Unit for procurement preceding that describes any object of the procurement activity or the requirements or procedures that Suppliers shall comply with to submit a Bid.

“Bid Security” means a security required from Bidders by the Unit and provided to the Unit to secure the fulfilment of any of the obligations referred thereunder section (71), and includes such arrangements as bank guarantees, surety bonds, standby letters of credit, cheques on which a bank is primarily liable, cash deposits, promissory notes and bills of exchange.

“Chief Officer” (CAO) means the most senior person who has principal day-to-day administrative authority over the operations and personnel of the Unit.

“Chief Procurement Officer” (CPO) means the most senior procurement officer in Unit.

“Classified Information” means information that has lawfully been designated as classified by a public authority of the Government having the authority to make such designation under an applicable National law of South Sudan.

“Concession Contract” means a procurement contract for works, the performance of which is compensated, in whole or in part, by a grant of a right to exploit the object of such contract;

“Complainant” means an interested party who has filed a complaint in accordance with the provisions of Chapter XIII of this Bill;

“Compliance Monitoring” means the monitoring teams of the Unit, or other authorized personnel such as the Office of the Auditor General, who have the authority to check procurement activities, at whatever stage, past, present and pending to verify compliance and conformity with this Bill and the Regulations;

“Consultancy Services” means services that relate to professional practises and are classed as professional, intellectual, technical and or are advisory in nature; such services include, but not limited to, consultancy, architecture; optometry; medicine; land surveying, design, supervision, training, legal, accounting, auditing, medical, software development, valuation, professional engineering, expert opinions, and similar technical or other professional services. An exclude services provided by professionals outside the scope of their profession, such as management consulting services provided by accounting firms, are not considered professional services.

“Contract” means the Procurement Contract made in written agreement between the procuring entity and a party or parties which creates legal obligations between them, and which results in a legally enforceable agreement between the parties, resulting from procurement proceeding.

“Contractor” means a person that has concluded a contract with a Unit to provide goods, works and, or services.

“Contract Security” means a security required from a Contractor by the Unit, to be provided to secure and guarantee the fulfilment of one or

more obligations in a contract, and includes any of the arrangements described specified in the definition of the word or expression (Bid) above.

“Unit” means the Central Procurement Unit, and any procuring entity authorized to conduct Public Procurement by the Unit.

“Delisting” means the removal from lists, records, and registries of previously approved or listed persons, suppliers, companies, by giving notification that they may not partake in ongoing or future procurement, for a pre-determined period.

“Design Contest” means a method of acquiring an artistic creation or design, by a design contest process, open to suitably selected Architects, Engineers, Consultants, Advisors, Artists, Sculptors, Designers, or Creative Artisans who compete to design an object in accordance with the provided guidelines.

“Director” means the Director General responsible for the Directorate of Public Procurement in the Ministry.

“Direct Invitation” means an invitation that is addressed directly to one or a restricted number of Suppliers; however it exclude an invitation addressed to a restricted number of Suppliers that have successfully participated in a pre-qualification or pre-selection proceedings.

“Domestic Procurement” means a procurement activity where participation is open only to Domestic Suppliers, as provided thereunder the provisions of section (11) of this Bill.

“Domestic Supplier” means any Supplier who is a citizen or lawful permanent resident of South Sudan, or whose business or other commenced Organisations have been established and taxable pursuant to any applicable law of South Sudan.

“Economically Most Advantageous Offer” means a cost related assessment taking into consideration not only the base price offered, but also considering various other criteria, requested in the invitation documentation, limited to the quality offered, cost-effectiveness, running costs, technical merit, aesthetic and functional characteristics, performance, technical assistance, after-sales service, delivery date, delivery period, date of completion, maintenance, spare parts, disposable or consumable costs, security of price.

The assessment of the overall cost of each offer shall be compared and evaluated to include the total costs of ownership, or the whole life cycle cost and where applicable, comparison of like for like. Where such criteria are applied in the evaluation of an award, they shall be applied, in ranked order of the total costs of acquisition and operation.

“Emergency Committee of Experts” means the Emergency Committee of Experts appointed at the Unit, in accordance with the provisions of section (63) (b), of this Bill to conduct an emergency procurement, when an unavoidable accident, an epidemic, a national catastrophe, or a state of emergency has been declared. The recommendations of the committee to final scrutiny and approval of the Commission, referred thereunder the provisions of this Bill.

“Environmental Requirements” means specifications and other requirements that are objectively aimed at ensuring compliance with National Environmental applicable laws and regulations or at promoting the environmental policies of the Government.

“Evaluation Committee” means the committee at the Unit appointed to evaluate the bids and select a successful Bid in a procurement proceeding, on the basis of the Lowest Cost Bid, or the most Economically Most Advantageous Offer.

“Expression of Interest” means a formal statement by an organisation, a company, an investor, or an individual, stating the desire to become involved in a particular project, or activity, in response to an invitation, or a call, by a Government Organisation. which indicates an interest to participate, not a commitment.

“Goods” means items of tangible movable property, whether in solid, liquid or gaseous form, and include but not limited to raw materials, commodities, equipment and finished or semi-finished products and manufactures, and electricity.

“Goods Contract” means a contract for particular interest concluded between the Unit, or by Procuring entity authorized to conduct procurement, with a Licensed Procurement Officer and one or more Suppliers that relates exclusively or mainly to the purchase, lease, rental or hire-purchase, with or without option to buy, of one or more Goods.

- “Government”** means the National Government of the Republic South Sudan.
- “State Owned Enterprise”** means any Organisation engaged in business, commercial or industrial activity in which the share of the Government ownership, whether direct or indirect, exceeds 50% of the total share.
- “Interested Supplier”** means a Supplier who has or had a specific material interest in the outcome of a specific procurement activity conducted by a Unit.
- “Legal Person”** means a any natural person, or body Corporate capable of suing or be sued, and acquire a legally rights and obligations.
- “Lowest Cost Bid”** means the lowest cost bid after the evaluation of the lowest responsive cost proposal offered by a bidder to provide Goods, Works or Services that are equal to, or are better than, the specification issued by an organisation.
- “Material Change”** means any substantial change to the Tender documents, that may make an impact upon.
- (1) The description of the subject matter of the procurement.
 - (2) The criteria or procedures for examining and evaluating Bids.
 - (3) The relative weight of the evaluation criteria
 - (4) Changes to other terms and conditions of the procurement previously established by the Unit, or a Procuring Entity that may make:
 - (a) A previously responsive Bids non-responsive, or
 - (b) That may render previously non-responsive Bids responsive, or
 - (c) That may change the status of Bidders with respect to their qualifications.
 - (d) That may change the ranking of Bids;
- “Ministry”** means the National Ministry responsible for Finance and Economic Procurement.
- “Minister”** means the National Minister responsible for Finance and Economic Planning.
- “Competent Ministry”** means the Competent National Ministry responsible for Justice.
- “Competent Minister”** means the Competent National Minister responsible for the National Ministry of Justice.

- “Negotiations”** means the pre-procurement discussion within which the Suppliers require prior approval from the UNIT which shall be conducted and include trained procurement negotiators during the negotiations.
- “Open Tender”** means competitive bidding, and the *default* procurement method in South Sudan, that permits any person or Supplier to submit a Bid. Used in International Competitive Tender and Domestic Competitive Procurements.
- “Organisation”** means any Organisation and includes any legal entity, enterprise, business organisation, Board, establishment, institution, association, agency or other organisation established in accordance with the provisions of the applicable law.
- “Petty Cash”** means a small amount of money kept in an office to pay for low value procurement and debts.
- “Pre-Qualification”** means the prequalification of suppliers necessary for large, or complex works, or technically complex projects, or any other circumstances in which the high costs of preparing detailed bids may discourage competition.
- “Pre-Qualification Documents”** means documents issued by the Unit that set out the terms and conditions of the pre-qualification proceedings in accordance with sections (13) and (14) of this Bill.
- “Procurement”** means the process for the acquisition of goods, or works, or services by the Unit, from one or more Suppliers or Contractors.
- “Procurement Activity”**
or “Procurement Proceedings” means any and all activities and proceedings connected with the initiation, conduct or conclusion on of a procedure that leads or is intended to lead to the award of a procurement contract;
- “Procurement Committees”** means a temporary group of persons appointed in accordance with the provisions of this Bill, that may be created to assist in any type of procurement activities. Such committees include, but not limited to established and occasionally constituted Committee.
- “Procurement Complaints Board” (PCB)** “ means the independent administrative Board established pursuant to the provisions of sections (95)

to (96) of this Bill, with the authority to review and decide on Complaints and award compensation.

“Procuring Entity”

means an authorized official Board, of a ministry, agency or authority, that exercises public executive, legislative, regulatory, administrative or judicial powers, and includes any department or Unit, or sub-Unit mandated with the legal authority to conduct procurement, with a Licensed Procurement Officer, on a permanent basis and make legal decisions, to sue, and be sued.

“Procurement Entity”

means an official Board, of a ministry, agency or authority that exercises public executive, legislative, regulatory, administrative or judicial powers, and includes any department or Unit, or sub-Unit and which has not yet the resources, nor has been mandated the legal authority to conduct procurement activities and enter into legal Contracts, but employs the services of the Unit, and or a LPO, to undertake its’ procurement activity, on a temporary basis, or a transitional basis pending full authorisation.

“Procurement Needs Assessment” means a formal process for determining and addressing needs, or gaps between current conditions and desired conditions. The process determines goals, identifies discrepancies between the optimal and actual performance, and establishing the priorities for action. It appraises the type, depth, and scope of a problem for a particular plan, activity, project, or situation, particularly related to a potential procurement activity, including its proposed specification and is designed to determine if the proposed procurement project is a cost effective solution;

“Licensed Procurement Officer” means any Officer, who may be a Director of Procurement, Procurement Manager or Procurement Officer, who may be licensed and employed by the Unit to conduct procurement activities, or who may be seconded to an organisation on the behalf of the Unit, who has completed the course, and award the certificate of the Procurement Educational Course of South Sudan, and authorized to sign a contract on behalf of the Unit. Who may be an employee of the Ministry of Finance and Economic Planning.

“Regulations”

means the Regulations, after consultation with the Unit, in accordance with the provisions of section (124) of this Bill,

“Public Body or Organization” means any of the central, regional, municipal or local executive authority, and include any ministry, department, agency, or other authority, that exercises, pursuant to the applicable law, executive, legislative, regulatory, public-administrative or judicial powers; and includes any department or Unit or sub-Unit, and any organization to management supervision by one or more public authorities, or that with an administrative, managerial or supervisory board, 50% or more of the votes of which are exercisable by members appointed by the Government, or its nominees, or one or more public authorities.

“Public Enterprise or Corporation” means an enterprise or corporation established by an act of the Assembly in which the Government controls its composition, with more than 50% of its voting number and shares.

“Real Estate or Property” means any immovable property that includes land and anything permanently affixed to the land, such as buildings, commercial buildings, fences, wells, fabrications and other site improvements that are fixed in location or the immovable.

“Request for Information (RFI)” means the procurement activity primarily used to gather information, and used as a procurement planning tool, And used to obtain general information related to the capacity and capabilities of various suppliers, or consultants, or related to the range of products, services or specifications, or range of costs, or to seek clarification, or an explanation of a specification, or a manufacturing process, or other detail, and used prior to deciding which type of procurement method shall be used.

“Request for Proposals (RFP)” means consultancy services and other advisory services and includes professional services, auditing, pensions, taxation, customs, training, computer systems and programming, and . which is undertaken by issuing an invitation for suppliers, through a bidding document process, to submit a proposal on achieving one or more objectives specified by the organisation. It may be distributed to a list of pre-qualified potential bidders, that have already been contacted as eligible by the organisation.

“Request for Quotations” (RFQ) means a procurement method used in connection with generally low-value and medium value procurements for standard and readily available goods, services or works,

defined to permit the evaluation of tenders against clearly stated criteria and specifications, requiring the submission of simple competitive Bids consisting wholly or principally of price offers. Which are normally sought from at least three (3), unless there is less than three available. The tender document shall describe the specifications to be met and the terms and conditions that may apply.

- “Restricted Tender (RT)”** means a procurement method that permits only persons or organisations possessing certain specified manufacturing capabilities, patents, agency agreements, qualifications or skills to submit a Bid;
- “Responsive Bid”** means a Bid that complies with all material requirements for a Bid specified in the Bidding Documents. Some very minor deviations are generally considered acceptable, as long as they do not materially alter any of the core elements of the requirement;
- "Separation of Duties"** means the clear authority of individual person(s) to approve and sign for approval in one designated area of responsibility, that does not include those in another area of responsibility, and prohibited for anyone to authorise, instruct, or to sign for activities which are outside of their area of authority and responsibility and contraventions, Legal action may be taken against those persons who deliberately infringe the rules.
- “Services ”** means an Advisory or Professional or Consultancy service and including financial, auditing, insurance, banking, taxation, training, computer specialist, project management that provides specialist assistance in an area of expertise, over a time period, or as and when it is needed. which may be provided by a single person, or a group of specialists, or a large professional company and may be difficult to measure its physical outputs, and the criterion of evaluation is the assessment of merit of individuals.
- "Service Contract"** means a contract for pecuniary interest concluded between the Unit and one or more Service Suppliers, that relates exclusively or mainly to the provision of services.
- “Single Source Procurement”** means a procurement method permitting the UNIT to conclude a contract directly with a selected person or organisation and without using a competitive process to select such person or organisation.

- “Invitation”** means the publication or issuance by the Unit of a written notice inviting one or more Suppliers to submit a Bid or to otherwise participate in a procurement activity.
- “Commission”** means the special High Commission constituted by the Council of Ministers, pursuant to the provisions of section 86 of this Bill, to serve as the Approving Authority for very high value contracts, contracts of strategic and national importance are involved, or when there has been a State of Emergency or a National Disaster declared.
- “SPLA”** means the Sudanese Peoples Liberation Army
- “Standard Bidding Documents”** mean standardised sets of tender documents, comprising of many different types including but not limited to; general information, forms, conditions of contract, data sheets, tables, instructions, solicitation, declarations, qualification, performance requirements, acceptance, agreements.
- “Standstill Period”** means the period, to be determined in accordance with the provisions of this Bill, between the date of the announcement of the selection of the successful Bid and the first date on which the specific contract may lawfully enter into force and during which non-successful Bidders and, in certain cases, other interested Suppliers may be entitled under the provisions of this Bill to file a complaint seeking a review of the selection. The mandatory Standstill Period shall be ten (10) consecutive days after notifying the unsuccessful bidders, and before signing the Contract.
- “Subsidized Organization”** means any organization that receives greater than 25% of its financing, directly or indirectly, from public funds. However it excludes any such Organization that is part of or has been established by the public institutions of a State or other political subdivision of South Sudan.
- "Supplier"** means a provider of goods, works or services and maybe a person or group of persons who may either supply, provide, deliver, erect, construct, manufacture or give advice related to goods, works or services.
- “Tender Review Committee”** means the authority specified under the provisions of this Bill, and whose approval is required before the Unit, or any organisation approved to act as a Procuring Entity by

the Unit, may formally accept the recommended Bid by the Evaluation Committee, and enter into a contract based thereon, or approve or reject any procurement application submitted before it. Which shall be the ultimate approving authority and acts as an independent watchdog over all procurement activities and Procurement Committees. The Tender Review Committee has the authority to request any official, or Supplier to answer questions relating to any procurement activity and ultimately may reject the selected bid, or order a new tender proceeding.

“Time Limits”

means the time limit set for the receipt of tenders, or requests to participate, which shall be a duration that is sufficient to give potentially interested economic operators a reasonable time to prepare and submit such documents. The time limit shall take into consideration the object and complexity of the specific procurement, and the contract to be awarded, as well as the level of difficulty and or complexity involved in the preparation of a responsive tender or request to participate.

“Two Envelope System”

means the procurement method used in the Request for Proposal and is different to the Two Stage System below. In which the technical and financial proposals are received in different envelopes and are clearly marked “Technical Proposal” and “Financial Proposal”.

“Two Stage System”

means a method of procurement often used in turnkey contracts, or contracts for large complex facilities, or works of a special nature, or complex projects, or for information and communication technology, where it may be undesirable, or impractical, to prepare complete technical specifications in advance. In such a case, a two-stage bidding procedure may be used, under which first un-priced technical proposals on the basis of a conceptual design or performance specifications may be invited, subject to technical and commercial clarifications and adjustments, then to be followed by amended bidding documents and the submission of final technical proposals and priced bids in the second stage. The final points of both the technical and financial offers may subsequently be calculated in accordance with the pre-determined formulae published in the revised bidding documents.

“Works”

means the construction, reconstruction, erection, demolition, repair, civil engineering activity, restoration or renovation

of a building, road, bridge, a facility, civil engineering structure or other structure, or any parts thereof, and including, but not limited to, site preparation and excavation, the erection or installation of equipment or materials, and the decoration and finishing thereof;

"Works Contract"

means a contract for pecuniary interest concluded between the Unit and one or more Suppliers of works that has as its exclusive or main object, the execution, design and execution, or realization, by whatever means, of Works;

CHAPTER II

PUBLIC PROCUREMENT IN SOUTH SUDAN

6 . The Scope of Public Procurement Bill

The provisions of this Bill shall govern the words and execution of all contracts, that may be conducted by public bodies, public officers, including inter-alia, Government Ministries and Judiciary, the Bank of South Sudan, and other public Institutions, Commissions, agencies, and organizations, and State Government and its Institutions, local Government authorities, and the including SPLA, Security, Police, Prisons, Fire brigades, Wildlife, and Customs Service

7. Exemptions and Exclusions.

(1) Notwithstanding any other provisions of this Bill, the Central Procurement Unit (UNIT) or any procuring entity as the case may be, shall not be required to comply with any provision of this Bill on advertising, or transparency or requiring the use of a specific procurement procedure, if the Council of Ministers, having previously sought the legal advice of the UNIT, and subsequently issued a decision determining that such compliance may compromise classified information or national security interests. The Council of Ministers may only issue such a decision if:-

- (a) The performance of the concerned contract may require the use of special security measures, or the procurement involves classified information, and
- (b) Such decision is not contrary to the provisions of any law guaranteeing public access to public documents and information.

(2) The provisions of this Bill shall not apply to procurement activities leading to the award of a public contract falling within the scope of an agreement that provides for the application of other procurement rules or procedures where.

- (a) Such an agreement makes the availability of financing for the specific contract conditional upon the use of such other rules and or procedures;
 - (b) Such agreement has been entered into between the Government and an intergovernmental, bilateral, multilateral or international financing institution.
- (3) The provisions of this Bill shall not apply to procurement activities leading to the award of a civil service contract or employment contract between the Unit or a procuring Entity and a natural person, and only applies to employment contracts.
- (4) Upon consultation and agreement with the Unit, Public Enterprises, or companies may be formally granted certain exemptions from the full scope of this Bill, if operating as a commercial company, provided that appropriate and necessary procurement principles of transparency, fair and equal treatment, promote competition, participation regardless of nationality, value for money, and maximizing economy and cost efficiency in procurement practises shall be adhered thereof, and subject to increased checks by the Unit.
- (5) Activities of the Police, Prisons, Wildlife, Custom, Fire Brigade, and Security Services, or other institutions, engage in strategic and or security sensitive procurements, may request prior written approval from the Unit, to selectively keep confidential the activities. Which may be subjected to increased audit checks by procurement compliance teams.
- (6) Certain types of contract may be unsuitable to be procured by the principles setforth in this Bill, that include, but not limited to, the following types of contract.
 - (a) Contracts of Employment;
 - (b) Contract related to the privilege of emission of financial instruments by the Central Bank;
 - (c) Certain types of Arbitration Services;
 - (d) Organisations shall seek advice from the Unit prior to embarking of any unusual type of procurement contracts.
- (7) Except for advisory consulting services, this Bill shall not apply to the tendering or any other related activity undertaken for 'Privatization' exercises, which its tendering shall be governed by other applicable law.

CHAPTER III

GENERAL PROVISIONS

8. The Application and Practice of Public Procurement.

- (1) The Unit or any authorized procuring entity, shall in conducting any procurement activity, ensure that public funds and resources are used in the most efficient, transparent and cost effective manner. The philosophy for public procurement in South Sudan is to continually introduce higher standards and to achieve the following: -
 - (a) That Open Tendering is the default procedure for public procurement and that 80% to 85% of tenders shall be conducted through this method.
 - (b) That all tendering is conducted in an open, fair and transparent manner.
 - (c) Procurement activities may be conducted to maximize competition.
 - (d) Greater cost effectiveness and control in the acquisition of goods, materials, services, works.
 - (e) To rationalize and standardize items procured.
 - (f) Abide by the Procurement Code of Conduct and Ethics.
 - (g) Practice of integrity and impartiality.
 - (h) The Unit, or an authorized Procuring Entity, shall be prohibited from specifying the object to be procured, dividing into lots, or aggregating the objects to be procured, selecting a procurement procedure, or establishing a selection, or award requirement, or criterion, or technical specification in a manner that favours, or discriminates for or against, any Supplier, or category, class or group of Suppliers, or that otherwise avoids an obligation under this Bill.
 - (i) The Unit, or an authorized Procuring Entity, shall not create or impose, and shall take all necessary measures to prevent the creation or imposition of, circumstances or requirements resulting in territorial, physical, material, personal or organizational discrimination among Bidders or Suppliers.
 - (j) Unless an authorization for the imposition of such a requirement is specifically provided for under the provisions of this Bill, any other applicable law in South Sudan or an international agreement, the Unit, or an authorized Procuring Entity, shall not require any Supplier.

- (i) To employ or utilize, or not to employ or utilize, any specific or category of persons in the performance of any aspect of a contract, or
- (ii) To supply or provide, or not to supply or provide, products or services originating from a specific person or geographic area.
- (iii) In the event such a requirement is specifically authorized by this Bill, any other applicable law or an international agreement, the exact parameters of such requirement shall be clearly and conspicuously specified in the Standard Bidding Documents.
- (k) The prompt and proper publication, dispatch and availability of all Bidding Documents and Tenders are to be widely advertised, including advertising of contracts awarded
- (l) Provide the same information to all contractors
- (m) The public opening of tenders
- (n) Documents of awards shall be available for inspection by interested parties
- (o) A robust complaint mechanism for contractors
- (p) Annual compliance monitoring of Procurement Sections
- (q) That all technical specifications and all selection and award requirements and criteria, including the relative importance of each such requirement and criterion, and the methodologies for selection and award, shall be clearly and conspicuously specified in the Specific Bidding Documents;
- (r) That no requirement, criterion or specification that has *not* been specified is used in the selection and award process; and
- (s) Clear criteria for the evaluation process and that the selected Bid conforms, in all material respects, to the requirements, criteria and specifications that have been specified.

9 . Procurement Communications.

- (1) Any document, notification, decision or any other information generated in the course of a procurement and communicated as required by this Bill, including in connection with review proceedings under Chapter XIII of this Bill, or in the course of a meeting, or forming part of the mandatory records of a procurement proceedings described under the provisions of section (27) of this Bill, below, shall be in a form that provides a record of the content of the information and that shall be accessible usable for subsequent reference.

- (2) The Unit when first inviting the participation of Suppliers in the procurement proceedings, shall be in a written document published or otherwise communicated in accordance with the requirements of this Bill, and shall specify:-
 - (a) Any requirements as to the form of Bids and other submissions;
 - (b) In a procurement activity that involves classified information, any special measures that the Unit has the authority under the Regulations or any applicable law of South Sudan to implement and intends to implement, to ensure the protection of such classified information;
 - (c) The means to be used to communicate information by the Unit to Suppliers or to the public or by a Supplier to the Unit;
 - (d) The means to be used to satisfy the provisions of this Bill requiring information to be in writing; and
 - (e) The means to be used to hold any meeting of Suppliers or Bidders.
- (3) The Unit shall try to use those means of communication that are in customary use by Suppliers in the context of the particular procurement. In any meeting held with Suppliers, they shall use only those means of communication that ensure that all such Suppliers have an equal and fair opportunity to fully and contemporaneously participate in such meeting.
- (4) The Unit shall put in place appropriate measures to ensure the authenticity, integrity of the information concerned and where necessary, issue a Declaration of Confidentiality, a Declaration of Impartiality, or any other statement, as may be provided in the Regulations, to be issued by the participants .
- (5) If the Unit charges a fee for Prequalification Documents, Bidding Documents, drawings or other procurement documents, the maximum amount that the Unit may charge shall be limited to an amount that is equal to the cost of printing and providing such documents to Suppliers, which shall not be used to recover any other costs, such as document preparation, consulting, administrative or advertising costs.

10. Restrictions on Domestic Procurement.

- (1) Except as specifically provided otherwise in the paragraph, Suppliers shall be permitted to participate in procurement proceedings without regard to nationality. The Unit may approve and limit participation in a procurement activity to domestic Suppliers, if:
 - (a) If Annex (A) (1) clearly specifies that the Unit may conduct, or give approval, for the procurement as a domestic procurement of the provisions of section 169 (5) and (6) of this Bill, or
 - (b) If the procurement is by the decision of the Council of Ministers issued under section 8 (1) above and due to the objectively reasonable national

security, or confidential grounds, which shall specifically requires that the procurement be conducted as a domestic procurement.

- (2) If the Unit limits participation in a procurement to Domestic Suppliers pursuant to subsection (1) above, the Unit shall:
 - (a) When first inviting the participation of Suppliers in the procurement proceedings, clearly declare such limitation, which may not later be altered, and provide a description of the grounds for such limitations, and
 - (b) Include in the record of the procurement proceedings a statement of the reasons and circumstances in which it relied when determining that such a declaration was lawful and appropriate.
- (3) The Unit shall make available to any member of the general public, immediately upon request, the statement required by the provisions Section 11 (2) (b) above.

11. Basic Eligibility Requirements for Suppliers.

- (1) A Supplier shall not be eligible to participate in the procurement proceedings or in the performance of any public contract if such a Supplier, or any employee, manager or director.
 - (a) Participated in the preparation of any Bidding Document or other documents being used by the Unit in that particular procurement proceeding.
 - (b) Received assistance or advice with respect to the preparation of any aspect of its Bid or other documents submitted in connection with the procurement proceeding from a person that participated in the preparation of any Bidding Document. or
 - (c) Is currently subject to a procurement exclusion order issued by the Unit pursuant to the provisions of sections 23 (1), (2), (4), and (6) below.
- (2) A Supplier shall not be eligible to participate in a procurement proceedings or in the performance of any procurement contract if such a Bidder or Supplier, or any employee, manager or director thereof, has, in the past ten years:-
 - (a) Been sentenced by any court of competent jurisdiction, for a criminal or civil offence involving corrupt practices, unlawful influence, procurement fraud, money laundering, bribery, kickbacks or activities described, or similar to, those described under section (103) or Annex (C) of this Bill.
 - (b) Been declared ineligible to receive any loan or investment or to participate in a procurement, by reason of conduct that described under paragraph (a) above, by any bank, institution or organization providing funds for general development, public investment or reconstruction.

- (c) Been sentenced by a court of competent jurisdiction, to have committed a serious offence by participating in the activities of a criminal Organization, defined as a structured association established over a period of time and operating in a concerted manner to achieve financial gain through activities that are criminal or otherwise illegal.
 - (d) Been sentenced by a court of competent jurisdiction, to have committed an act of fraud or an act equivalent to fraud.
 - (e) Been sentenced to have engaged in unprofessional conduct by a court of competent jurisdiction, administrative agency or organization responsible for enforcing standards of professional conduct, or breached the rules of Trade Associations, or
 - (f) Been sentenced by a court of competent jurisdiction, to have made serious misrepresentations to any governmental or other public authority in South Sudan or elsewhere.
 - (g) Been sentenced to have provided false papers, notarized document, certificates, references, attestations or other such illegal fabrications.
- (3) A Supplier shall not be eligible to participate in a procurement proceeding or in the performance of any procurement contract if such a Supplier:
- (a) Has, in the past two years, been adjudged to be bankrupt or insolvent by a court of competent jurisdiction, or is currently the subject of proceedings, under the law of any jurisdiction:-
 - (i) For a declaration of bankruptcy or insolvency; or
 - (ii) For an order for compulsory winding up or administration by a court or governmental or public authority;
 - (b) Is being wound up or administered, or its affairs are being wound up or administered, under the law of any jurisdiction, by a court or governmental or public authority.
 - (c) Currently has in place an agreement or arrangement with its creditors providing for extended or reduced terms of payment if such terms were agreed to by such creditors due to the Supplier previously to satisfy its obligations.
 - (d) Is in any situation analogous to the provisions of paragraph (a – c) above, arising from a similar procedure under the laws of its place of establishment or of a place where it conducts business.
 - (e) Is currently the subject of a judicial or administrative order, in any jurisdiction, suspending or reducing payments by or to such Bidder or Supplier and resulting in the total or partial loss of the right to administer or dispose of its property.
 - (f) Is currently the subject of legal or administrative proceedings, in any jurisdiction, that may result in a judicial or administrative order suspending or reducing payments by or to such a Supplier if such

proceedings may also result in the Supplier being adjudged bankrupt or insolvent.

- (g) Has, in the past three (3) years, been adjudged by a court of competent jurisdiction, within or outside South Sudan, to have seriously breached a contract with any governmental or public authority.
 - (h) Is currently for more than ninety (90) days' delinquent in the payment of taxes or social security contributions in South Sudan or in the Country of the Supplier, or in the jurisdiction of establishment, or in the payment of any amount owed to a provider of public utility services in South Sudan.
 - (i) Has, in the past three years, been determined to have materially breached or been responsible for the occurrence of an event of default under a procurement contract;
 - (j) Has failed to comply with an order issued by the Procurement Compliance Unit, or a Court of the South Sudan ; or
 - (k) Has a place of business in South Sudan but does not have a current and valid certificate of registration issued by the competent business registry, or the Unit.
- (4) The periods specified in the foregoing provisions of sub-section shall relate to the period immediately preceding the first date of full publication or communication of any invitation document relating to the particular procurement.
- (5) The Regulations shall contain rules relating to the types of documents, evidence, or declarations that a Supplier may provide in order to demonstrate that such a Supplier is not ineligible by reason of any provision of this section:
- (a) The Regulations shall ensure that such rules do not strictly require documents or declarations that are not available in certain countries or regions.
 - (b) The Regulations shall ensure that such rules reasonably accommodate the abilities of Suppliers by permitting the submission of declarations under oath, notarized or legalized statements. In all cases, the submitting Supplier shall be required to acknowledge the possibility of criminal and civil sanctions, penalties and damages, if such Supplier intentionally or negligently submits any document or mandatory document, declaration or statement containing materially false or misleading statements or information.
- (6) Notwithstanding the provisions of sub section (5) above, the Regulations shall ensure that: -
- (a) Such rules do not strictly require documents and
 - (b) Such rules reasonably accommodate the abilities of the Suppliers by permitting submission of declaration under Oath, and shall be required to acknowledge the possibilities of criminal and civil sanctions, penalties and damages, if such supplier intentionally or negligently

submit any document or mandatory document, declaration or statement containing materially false or misleading statement or information.

- (7) When first inviting the participation of Suppliers in the procurement proceedings, the Unit shall clearly reference this section, provide a notice referencing the eligibility requirements set forth herein, and inform any Supplier desiring to participate in the procurement proceeding may be required to submit, under penalty of perjury and other criminal and civil sanctions, a declaration under other or such other document(s) as may be provided for in the Regulations pursuant to subsection (5) above, and verifying that they are not ineligible by reason of the provisions of this section.
- (8) The Unit shall disqualify a Supplier if it establishes at any time that the information submitted relating to the eligibility of the Supplier is false. The Unit may disqualify a Supplier if it establishes at any time that the information submitted relating to the eligibility of the Supplier was materially inaccurate or materially incomplete. However the Unit may not disqualify a Supplier on the ground that information submitted relating to eligibility was inaccurate or incomplete in a non-material respect, and that Supplier may be disqualified if it fails to remedy such deficiencies promptly upon request by the Unit.

12. Qualification or Pre-Qualification of Suppliers.

- (1) This section applies to the ascertainment by the Unit of the qualifications of a Supplier at any stage of the Procurement proceedings where it is necessary to establish:
 - (a) Whether an organisation is registry as qualified, or business registry, or registry for tax purposes in South Sudan, or is officially registry or licensed to operate in a particular trade, profession, or calling, or is capable of operating within a particular work sector, identified by pre-determined category or classification by the government, or an authorized agency, or a member of a trade related organisation, or a professional or vocational body.
 - (b) That pre-qualification **is** required for high value large Works or projects involving highly technical, or complex equipment and supplies, or
 - (c) That if a pre-qualification is being applied to limit the number of suitable applicants and not a pre-selection amongst qualified bidders, that participants are clearly notified of the condition in the tender documents.
- (2) The Unit may, as it reasonably considers appropriate and relevant in the circumstances of the particular procurement, establish one or more of the following qualifications that a Supplier shall possess in order to participate, or participate further in the type of procurement proceeding (discussed in subsection (1) above. The Unit shall determine what criteria is required to pre-qualify and

place in writing the minimum criteria required to qualify, that may be judged on a Pass or Fail basis, in the following types of areas, or other specialist areas, to be determined;

- (a) That they have the professional, technical, quality and or environmental qualifications or competence needed to perform the contract;
 - (b) That they may demonstrate that they possess, or have reliable access to, the financial resources, suitable machinery, equipment, physical facilities, storage, and or personnel needed to perform the contract;
 - (c) That they have managed contracts equal to or above a certain pre-determined monetary level, or minimal annual turnover over a number of years;
 - (d) That they have the managerial capability, reliability, or experience needed to perform the contract;
 - (e) That they possess, or can prove, or will have access to, suitable and related insurance or security clearances required to perform the contract;
 - (f) That they meet any applicable ethical and or current professional standards, agency agreements or licenses needed to perform the contract;
 - (g) That they have legal capacity to enter into the procurement contract;
- (3) Subject to the right of Suppliers to protect their intellectual property or trade secrets, the Unit may require them to provide appropriate documentary evidence or other information to satisfy itself that the Suppliers meet, as applicable, any qualification requirements established in accordance with paragraph (2) above.
- (4) Any requirement established pursuant to this section shall be set out in the prequalification documents, if any, and in the Bidding Documents, and shall apply equally to all Suppliers. The Unit shall impose no criterion, requirement or procedure with respect to the qualifications of Suppliers other than those provided for in this Bill.
- (5) The Unit shall evaluate the qualifications of Suppliers in accordance with the qualification criteria and procedures set out in the Pre-Qualification Documents, if any, and the Bidding Documents.
- (6) The Unit shall disqualify a Supplier if it finds at any time that the information submitted relating to the qualifications of the Supplier was false. The Unit may disqualify a Supplier if it finds at any time that the information submitted relating

to the qualifications of the Supplier was materially inaccurate or incomplete. The Unit may not disqualify a Supplier on the ground that information submitted relating to the qualifications of the Supplier was inaccurate or incomplete in a non-material respect; however, the Supplier may be disqualified if it fails to remedy such deficiencies promptly upon request of the Unit.

13. Pre-Qualification Conditions of Use and Proceedings.

- (1) The Unit may engage in pre-qualification proceedings with a view to identifying and limiting, prior to the issuance of the Bidding Documents, Suppliers qualified to perform the specific contract. The provisions of section (13) shall apply to pre-qualification proceedings.
- (2) If the Unit engages in pre-qualification proceedings, it shall cause an invitation to pre-qualify to be published in the Official Gazette of the Government and an official website, and shall be published, at least once, in the English language in;
 - (a) A daily or weekly publication of wide circulation in South Sudan, and,
 - (b) If the procurement is not being conducted as a domestic procurement, in a daily or weekly publication of wide international circulation.
- (3) The invitation to pre-qualify shall include the following information:
 - (a) The name and address of, and other relevant contact information for, the Unit;
 - (b) A general description of the objectives of the procurement, which shall include a summary of the principal objectives to be realised, including the required terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings, including the nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the works to be constructed or effected, or the nature of the services and the location where they may be provided, and the desired or required time for the delivery of the goods, the completion of the works, and or the timetable for the provision of the services;
 - (c) The criteria and procedures to be used for ascertaining the qualifications of Suppliers, as established in conformity with the provisions of section 13 of this Bill.
 - (d) In the case of a domestic procurement section (11) (1) (a - b) above, the declaration as required by the provisions of section (11) (2) (a) of this Bill.
 - (e) The means of obtaining the Pre-Qualification Documents and the place where they may be obtained.

- (f) Subject to the restriction established by section (10) (5) of this Bill, the price, if any, charged by the Unit for the Pre-Qualification Documents and, subsequent to pre-qualification, for the Bidding Documents.
 - (g) If a price is charged, the means of payment for the Pre-Qualification Documents and, subsequent to pre-qualification, for the Bidding Documents, and the currency of payment.
 - (h) The language or languages in which the Pre-Qualification Documents and, subsequent to pre-qualification, the Bidding Documents available; and
 - (i) The manner, place and deadline for submitting applications to prequalify and, if already known, the manner, place and deadline for submitting Bids, in conformity with the provisions of section 19 of this Bill.
- (4) The Unit shall provide a set of Pre-Qualification Documents to each Supplier that submits a request in accordance with the invitation to prequalify and that pays the price, if any, charged for those documents.
- (5) The Pre-Qualification Documents shall include the following information:
- (a) Instructions for preparing and presenting pre-qualification applications;
 - (b) Provide any documentary evidence or other information that shall be presented by a Supplier to demonstrate its qualifications and to verify that it is not ineligible under the provisions of section (12) of this Bill.
 - (c) The name, functional title and address of one or more officers or employees of the Unit authorized to communicate directly with and to receive communications directly from Suppliers in connection with the pre-qualification proceedings;
 - (d) References related to the provisions of this Bill, the Regulations and other laws and regulations directly pertinent to the pre-qualification proceedings and how and where Suppliers may obtain such laws and regulations; and
 - (e) Any other requirements that established by this Bill or the Regulations or by the Unit in conformity therewith relating to the preparation and presentation of applications to pre-qualify and to the prequalification proceedings.
- (6) The Unit shall respond to any request by a Supplier for clarification of the Pre-Qualification Documents received by the Unit within a reasonable time prior to the deadline for presenting applications to pre-qualify. The Unit shall respond in writing and within a reasonable time to enable the Supplier to make a timely

presentation of its application to pre-qualify. Any clarification shall also be contemporaneously communicated to the other Suppliers that have been provided with the Pre-Qualification Documents, without identifying the source of the request. Such clarification shall also be included with any Pre-Qualification Documents subsequently provided to another Supplier.

- (7) When it is expected to attract an unmanageable number of pre-qualification applications, the Unit may limit the total number of applications.
- (8) The Unit shall take a decision with respect to the qualifications of each Supplier presenting an application to pre-qualify. In reaching that decision, the Unit shall apply only the criteria and procedures set out in the invitation to pre-qualify and in the Pre-Qualification Documents.
- (9) Only Suppliers that have been pre-qualified shall be entitled to participate further in the procurement proceedings.
- (10) The Unit shall promptly notify each Supplier presenting an application to pre-qualify of any decision as to whether or not it has been pre-qualified. The Unit is not required to give the reasons for its finding, despite that, the outcome may be challenged. It shall also make available to any member of the general public, upon request, the names of all Suppliers that have been pre-qualified.
- (11) The Unit shall promptly communicate to each Supplier that did not pre-qualify.

14. Description of the Subject Matter and the Terms and Conditions of the Procurement Contract.

- (1) The Unit shall set out in the Pre-Qualification Documents, and or in the Bidding Documents the description of the subject matter of the procurement that may be used in the examination of Bids and other submissions, including the minimum requirements that Bids and other submissions shall meet in order to be considered responsive and the manner in which those minimum requirements are to be applied; for the avoidance of doubt, such minimum requirements include the thresholds referred to in the provisions on request for proposals without negotiation and consecutive negotiations.
- (2) Any other criterion, requirement or procedure that may be imposed by the Unit in accordance with the provisions of section (11) of this Bill, and without prejudice to the requirements of the provisions of section (9) of this Bill, no description of the subject matter of a procurement that creates an obstacle to the participation of Suppliers in the procurement proceedings, including any obstacle based on nationality, shall be included or used in the Pre-Qualification Documents, or in the Bidding Documents.
- (3) The description of the subject matter of the procurement may include specifications, plans, drawings, designs, and requirements, including

environmental requirements and requirements related to testing and test methods, packaging, marking, labelling, conformity certification, symbols and terminology.

- (4) To the extent practicable, any description of the subject matter of the procurement shall be objective, functional and generic, and shall set out the relevant technical and performance characteristics of that subject matter. 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 the procurement and provided that words such as “or nearest equivalent” are included.
- (5) Standardised features, requirements, symbols and terminology relating to the technical and performance characteristics of the subject matter of the procurement shall be used, where available, in formulating any description of the subject matter of the procurement to be included in the Pre-Qualification Documents, if any, and in the Bidding Documents;
- (6) Due regard shall be had for the use of standardized trade terms, where available, in formulating the terms and conditions of the procurement and the procurement contract and in formulating other relevant aspects of the prequalification documents, if any, and Bidding Documents.

15. Bid Evaluation Criteria.

- (1) The Unit shall specify in the Bidding Documents either;
 - (a) That the contract shall be awarded to the Bidder who submitted a responsive Bid with the Lowest Cost Bid, or
 - (b) That the contract shall be awarded to the Bidder who submitted the Most Economically Advantageous Bid.
- (2) If the Unit has specified that the award of a public contract shall be made to the Bidder submitting the Most Economically Advantageous Bid, the Unit shall specify in the Bidding Documents all evaluation criteria for determining the winning Bid and the weighting assigned to each criterion. To the extent practicable, the Unit shall specify each evaluation criterion in an objective and quantifiable manner and express the weighting assigned thereto in monetary terms, or a formulae how the criterion may be used in calculation. The Unit shall also specify the manner in which the criteria may be applied in the evaluation procedure.
- (3) In evaluating Bids, the Unit 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. No criterion or procedure shall be used that has not been set out in accordance with this provision.

- (4) Except for the other criteria that are specifically permissible under paragraph (5) below, the specified criteria shall be directly linked to the objectives of the procurement and the requirements of the specific contract and only relate to:
- (a) The price;
 - (b) The terms of payment;
 - (c) For goods or works the operating, maintenance, spare parts, repairing or other life-time costs;
 - (d) The time for delivery of goods, completion of works, or provision of services;
 - (e) Objectively assessable technical, functional, environmental, performance, quality or similar characteristics;
 - (f) The price and availability of after-sales service and technical assistance;
 - (g) The terms of any warranties, guarantees and exclusions;
 - (h) In procurement involving a Request for Proposals the;
 - (i) Experience, reliability;
 - (ii) Professional and managerial competence of the Bidder;
 - (iii) The type and performance of the equipment or supplies;
 - (iv) Type and skills/services offered by personnel to be involved in performing the contract.
- (5) Subject to restrictions specified in paragraph (6) below, the evaluation criteria may include a margin of preference for the benefit of Domestic Procurement as provided in section (11) of this Bill.
- (a) Bids submitted for a works contract to be performed, in whole or in part, by Domestic Suppliers;
 - (b) Bids offering, in whole or in part, domestically produced goods;
 - (c) Bids offering services to be provided, in whole or in part, by Domestic Suppliers.
- (6) A margin of preference may be included in the evaluation criteria only to the extent such margin ;
- (a) Is permitted by the Regulations;

- (b) Has been approved in writing by the Ministry if for Unit procurement, or by the Unit, if on behalf of an authorized Procuring Entity.

16. Groups of Suppliers.

- (1) A pre-qualification application or a Bid may be submitted by a group of Suppliers. No such a group shall be required to assume a specific legal form in order to submit such an application or Bid; however, the group selected may be required to do so if it has been awarded the particular contract, to the extent that such a requirement is necessary for the satisfactory performance of the contract.
- (2) If a Supplier declines from an awarded contract, it may be substituted by Supplier of equal, or superior standing, if approved by the UNIT, otherwise the contract may be awarded to the seconded ranked Supplier. If there are doubts as to the capabilities of the seconded ranked supplier to satisfactorily undertake the contract to the standards required, the contract may be cancelled.
- (3) A group of Suppliers shall not be formed if its formation has the purpose or effect of preventing, restricting or distorting competition for a procurement contract;
- (4) If a Bid is submitted by such a group, the group shall be required to submit with its Bid a signed original of the agreement establishing such group. This requirement shall be set forth in the Bidding Documents.
- (5) All members of such a group shall be jointly and severally liable to the Unit for the contents of their Bid, and if the particular contract is awarded to such group, the performance of such contract. The Bidding Documents shall contain a notice to this effect.
- (6) A Unit shall ensure that all pre-qualification documents and Bidding Documents set forth the requirements in paragraphs (1) – (4) above.

17. Language.

- (1) All invitations, contracts, Pre-Qualification Documents, Bidding Documents and procurement records shall be in English.
- (2) Any bid or other document or written communication submitted or provided, in any manner, by a Supplier during procurement proceeding shall be accompanied by a translation into English that is certified as having been prepared by a authorized or licensed translator.

18. Manner, Place and Deadline for Submitting Applications to Pre-Qualify or Bids.

- (1) The manner, place and deadline for submitting applications to pre-qualify shall be set out in the invitation to pre-qualify and the Pre-Qualification Documents. The

manner, place and deadline for submitting Bids shall be set out in the Bidding Documents. The deadlines for submitting applications to pre-qualify or Bids shall be expressed as a specific date and time.

- (2) The Regulations shall specify the minimum time period that shall pass between:
 - (a) The issuance of the invitation to pre-qualify and the deadline set for the submission of an application to prequalification.
 - (b) The issuance of the Bidding Documents and the deadline for the submission of Bids. Different minimum time periods may be specified for different categories of procurement, to be established based on contract type and value and the method of procurement used. The Regulations shall ensure that such minimum time periods allows sufficient time for Suppliers to prepare and submit their applications or Bids taking into account the type, value, and method of procurement and the reasonable needs of procuring entities in accordance with the Annex (B) of this Bill.
- (3) The Regulations shall also specify the minimum extension of such a deadline that shall be allowed by a Unit, in the event such Unit issues a clarification or modification of the prequalification or Bidding Documents. The Regulations shall ensure that the specified minimum extension allows Suppliers a reasonable amount of time to take the clarification or modification into account in the preparation of their applications or Bids.
- (4) The Regulations shall also specify the applicable restrictions and conditions that shall be complied with by the Unit that desires, on its own initiative, to extend a deadline that has been specified for the submission of applications to pre-qualify or Bids.
- (5) The Unit shall, immediately and by the most expeditious means reasonably available, provide written notice of any deadline extension to any Supplier to which the Unit provided the pre-qualification or Bidding Documents.

19. Clarifications and Modifications of Bidding Documents.

- (1) Within a reasonable time prior to the deadline for the submission of Bids, a Supplier may request a clarification of the Bidding Documents from the Unit. The Unit shall respond to any such request within a sufficient time to enable Suppliers to prepare and timely submit Bids that take the clarification into account. The Unit shall contemporaneously communicate the clarification, without identifying the source of the request, to all Suppliers to which the Unit has provided the Bidding Documents. Such clarification shall also be included with Bidding Documents subsequently provided to another Supplier.

- (2) Prior to the deadline for the submission of Bids, the Unit may, whether on its own motion or as a result of a request for clarification by a Supplier, modify the Bidding Documents by issuing an addendum. The addendum shall be communicated promptly and contemporaneously to all Suppliers to which the Unit has provided the Bidding Documents and shall be binding on those Suppliers. Such addendum shall also be included with any Bidding Documents subsequently provided to another Supplier.
- (3) If the Unit convenes a meeting of Suppliers, or arranges a Site visit, it shall prepare minutes of the meeting containing any requests submitted at the meeting for clarification of the Bidding Documents, and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly and contemporaneously to all Suppliers to which the Unit provided the Bidding Documents, so as to enable those Suppliers to take the minutes into account in preparing their Bids. Such minutes shall also be included with any Bidding Documents subsequently provided to another Supplier.
- (4) As may be reasonably necessary under the circumstances, the Unit shall extend the Bid submission deadline by an amount of time that is sufficient to enable Suppliers to prepare and timely submit Bids that take a clarification, addendum or meeting minutes into account.
- (5) In conformity with the provisions of this section, the Regulations, may provide, and impose reasonable time restrictions and other requirements on the submission of clarification requests, the issuance of responses and addenda by the Unit, the holding of meetings of Suppliers and the distribution of the minutes thereof, and the extension of deadlines necessitated thereby.

20. Cancellation of Procurement.

- (1) The Tender Review Committee of the Unit may cancel the procurement at any time prior to the selection of the successful Bid. The Tender Review Committee may also cancel the procurement after such selection, but only if specifically authorized to do so by another provision of this Bill. The Tender Review Committee or the Evaluation Committee shall not thereafter open any Bids or pre-qualification applications that were unopened at the time of the decision to cancel the procurement.
- (2) The decision of the Tender Review Committee to cancel the procurement and reasons for the decision shall be recorded in the record of the procurement proceedings and promptly communicated to any Supplier or Bidder that submitted a Bid or other document during the procurement proceeding. The Unit shall in addition promptly publish a notice of the cancellation of the procurement in the same manner and place in which

any invitation or notice of the procurement was published, and return to the concerned Supplier any Bid or pre-qualification application that was unopened at the time of the decision. The type of reasons allowed for cancellation may be published in the Regulations.

- (3) Unless the cancellation of the procurement was a consequence of intentional misconduct or gross negligence on the part of the Unit, the Unit, or its staff, shall incur no liability towards any Supplier that submitted a Bid or pre-qualification application solely because the Unit took a cancellation decision pursuant to paragraph (1) of this section.

21. Abnormally Low Bids.

- (1) If a Bidder submits a Bid that, considered objectively, or appears to be abnormally low in relation to the object of the procurement and the Bid therefore gives rise to a reasonable belief that the Bidder may likely not be able to perform the contract if awarded on the basis of that Bid, the Unit shall send a written request to the Bidder asking for the Bidder to supply a written submission providing a detailed breakdown of the relevant constituent elements of the Bid and explanations, addressing any of the matters described in paragraph (2) below, regarding the bases for its Bid. The Bidder shall have five (5) business days to respond to such a request.
- (2) The Unit shall take into consideration explanations that are timely provided by the Bidder and that relate to:
 - (a) The economics of the goods manufacturing, or acquisition process, of the services provided, or the construction method.
 - (b) The various technical solutions offered or chosen;
 - (c) Any exceptionally favorable conditions available to the tenderer for supplying the goods, providing the services, executing the works project, or performing the construction activities being procured; or
 - (d) The source, country of origin, manufacturer, originality and specification of the goods, services, or works proposed.
- (3) After taking into consideration the information and explanations provided by the Bidder, if the Unit concludes that the Bidder has provided a satisfactory explanation of the bases of its Bid, the Unit shall treat such Bid in the same manner as any other Bid.
- (4) After taking into consideration the information and explanations provided by the Bidder, if the Unit concludes that there is still good reason to believe that the Bidder may likely not be able to perform the contract if awarded on the basis of the concerned Bid, the Unit may either;

- (a) Reject the Bid, if it first receives the written permission of the Ministry of Justice to do so; or
 - (b) Award the concerned contract to such Bidder on the condition that the Bidder agrees to post Contract Performance Security in an amount that is equal to ten percent (10%) of the value of the contract plus an amount that the Unit reasonably determines to be sufficient to cover any damages and expenses that the Unit reasonably expects it will incur in the event of a breach of such contract by the Bidder.
- (5) Any decisions of the Unit and, if applicable Ministry of Justice and the basis thereupon shall be recorded in the record of the procurement proceedings and promptly communicated to the Bidder.

22. Debarment and Exclusion from Procurement for Misconduct, Falsification or Conflict of Interest.

- (1) A Supplier, Contractor, or Consultant, or persons undertaking a Tender or Contract activity, may be considered for delisting, or removed from procurement proceedings, if they fail to deliver the contractual obligations or are shown to be responsible for any of the following type of actions, or complaints, that include, but are not limited to;

- (a) Falsification of documents
- (b) Falsification of information
- (c) Fraud, deception, or collusion, or intent to do so
- (d) Substitution of goods or materials, without approval
Provide defective material
- (e) Late deliveries in provision of materials
- (f) Late deliveries in provision of construction projects
- (g) Unacceptably late deliveries, affecting sub-contractors
- (h) Failure to complete the deliverables of the contract in full
- (i) Concealment
- (j) Uncooperative behaviour
- (k) Bribery, in whatever form
- (l) Verbal abuse
- (m) Intimidation, Harassment and other unacceptable behaviour
- (n) Breaks or fails to implement any social regulations or national legislation and other such offences on:
 - (i) Environmental Legislation
 - (ii) Social Legislation
 - (iii) Health & Safety Regulations

- (2) The Unit shall exclude a Supplier if the Supplier and including any Board Member, Director, or Manager, or significant owner thereof:

- (a) Engages in any conduct described in section 106 or Annex C;

- (b) Is ineligible under section 12; or
 - (c) Has a conflict of interest that requires the exclusion of the Supplier under the Regulations, or notification thereof.
- (3) The exclusion of a Supplier from specific procurement proceedings under this section and the reasons therefore shall be recorded in the record of the procurement proceedings and promptly communicated to the Supplier concerned.
 - (4) If the Supplier has engaged in conduct described in section(23) (3), section (103), or Annex C, the Unit may issue an order to such Supplier excluding such Supplier from participation in all procurements for a period of up to five (5) years. The reasons for such action shall be recorded in the official records of the Unit, and promptly communicated to the Supplier concerned. Such exclusion shall remain in effect, the Supplier and its senior members of staff, at the time of the decision, shall be ineligible to participate in any manner in any future procurement proceeding for the period concerned.
 - (5) Any Supplier, Board Member, Director or its management staff, who are subject to a decision resulting in such exclusion of the Supplier under this section shall be advised and given the right to present a case against such a decision being taken and also have the right of appeal to have such decision reviewed under section 99 (1), 100 (3), 102, of this Bill.
 - (6) The exclusion remedy provided for in this section shall be in addition to, and without prejudice to, the applicability of any civil, administrative or criminal penalties, damages or sanctions provided for by this Bill, the Regulations or any other law or regulation.

23. Acceptance of Successful Bid and Entry into Force of Contract.

- (1) The Unit shall select the responsive bid with Lowest Cost Bid or, the Most Economically Advantageous Bid, or in the case of procurement with price and other evaluation criteria, the highest points ranked Bid as the successful bid, unless the procurement is cancelled in accordance with section 21 or the concerned Bidder is disqualified or excluded in accordance with the provisions of this Bill or the Regulations.
- (2) The Unit Tender Review Committee after confirming the validity and effectiveness of the selected bid, subjected to any clarification or correction requested, shall inform the Contract Section of the Unit, to promptly notify each Bidder in a procurement proceeding of the Unit intent to accept the selected Bid as the successful Bid. The notice shall contain, at a minimum, the following information:
 - (a) The name and address of the Bidder that submitted the selected Bid;

- (b) The price offered or, if the selection was based on price and other criteria, the contract price and a summary of other characteristics and relative advantages of the selected Bid; and
 - (c) The ten day duration of the Standstill Period.
- (3) Sub-section (2) above, shall not apply to the award of a procurement contract;
 - (a) Where the contract is of low value; or
 - (b) Where the Tender Review Committee of the Unit, and where applicable Ministry of Justice, determines that urgent public interest considerations require the procurement to proceed without a Standstill Period. The decision of the Unit and where applicable Ministry of Justice that such urgent considerations exist and the reasons for the decision shall be recorded in the record of the procurement proceedings and shall be deemed conclusively to be valid with respect to all levels of review under Chapter XIII of this Bill except for judicial review.
- (4) Upon expiry of the Standstill Period, or where there is none, promptly after the selection of the successful Bid, the Unit shall dispatch a formal notice of acceptance of the Bid to the concerned Bidder unless, during the Standstill Period, a complaint with respect to the concerned procurement proceeding has been filed with the Procurement Compliance Unit. If a complaint is filed with the Procurement Compliance Unit during the Standstill Period, the procurement proceeding shall be suspended for such time as may be necessary to resolve or otherwise dispose-off such complaint in accordance with the provisions and procedures of Chapter XIII of this Bill. After a complaint is filed during the Standstill Period, the conduct of the procurement proceeding shall be subject to any order issued by the Unit, thereafter the Procurement Compliance Unit when formed.
- (5) When this Bill requires the execution of a written contract then the formal notice of acceptance shall be dispatched to the concerned Bidder, and provided that the notice is dispatched prior to the expiration of the effective period of the Bid and may be signed by both parties just before the end of the standstill period.
- (6) Where the Bidding Documents require the Bidder that submitted the successful Bid to sign a written contract conforming to the terms and conditions of the Bid:
 - (a) The Unit and the Bidder shall sign the procurement contract within a period of five days after the notice of acceptance is dispatched to the Bidder;
 - (b) Unless the Bidding Documents stipulate that the contract is subject to approval by a higher authority, when the contract is signed by both the Bidder and by the Unit, the contract enters into force immediately after the end of the standstill period,

- (c) Between the time when the notice of acceptance is dispatched to the Bidder and the entry into force of the procurement contract, neither the Unit nor that Bidder shall take any action that interferes with the entry into force of the contract or with its performance.
- (7) Where the Bidding Documents stipulate that the contract is subject to approval by a higher authority, the contract shall not enter into force before the approval is given. The Bidding Documents shall specify the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval. A failure to obtain the approval within the time specified in the Bidding Documents shall not extend the effective period of Bids or Bid Security, if any, specified in the Bidding Documents.
- (8) If a Bidder that has received a notice of acceptance fails or refuses to promptly sign any written contract required, or fails or refuses to promptly provide any required Contract Performance Security, the Unit may cancel the procurement or may decide to award the procurement contract to the next highest ranked Bid still in effect which the Unit ascertains to be successful in accordance with the criteria and procedures set out in this Bill and in the Bidding Documents. In such case the provisions of this section shall apply *mutatis mutandis* to such submission.
- (9) The notices under this section are deemed dispatched when they are promptly and properly addressed and otherwise directed and transmitted to the Bidder or Supplier by any reliable means specified in accordance with section 10 of this Bill.
- (10) Upon the entry into force of the procurement contract and, if required, the provision by the Bidder of any required Contract Performance Security, notice of the procurement contract shall be given promptly to other Bidders, specifying the name and address of the Bidder that has entered into the contract and the contract price.

24. Public Notice of Procurement Contracts.

- (1) Promptly after the entry into force of a procurement contract, the Unit shall publish a notice on its Notice Board, and where applicable on an approved Website; with respect thereto specifying the type, value, and object(s) of the contract and the name(s) of the Bidder(s) to whom the contract was awarded.
- (2) Sub-section (1) above, may not be applicable where the concerned contract is of minimal value. The Unit shall publish a cumulative notice of low, medium and high value contracts every quarter, but at least once a year in the annual report of the Unit.
- (3) The Regulations shall provide for the manner of publication of the notices required by this article.

25. Confidentiality.

- (1) In its communications with Bidders or Suppliers or the general public, the Unit, or its representatives, shall not disclose any information if its disclosure may be contrary to law, may impede law enforcement, may not be in the public interest, may prejudice the legitimate commercial interests of the Bidders or Suppliers, would impede fair competition in a current proceeding or in future procurement proceedings, or may compromise essential national security interests. The foregoing shall not apply to a disclosure of information to the extent such disclosure is required by an applicable law of South Sudan, or by an order of the Procurement Compliance Unit or a competent court or public authorization.
- (2) Without prejudice to sections (24), (2), (25), (27), and (49) of this Bill, the Unit shall treat applications to pre-qualify and Bids in such a manner as to avoid the disclosure of their contents to other Bidders or Suppliers or to any other person not authorized to have access to the concerned information.
- (3) Any discussions, communications, negotiations and dialogue between the Unit and a Bidder or Supplier pursuant to any provision of Chapter VIII of this Bill shall be confidential. Unless required by law or ordered by the Unit or a competent Court or public authorization, or clearly permitted in the Bidding Documents, no party to any such discussions, communications, negotiations or dialogue shall disclose to any other person any technical, price or other information relating to such discussions, communications, negotiations or dialogue without the consent of the other party.
- (4) In a procurement involving Classified Information, the Unit shall:
 - (a) Ensure measures are imposed protecting such Classified Information from public disclosure;
 - (b) Impose on Bidders and Suppliers requirements aimed at protecting such Classified Information from public disclosure; and
 - (c) Require that Bidders and Suppliers ensure compliance by their subcontractors with such requirements.

26. Procurement Records.

- (1) The Unit, or any procuring entity, shall maintain a history record of each procurement proceeding that includes the following information:
 - (a) An unique procurement reference number and brief description of the subject matter of the procurement;
 - (b) The procurement method and category type
 - (c) The evaluation records and related evaluation criteria;

- (d) The names and addresses of all Bidders and Suppliers that submitted a Bid or an application for prequalification;
 - (e) The name(s) and addresses of the Contractors with whom the procurement contract was entered into, and the contract price;
 - (f) Details of the winning bid and value.
- (2) The Unit, and each Procurement Entity, shall record, file, preserve and archive, in documented order, all documents relating to procurement proceedings in accordance with the requirements specified in the Regulations and other applicable provisions of the applicable law of South Sudan.

CHAPTER IV

PROCUREMENT PLANNING AND INITIATION

27. Annual Procurement Planning.

- (1) Not less than sixty (60) calendar days before the end of each fiscal year, all government organizations, institutions and individual autonomous bodies shall prepare and provide to the Ministry in writing, through the Unit, an annual Procurement forecast that identifies, in reasonable detail, all procurements that the organization, institution require over the course of such fiscal year.
- (2) Within fifteen (15) calendar days after the promulgation of the appropriations legislation for a fiscal year, the Unit shall prepare and provide to Ministry, in writing, a final procurement forecast to be consistent with the appropriations of the Unit, and other organizations appropriations, that identifies in reasonable detail, all procurements that the Unit, and where applicable, authorized Procuring Entities, intends to complete over the course of such fiscal year.
- (3) The Unit shall develop and issue Regulations specifying, in reasonable detail, the formal, informational and other requirements that the preliminary and final procurement forecasts shall meet.
- (4) During the planning process a Request for Information (RFI) as discussed in section (52) of this Bill, may be used. The RFI is primarily used to gather information to help make a decision on what steps to take next. RFIs are often the first stage of information gathering and used for procurement planning and next steps.

28. Advance Information on Possible Future Procurement.

- (1) The Unit shall publish information regarding the planned future procurements of the Unit, each quarter, and annually, and shall be mandatory requirement as described in section 28 above.

- (2) Publication of information or a notice under this section 29 shall not constitute a invitation, or obligate the Unit to issue an invitation, or confer any rights on any person.

29. Procurement Needs Assessment.

- (1) Prior to initiating the conduct of any proposed procurement, the Unit shall be responsible for ensuring that a formal Needs Assessment is conducted with respect thereto.
- (2) The results of this assessment shall be summarized in a written Needs Assessment signed by the original requesting organization, and approved by the Unit and setting forth;
 - (a) The precise nature and scope of the specific needs of the organization that the proposed procurement is intended to satisfy;
 - (b) A good faith objective estimate of the value of the anticipated contract, the proposed type and material terms of such contract,
 - (c) The proposed functional specifications of each object to be covered by such contract;
 - (d) The benefits expected from each such object;
 - (e) In the case of equipment, durable goods and works, an estimate of the full cost of ownership over the operational life of the Unit, including acquisition, operating, and maintenance costs and residual value;
 - (f) An indication as to whether such procurement is included in the procurement forecast of the organization and Unit, and, if not, a statement of reasons as to why it was not included; and
 - (g) A clear statement as to how the procurement may promote the institutional objectives of the organization.

30. Confirmation of Funds Availability.

- (1) The organization requesting goods, works or services shall forward the Needs Assessment to the CFO of the Unit, and the CFO shall formally ensure that funds have been appropriated for the concerned procurement in an amount sufficient to fulfill any financial obligations that may arise during the course of the then-current fiscal year as a result of such procurement.
- (2) If the concerned contract may give rise to financial obligations that are to be satisfied from appropriations expected in *future* fiscal years, the CFO shall:
 - (a) Ensure that any formal expenditure projections of the Unit, or the requesting organization, for future fiscal years provides a reasonable basis to expect that sufficient funds may be appropriated to it in such future fiscal years for the purpose of satisfying such obligations; and

- (b) Ensure that the concerned public contract contains a provision that clearly conditions the enforceability of such future year obligations on the availability, under future appropriations legislation, of sufficient funds to satisfy such obligations.
 - (c) Ensure that in relation to section 31 (2) (b) above, reoccurring annual expenditures for operation costs, both direct and indirect, are included in the Annual Procurement Planning Budget estimates as provided under section (28) of this Bill.
- (3) If the CFO determines that funds are available for the proposed procurement, the CFO shall prepare, sign and deliver to the Procurement Section of the Unit, or to an authorized Procuring Entity, a document titled as “Confirmation of Availability of Funds” containing:
 - (a) A written statement affirming the availability of funds for the concerned procurement and, if applicable,
 - (b) A written statement setting forth the basis for the CFO’s expectation regarding future appropriations and directing the Unit, as the case may be, to include the provision required by section 31 (2) (b) (c) above in the concerned contract.

31. Initiation of Procurement Procedure.

- (1) Upon receipt of the Confirmation of Funds Availability by the CFO, the Unit shall, if there is a desire to continue with the procurement, deliver both the Procurement Needs Assessment under section (30) and the Confirmation of Availability of Funds under section (31) to the Procurement Section of Unit.
- (2) Except as provided under sub-section (3) below, the Procurement Section shall have principal responsibility for promptly initiating the procurement and ensuring that the procurement is conducted in accordance with this Bill and the Regulations.
- (3) The Procurement Section of the Unit shall have the principal responsibility for initiating procurement and ensuring that the procurement is conducted in accordance with this Bill and the Regulations. When an organization has been given the authority and status of a Procuring Entity by the Unit, to conduct a procurement activity, with the services of a Licensed Procurement Officer, on a temporary or permanent basis, the same conditions may apply provided under sections (31), (32) including any other conditions in accordance with this Bill and the Regulations.

CHAPTER V

PROCUREMENT PROCEDURES AND CONDITIONS ON THEIR USE

32. Procurement Procedures.

Where applicable, the following types of procurement procedures may be used, subject to appropriate approval:

- (a) Open Tendering (*Default Procedure*)
 - (i) International Competitive Tender
 - (ii) Domestic Competitive Tender
- (b) Request for Information
- (c) Expression of Interest
- (d) Minimal Value
- (e) Request for Quotations;
- (f) Request for Proposals (Advisory & Consultancy Services)
- (g) Single Source Procurement.
- (h) Restricted Tendering;
- (i) Two-Stage Tendering
- (j) Design Contest
- (k) Urgent Procurement
- (l) Emergency Procurement

33. General Rules Applicable to the Selection of a Procurement Method.

- (1) Except as otherwise provided for in sections (35) – (38) of this Bill, the Unit shall conduct procurement by means of Open Tendering (Default Procedure).
- (2) The Unit may use a method of procurement other than open tendering only if the applicable conditions specified under sections (35) – (38) below are satisfied and the method is specified in Annex A1 as an available method for the type and value of procurement concerned.
- (3) The Unit is strictly required to select the other method of procurement to accommodate the circumstances of the procurement concerned and, in making such selection and conducting the procurement, to maximize competition to the extent that is practicable.

34. Conditions on the Use of Restricted Tendering, Request for Quotations and Request for Proposals

- (1) The Unit may engage in procurement by means of Restricted Tendering in accordance with section (59) of this Bill when:

- (a) The Bidders are selected by the Unit or an approved Procuring Entity, and invited to bid.
 - (b) The subject matter of the procurement, by reason of its highly complex, or technically complex, or of a specialised nature, and include, Manufacturing, Construction, Project Management, Consultancy Services, and is available only from a limited number of Suppliers and pre-approved by Unit; or
 - (c) The time and cost required to examine and evaluate a large number of Bids may be disproportionate to the value of the subject matter of the procurement.
- (2) The Unit may engage in a procurement by means of a Request for Quotations in accordance with section (56) of this Bill, for the procurement of simple or readily available goods, works or services that are not specially produced or provided to the particular description of the Unit and for which there is an established market, as long as the estimated value of the procurement contract is less than the threshold amount set out in the Regulations.
- (3) The Unit may engage in procurement by means of Request for Proposals in accordance with section (57) of this Bill, where the Unit needs to consider the financial aspects of proposals separately and only after completion of the examination and evaluation of quality and technical aspects of the proposal.

35. Conditions on Use of Two-Stage Tendering-

- (1) Subject to the prior written approval of the Tender Review Committee of the Unit, the Unit may engage in an open and competitive Two-Stage Procurement under the following circumstances:
- (a) Where it is not feasible to formulate a detailed specification or a clear definitive description of the subject matter or where the technicality or complexity of the procurement makes it impossible to produce a written description accurately identifying each component in terms of outputs, composition, materials , performance or expectations and in accordance with section (13) of this Bill, and the Tender Review Committee of the Unit has determined, after a review, that the discussions, dialogue or negotiations, that the chosen method permits a change, which is needed to obtain a more satisfactory solution to its procurement needs; or
 - (b) When the Unit seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs;
 - (c) In the case of procurement for reasons of essential national defence or essential national security, where the Unit determines that the selected method is the most appropriate method of procurement provided under sections 8 (1), 11 (1b),and 26 (1), of this Bill.

- (d) When open tendering was engaged in but no Bids were submitted, or the procurement was cancelled by the Unit pursuant to section (21), of this Bill, or all Bids were rejected under section 50 (3) of this Bill, and when, in the judgement of the Unit, engaging in new open tendering proceedings, or an Open procurement method under Chapter VII would be unlikely to result in a procurement contract.

36. Conditions on the Use of Urgent and Emergency Procurement.

- (1) Subject to the prior written approval of the Tender Review Committee of the Unit, the Unit and Tender Negotiation Committee may engage in competitive negotiations, in accordance with the provisions of section (65) of this Bill, in the following circumstances:
 - (a) There is a need for the subject matter of an Urgent Procurement, provided under section (62) of this Bill, and engaging in open tendering proceedings or any other method of procurement because of the time involved in using those methods may therefore be impractical, provided that the circumstances giving rise to the urgency was not due to an omission from the annual procurement plan of an organisation, nor was the result of dilatory conduct on its part, and therefore were not foreseeable by the Unit, or another organisation in accordance with the provisions of section (62) of this Bill.
 - (b) Owing to a catastrophic event, there is an urgent need for an Emergency Procurement, provided under section (63) of this Bill, making it impractical to use open tendering or another more competitive and transparent method of procurement because of the time involved in using those methods in accordance with the provisions of section (63) of this Bill.
 - (c) In the case of procurement for reasons of essential national defence or essential national security, where the Unit determines that the use of any other method of procurement is not appropriate.
- (2) For the avoidance of doubt, competitive negotiations, the provisions of section (65) of this Bill, shall only be used when there is not an appropriate alternative method that may ensure the most practicable level of competition under the circumstances without jeopardizing other equally important considerations, such as cost efficiency procurement, or the absolute urgency of delivery, as the main object of the procurement.
- (3) Not all cases of Urgent Procurement or Emergency Procurement warrant the use of Competitive Negotiations. In all cases Competitive Negotiations will be subject to prior written approval by the Unit.

37. Conditions on the Use of Single Source Procurement (Direct Contracting).

- (1) With the prior approval of the Tender Review Committee of the Unit, may the Unit may engage in Single-Source Procurement in accordance with the provisions of section 58 of this Bill in the following exceptional circumstances;
 - (i) The subject matter of the procurement is available only from one particular Supplier, or a particular Supplier that has exclusive rights in respect of the subject matter of the procurement, such that no reasonable alternative or substitute exists, and the use of any other procurement method may therefore not be possible, or after an unsuccessful competitive bidding process;
 - (ii) Owing to a catastrophic event, there is an Emergency Procurement as provided under section (63) of this Bill, need for the subject matter of the procurement, and engaging in any other method of procurement may be impractical because of the time involved in using those methods;
 - (iii) The Unit, having procured goods, equipment, technology or services from a Supplier, and the Tender Review Committee determines that additional supplies shall be procured from that Supplier for reasons of standardisation, or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the user and the Unit, a follow-up contract where competition may significantly hinder the economy of a project, when the supplier enjoys exclusive propriety rights, after an unsuccessful competitive bidding process, 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 goods or services in question; and the value is *less than* 10% of the original contract cost; or
 - (iv) In the case of procurement for reasons of essential national defence or essential national security, where the Tender Review Committee of the Unit determines that the use of any other method of procurement is not appropriate.
 - (v) Direct Contracting is not considered the correct method for small value contracts and the Request for Quotation shall be used.

CHAPTER VI

INVITATION METHODS AND CONDITIONS ON THEIR USE

38. Invitation in Open Tendering and Two-Stage Tendering .

- (1) In procurement proceedings using Open Tendering in International or Domestic procurement or Two-Stage Tendering, the Unit shall Invite Bids, or in the case of initial Bids, by publishing a Bid Invitation Notice in the English language in:
 - (a) The Official Gazette;
 - (b) A daily or weekly publication of wide circulation in South Sudan, or
 - (c) A suitably hosted international Tender Website; or
 - (d) Where appropriate, a suitably hosted local website situated in South Sudan;
 - (e) If the procurement is not being conducted as a domestic procurement, or is of minimal value, in a daily or weekly publication of wide international circulation.
- (2) The provisions of this section shall not apply if there has been a pre-qualification proceeding conducted in accordance with sections (13), (14) of this Bill.

39. Invitation in Restricted Tendering, Request for Quotations, Expression of Interest and Single-Source Procurement.

- (1) In Restricted Tendering, Request for Quotations, and Expression of Interest the Unit shall invite Bids directly from a sufficient number of suppliers, or contractors, to ensure effective competition.
- (2) In Single Source Procurement under the circumstances set out under section (38) of this Bill, the Unit may Invite a proposal, or price quotation, from a single Supplier.
- (3) In Restricted Tendering, Request for Quotations, and Expression of Interest the Unit shall publish a notice of the procurement in the Official Gazette, or a Tender Website, where appropriate. The notice shall contain at a minimum the following information:
 - (a) The name and address of, and other relevant contact information for, the Unit;
 - (b) A summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings, including the nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the construction to be effected, or the nature of the services and the location where they are to be provided, and the desired or required time for the supply of the goods, or

for the completion of the construction, or the timetable for the provision of the services;

- (c) If the procurement is being conducted as a domestic procurement, the declaration required by section 11 (2) (a); and
 - (d) The method of procurement to be used.
- (4) The provisions of sub section (2) above, shall not apply to a procurement involving Classified Information, where the Unit is authorized to withhold publication in order to protect Classified Information, or to a procurement being conducted under Urgent or Emergency circumstances as referred under sections (37) and (38) of this Bill.

40. Invitation in Proceedings Involving Request for Proposals

- (1) The provisions of Invitation under section (39) of this Bill, shall apply *mutatis mutandis* to an invitation of Bids involving Proposals under section (57) of this Bill, except where a direct invitation is required in those procurement proceedings because:
- (a) The subject matter to be procured is available only from a limited number of suppliers or contractors, provided that the Unit invites proposals from all those suppliers or contractors; or
 - (b) The time and cost required to examine and evaluate a large number of proposals may be disproportionate to the value of the subject matter to be procured, provided that the Unit invites proposals from a sufficient number of suppliers or contractors to ensure effective competition; or
 - (c) The procurement involves Classified Information, provided that the Unit invites proposals from a sufficient number of suppliers or contractors to ensure effective competition.
- (2) The provisions of section (40) of this Bill, shall apply to a direct invitation in procurement proceedings involving a Request for Proposals under this Section, except where the procurement involves classified information, and the Unit withholds publication of the notice of the procurement in order to protect classified information.

CHAPTER VII OPEN TENDERING

41. Open Tendering

- (1) Open Tendering is the default tender process and may be used for :
- (a) International Competitive Tender
 - (i) International Competitive Tender

(b) Domestic Competitive Procurement

- (i) Domestic Competitive Procurement may be used, where appropriate, and only for minimal value and low value procurements Annexes (A1) and (A2).
 - (ii) Domestic Competitive Procurement may be used for medium value procurements, if there are a sufficient or minimum number of domestic suppliers, with prior approval of the Tender Review Committee of the Unit provided under Annexes (A1) and (A2).
 - (iii) Domestic Competitive Procurement cannot be used for high value procurements. All high value procurements may only be placed on International Competitive Tender, for which, a local supplier may bid, if they are suitably qualified to do so.
- (2) Depending upon the specification, the procurement selection may generally be either based upon a responsive bid with the Lowest Cost Bid, or a responsive bid with the Economically Most Advantageous Offer which is obtained competitively, assuming the bid was to the TOR or specification required. The chosen supplier may offer good technical and financial capability, may be financially sound, offer acceptable financial terms and may be capable of providing where appropriate support services, all requirement to specification, in an efficient manner and within the time frame stipulated. For Domestic Suppliers, the selected company shall be business registry locally and have paid up-to-date any taxes that are due, it is forbidden to deal with any organisation that does not satisfy these requirements.
- (3) All other procurement methods under Chapter (VIII), require the prior approval of the Tender Review Committee, other than those identified under sub section (1) above.

42. Procedures for Inviting Bids.

- (1) In an Open Tendering the Unit shall solicit Bids by publishing a Bid invitation notice in accordance with the provisions of section (39) and Annex (B).

43. Contents of Bid Invitation Notice.

- (1) The Bid Invitation notice shall include the following information:
- (a) The name and address of, and other relevant contact information for, the Unit;
 - (b) A general description of the object(s) of the procurement, which shall include a summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings, including the nature and quantity, and place of delivery of the

- goods to be supplied, the nature and location of the works to be effected, or the nature of the services and the location where they are to be provided, and the desired or required time for the supply of the goods or for the completion of the works, or the timetable for the provision of the services;
- (c) An indication of the documentary evidence or other information that shall be presented by a Supplier to verify that it is not ineligible under section (12) of this Bill.
 - (d) If applicable, an indication of the criteria and procedures to be used for ascertaining the qualifications of Suppliers as established in accordance with section (13) of this Bill, and an indication of the documentary evidence or other information that shall be submitted by Suppliers to demonstrate their qualifications, in conformity with that section;
 - (e) If being conducted as a domestic procurement, the declaration required by section 14 (2) (a) of this Bill,
 - (f) The means of obtaining the Bidding Documents and the place where they may be obtained;
 - (g) Subject to the restriction established by section 10 (5) of this Bill, the price, if any, charged by the Unit for the Bidding Documents;
 - (h) If a price is charged for the Bidding Documents, the means and currency of payment;
 - (i) The language or languages in which the Bidding Documents are available; and
 - (j) The manner, place and deadline for submitting Bids, to be established in conformity with section (19) of this Bill.

44. Provision of Bidding Documents.

The Unit shall provide the Bidding Documents to each Supplier that responds to the Bid invitation notice in accordance with the procedures and requirements specified therein.

45. Contents of Bidding Documents.

- (1) The Bidding Documents shall include, at a minimum, the following information:
 - (a) Instructions for preparing Bids;
 - (b) A description of the documentary evidence or other information that shall be presented by a Supplier to verify that it is not ineligible under section (13), of this Bill.
 - (c) If applicable, a description of the criteria and procedures to be used for ascertaining the qualifications of Suppliers as established in accordance with section 12 and in any further demonstration of qualifications pursuant to section 50 (6) and (8) of this Bill.

- (d) A description of the documentary evidence or other information that shall be submitted by Suppliers to demonstrate their qualifications, in conformity with section 12 of this Bill,
- (e) A description of the subject matter of the procurement, in conformity with section (13) of this Bill, including: the quantity and quality or, in the case the procurement has as its object the award of a framework contract, estimated quantity of the goods to be delivered or services to be performed; the location where the goods are to be delivered, works are to be effected or services are to be provided; and the desired or required time, if any, when goods are to be delivered, works are to be completed or services are to be provided.
- (f) The terms and conditions of the procurement contract, to the extent they are already known to the Unit, and the written contract form to be signed by the parties, if any;
- (g) If Suppliers are permitted to submit Bids proposing *alternatives* to the characteristics of the subject matter of the procurement, contractual terms and conditions or other requirements set out in the Bidding Documents, a statement to that effect and a description of the manner in which Bids proposing such alternatives are to be evaluated;
- (h) If Suppliers are permitted to submit Bids for only a portion of the subject matter of the procurement, a description of the portion, or portions, for which Bids may be separately submitted;
- (i) 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, such as any applicable transportation and insurance charges, recommended spare parts, cost of consumables, customs duties and taxes;
- (j) The currency or currencies in which the Bid price is to be formulated and expressed;
- (k) The language or languages, in conformity with section 18 of this Bill, in which Bids are to be prepared;
- (l) Any requirements of the Unit with respect to the issuer and the nature, form, amount and other principal terms and conditions of any Bid Security to be provided by Bidders in accordance with section 71 of this Bill; and any such requirements for any Contract Performance Security to be provided by the Bidder that is awarded the contract in accordance with section 74 of this Bill, including securities such as labour and material bonds;
- (m) If a Bidder may not modify its Bid after submission, a statement to that effect; and if a Bidder may not withdraw its Bid prior to the deadline for Bid submission without forfeiting its Bid security, a statement to that effect;
- (n) The manner, place and deadline for submitting Bids, in conformity with section 19 of this Bill;
- (o) The means by which, pursuant to section 20 of this Bill, suppliers or contractors may seek clarifications of the Bidding Documents, and a

- statement as to whether the Unit intends, at this stage, to convene a meeting of suppliers or contractors;
- (p) The period of time during which Bids shall be in effect, in conformity with section 48 of this Bill;
 - (q) The manner, place, date and time for the opening of Bids, in conformity with section 49 of this Bill;
 - (r) Information about the criteria and procedure for the examination of Bids as against the description of the subject matter of the procurement;
 - (s) Information about the criteria and procedure for evaluation of Bids in accordance with section 16 of this Bill;
 - (t) The currency that may be used for the purpose of evaluating Bids pursuant to section 50 (7) of this Bill, and either the exchange rate that may be used for the conversion of Bids into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date may be used;
 - (u) References to this Bill, the Regulations and other applicable laws and regulations directly pertinent to the procurement proceedings, including those applicable to procurement involving Classified Information, and where Suppliers may obtain or access these laws and regulations;
 - (v) The name, functional title and address of one or more officers or employees of the Unit who are authorized to communicate directly with and to receive communications directly from Suppliers in connection with the procurement proceedings;
 - (w) Notice of the right provided under Chapter XIII of this Bill to seek review of non-compliance with the provisions of this Bill together with information about duration of the applicable Standstill Period and, if none will apply, a statement to that effect and the reasons therefore;
 - (x) Any formalities that may be required once a successful Bid has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract pursuant to section 24 of this Bill, or the obtaining of the approval by a higher authority and the estimated period of time following the dispatch of the notice of acceptance that may be required to obtain the approval;
 - (y) Any other requirements established by the Unit in conformity with this Bill and the Regulations relating to the preparation and presentation of Bids, including any mandatory documentation, and to other aspects of the procurement proceedings, including any relevant timetables applicable in respect of the procurement process.

46. 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 that is signed and dated, and:

- (a) If in paper form, in a sealed envelope(s); or
 - (b) If in any other form, including electronically where applicable, according to requirements specified by the Unit in the Bidding Documents, which ensure at least a similar degree of authenticity, security, integrity and confidentiality.
- (3) The Unit shall provide to the Supplier a receipt showing the date and time when its Bid was received, recording the number of packages received and that each package is clearly marked with the correct identifying information;
 - (4) All Bid Packages may be kept in a locked tender box, or filing cabinet, or room, and the access key kept by one appointed member of the Procurement Section;
 - (5) The Unit shall preserve the security, integrity and confidentiality of a Bid, and shall ensure that the content of the Bid is examined only after its public opening, at the time stated in the tender documents, and in accordance with the directives of this Bill.
 - (6) A Bid received by the Unit after the deadline for submitting Bids shall not be accepted or opened and shall be returned unopened to the Supplier that submitted it. Any such event shall be recorded in the records required by section 27 of this Bill, the time of receipt of the Bid, the name and address of the Supplier to which it was returned, and the time of its dispatch to such Supplier.

47. Period of Effectiveness of Bids; Modification and Withdrawal of Bids,

- (1) Bids shall be legally in effect during the period of time specified in the Bidding Documents.
- (2) Prior to the expiry of the period of effectiveness of Bids, the UNIT may request Bidders to extend the period for an additional specified period of time. A Bidder may refuse the request without forfeiting its Bid Security;
- (3) Bidders that agree to an extension of the period of effectiveness of their Bids shall extend or procure an extension of the period of effectiveness of the Bid Security provided by them. Alternatively, Bidders may provide new Bid Security to cover the extended period of effectiveness. A Bidder that has not extended the effective period of its Bid Security, or that has not provided new Bid Security, is considered to have refused the request to extend the period of effectiveness of its Bid.
- (4) Unless otherwise stipulated in the Bidding Documents, a Bidder may modify or withdraw its Bid prior to the deadline for submission of Bids without forfeiting its tender security. The modification, or notice of withdrawal, is effective if it is received by the Unit prior to the deadline for the submission of Bids.

48. Opening of Bids.

- (1) Bids shall be opened in public and immediately after the time specified in the Bidding Documents. They shall be opened at the place and in accordance with the manner and procedures specified in the Bidding Documents.
- (2) Every Bidder, or its representative, shall be permitted to be present at 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, in addition to any discounts or restrictions and caveats, communicated to those Bidders that have submitted Bids but that are not present, or represented, at the opening of Bids, and recorded immediately in the record of the procurement proceedings and records required by section 27 of this Bill. When the information has been publically read out aloud, and the same announcements may be transcribed onto a whiteboard, blackboard or paper chart in full view of those present.
- (4) The Bid Opening Committee shall all sign and officially stamp the opened Bidders proposal sheets
- (5) The Bid Opening Committee shall sign the minutes of the meeting and the summary sheets of the price offers, with the discounts and caveats, including any one volunteer of the representatives of the Bidders present.

49. Examination and Evaluation of Bids

- (1) Subject to sub section (2) below and section 81 of this Bill:-
 - (a) The Bid Evaluation Committee may ask a Bidder for clarifications of its Bid in order to assist in the examination and evaluation of Bids; and
 - (b) The Bid Evaluation Committee shall correct purely arithmetical errors that are discovered during the examination of Bids and shall give prompt notice of any such correction to the concerned Bidder.
- (2) No change in a matter of substance in the Bid, including changes in price and changes aimed at making an unresponsive tender responsive, shall be made, sought, offered or permitted.
- (3) Subject to the provisions of this sub-section, the Bid Evaluation Committee shall regard a tender as responsive if it conforms to all requirements set out in the Bidding Documents in accordance with section 15 of this Bill. The Bid Evaluation Committee may regard a tender 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

materially altering the very substance of the Bid. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of Bids. All minor changes may be clearly noted in the evaluation records.

- (4) The Bid Evaluation Committee shall reject a tender:
 - (a) If the Bidder that presented the tender does not meet the qualification requirements, if any, on a pass, or fail basis, as specified in the Bidding Documents;
 - (b) If the Bidder does not accept a correction of an arithmetical error made pursuant to sub section (1) (b) above;
 - (c) If the Bid is not responsive; or
 - (d) If the circumstances referred to under sections 22 and 23 are applicable.
- (5) The Bid Evaluation Committee shall evaluate the Bids that have not been rejected in order to ascertain the successful Bid, as defined under (6) below, in accordance with the procedures and criteria set out in the Bidding Documents. No criterion shall be used that has not been set out in the Bidding Documents.
- (6) The successful Bid shall be:
 - (a) Where price is the only award criterion, an evaluated and responsive Bid which is the Lowest Cost Bid; or
 - (b) Where there are price and other award criteria to consider, then it shall be the bid selected as a responsive bid and the Economically Most Advantageous Offer, ascertained on the basis of the criteria and procedures for evaluating Bids specified in the Bidding Documents in accordance with requirements of section 15 and 16 of this Bill.
- (7) When Bid prices are expressed in two or more currencies, for the purpose of evaluating and comparing Bids, the Bid prices of all Bids shall be converted to the currency specified in the Bidding Documents according to the rate specified in those documents, pursuant to section 46 (t) of this Bill.
- (8) Whether or not it has engaged in pre-qualification proceedings pursuant to section 14 of this Bill, the Tender Review Committee may require the Bidder submitting the Bid that has been found to be the successful Bid pursuant to paragraph (6) above to demonstrate its qualifications again, in accordance with the criteria and procedures conforming to the provisions of section 13 of this Bill, The criteria and procedures to be used for such further demonstration shall be set out in the Bidding Documents. Where pre-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.
- (9) If the Bidder submitting the successful Bid is requested to demonstrate its qualifications again in accordance with subsection (8) above, but fails to do so, the

Bid Evaluation Committee shall reject that tender and shall select a successful Bid, in accordance with subsection (6) above, from among the remaining Bids still in force, subject to the right of the Tender Review Committee to cancel the procurement in accordance with section 21 (1) of this Bill.

- (10) Information relating to the examination, clarification, and evaluation of Bids shall remain confidential and not be disclosed to any Person not involved officially in the examination and evaluation of Bids, or in the decision on which the Bid shall be accepted, except as provided in sections 24, 26 and 27 of this Bill.

50. Prohibition of Negotiations with Suppliers or Bidders.

- (1) In an Open Tendering procedure, no negotiations shall take place between the Unit, the Tender Review Committee, the Bid Evaluation Committee and any Bidder with respect to a Bid.

CHAPTER VIII

OTHER PROCUREMENT METHODS

51. Request for Information (RFI).

A Request for Information is a procurement activity employed to gather information and used as a procurement planning tool, as provided under section 28 of this Bill. It is used to gather general information about:

- (a) The capacity and capabilities of various suppliers, or consultants;
- (b) The range of products and services provided;
- (c) The range of prices and spare parts recommended;
- (d) Explanation of specifications and performance details;
- (e) Seek clarification, or an explanation of a manufacturing process;
- (f) Any other details which may be considered prior to deciding the type of procurement method to be used.

52. Expression of Interest (EOI).

The UNIT itself, or on behalf of another government organisation, may issue an Expression of Interest pertaining to a particular project, requirement or activity. The Unit shall publish the EOI in:

- (a) the Official Gazette;
- (b) a daily or weekly publication of wide circulation in South Sudan, or
- (c) a suitably hosted Tender Website in care of domestic procurement; or
- (d) if the procurement is not being conducted as a domestic procurement, in a daily or weekly publication of wide international circulation.

53. Minimal Value Procurement (MV)

- (1) A Minimal Value procurement is a local method that may be conducted with an Official Purchase Order after obtaining 3 quotations. Payment by:
 - (a) Cheque or;
 - (b) Purchase Card or Credit Card;
 - (c) Bank to Bank Transfer;
 - (d) A business account with specific Supplier(s);
 - (e) An ad-hoc basic.
- (2) Approved requisitions, invoices and payment receipts shall be kept in chronological order, suitably cross-referenced.

54. Petty Cash (PC).

Petty Cash is the purchase of very low cost item by petty cash for which a receipt of Cash Invoice or Receipt with Company Stamp, Payment/Invoice Receipt or Till Roll Receipt is required,

55. Requests for Quotation (RFQ)

- (1) In a Request for Quotation the Unit shall request and receive quotations from as many Suppliers as practicable, but from at least three (3), unless there is less than three available, whereupon the Unit may record the reasons stating why there were less than three, and what steps were taken to maximise the number of suppliers. Each Supplier from whom a quotation is requested shall be informed whether any elements other than the price for the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the quotation.
- (2) Each Supplier is permitted to provide only one quotation and is not permitted to change its quotation. No negotiations shall take place between the Unit and a Supplier with respect to a quotation presented by the Supplier.
- (3) The successful quotation shall be the Lowest Cost Quotation meeting the specification and the needs of the Unit, as set out in the request for quotations.

56. Requests for Proposals (RFP) (Advisory or Consultancy Services)

- (1) The Request for Proposals may use one of the following methods, with prior approval of the Unit:
 - (a) Quality- and Cost-Based Selection (QCBS) (*most common);
 - (b) Quality-Based Selection (QBS);
 - (c) Selection under a Fixed Budget (FBS);

- (d) Least-Cost Selection (LCS);
- (e) Selection Based on Qualifications of the consultant (CQS);
- (f) Single-Source Selection (SSS);
- (g) Commercial Practices (CP).

*The choice of the appropriate method may depend on the nature, size, and complexity of the assignment; the likely downstream impact of the assignment; and technical and financial considerations.

(2) Except in the cases of Direct invitation under section 41 of this Bill, the Unit shall solicit Bids in accordance with section 39 of this Bill.

(3) The invitation shall include:

- (a) The name and address of, and other relevant contact information for the Unit;
- (b) A description of the subject matter of the procurement, including the technical and other characteristics to which the proposal shall conform and the desired or required time and location for the provision of such subject matter;
- (c) The terms and conditions of the procurement contract, to the extent they are already known to the Unit, and the contract form, if any, to be signed by the parties;
- (d) If being conducted as a domestic procurement, the declaration required by section 11 (2) (a) of this Bill;
- (e) The criteria and procedures to be used for ascertaining the qualifications of Suppliers and any documentary evidence, or other information, that must be presented by Suppliers to verify that they are not ineligible under section 11 of this Bill and to demonstrate their qualifications in conformity with section 12 of this Bill;
- (f) The criteria and procedures for opening the proposals and for examining and evaluating the proposals in accordance with sections 12 and 13 of this Bill, including the minimum requirements with respect to technical and quality characteristics of proposals, and a statement that proposals that fail to meet those requirements may be rejected as non-responsive;
- (g) Information on how Suppliers may obtain or access the Request for Proposals;
- (h) Subject to the restriction established by section 10 (5) of this Bill, the price, if any, charged by the Unit for the request for proposals;
- (i) If a price is charged for the request for proposals, the means and currency of payment for the request for proposals;
- (j) The language or languages in which the requests for proposals are available;
- (k) The manner, place and deadline for presenting proposals.

(4) The Unit shall issue the Request for Proposals:

- (a) Where the invitation has been published, to each Supplier that responds to the invitation in accordance with the procedures and requirements specified therein;
 - (b) In the case of direct invitation, to the Suppliers selected by the Unit.
- (5) The Request for Proposals shall include, in addition to the information referred to in paragraphs (2) (a - f) and (k) above of this section, the following information:
- (a) Instructions for preparing and presenting proposals, including instructions to Suppliers to present simultaneously to the Unit proposals in two envelopes: one envelope, suitably marked with “technical proposal” containing the technical, the performance and other characteristics of the proposal and a second envelope, suitably marked with “financial proposal”, containing the financial aspects of the proposal;
 - (b) The currency, or currencies, in which the proposal price is to be formulated or expressed, and the currency that may be used for the purpose of evaluating proposals, and either the exchange rate that may be used for the conversion of proposal prices into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date may be used;
 - (c) The manner in which the proposal price is to be formulated or expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
 - (d) The means by which Suppliers may seek clarifications of the request for proposals;
 - (e) References to this Bill, the Regulations and other released and applicable laws and regulations directly pertinent to the procurement proceedings, including those applicable to procurement involving Classified Information, and where Suppliers may obtain or access these laws and regulations;
 - (f) The name, functional title and address of one or more officers or employees of the UNIT who are authorized to communicate directly with and to receive communications directly from suppliers in connection with the procurement proceedings;
 - (g) Notice of the right provided under Chapter XIII of this Bill to seek review of non-compliance with the provisions of this Bill, together with information about duration of a Standstill Period and, if none may apply, a statement to that effect and the reasons therefore;
 - (h) Any formalities that may be required once the proposal has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract pursuant to section 25, or the obtaining of the approval by a higher authority and the estimated

period of time following the dispatch of the notice of acceptance that may be required to obtain the approval;

- (i) Any other requirements that may be established by the UNIT in conformity with this Bill and the Regulations relating to the preparation and submission of proposals and to the procurement proceedings, including any relevant timetables applicable in respect of the procurement process.
- (6) The Evaluation Committee shall examine and evaluate the technical and other characteristics of proposals in accordance with the criteria, sub-criteria, and points system and procedures specified in the request for proposals. The results of the examination and evaluation of each of the technical and the other characteristics of the proposals shall be immediately recorded in the record of the procurement proceedings, ranking them in order of highest to lowest points.
 - (7) The proposals whose technical and quality characteristics fail to meet the relevant minimum requirements shall be considered to be non-responsive and shall be rejected on that ground. The notice of rejection and reasons for rejection, together with an unopened envelope containing the financial aspects of the proposal, shall be promptly dispatched to each respective Supplier whose proposal was rejected.
 - (8) The proposals whose technical and other characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive. The UNIT shall invite all such Suppliers to the opening of the envelopes containing the financial aspects of their proposals.
 - (9) The score of the technical and other characteristics of each responsive proposal and the corresponding financial aspect of that proposal shall be read out in the presence of the Bidders or contractors invited in accordance with sub section (8) above.
 - (10) The financial envelopes shall be publically opened and the prices read out, including any discounts or other caveats.
 - (11) The Evaluation Committee shall compare the financial aspects of the responsive proposals and on that basis identify the successful proposal in accordance with the criteria and the procedure set out in the request for proposals. The successful proposal shall be the proposal with the best combined evaluation in terms of the criteria other than price specified in the request for proposals and the price.
 - (12) Where such an RFP is for the selection of an Advisory or Consultant Services, the UNIT expects the negotiations to be on the basis of the professional staff named in the RFP.
 - (13) A summary table of all the relevant recorded data may be signed and dated by all the committee members.

- (14) Other methods of evaluation and calculation of a winner for Requests for Proposals are dependent upon which one of the seven methods was chosen from the operational guidelines for different RFP methods will be published in the Regulations.

57. Single-Source Procurement (SSP).

(1) If the Unit undertakes a Single Source Procurement, it may approve a proposal, or price quotation, sought from a single Supplier in accordance with sections 41 and 43 of this Bill. The successful Bid shall be:

- (a) Where price is the only award criterion, a responsive Bid which is evaluated as the Lowest Cost Bid_ price; or
- (b) Where there are price and other award criteria needs to be consider, then it shall be the offer which is a responsive bid and calculated on the same basis used to cost the Economically Most Advantageous Offer, ascertained on the basis of the criteria, subject matter and procedures for evaluating Bids specified in the Bidding Documents in accordance with section 15 of this Bill.

58. Restricted Tendering (RT).

- (1) When the Unit undertakes a Restricted Tender, after approval by the Tender Review Committee, it shall invite Bids in accordance with the provisions of section 40 and, as applicable, paragraph (2) or (3) of this section.
- (2) When the Unit engages in Restricted Tendering on the grounds that the subject matter of the procurement, by reason of its highly complex, technical, or specialised nature, is available only from a limited number of Suppliers, it shall invite Bids from all Suppliers from whom the subject matter of the procurement is available.
- (3) When the Unit engages in Restricted Tendering on the grounds that the time and cost required to examine and evaluate a large number of Bids shall be disproportionate to the value of the subject matter of the procurement, it shall select Suppliers from whom to invite Bids in a non-discriminatory manner, and it shall select a sufficient number of Suppliers to ensure effective competition.
- (4) The contract is awarded to the responsive evaluated bid with the Lowest Cost Bid.
- (5) Except as may be necessary to accommodate the provisions of sub section (1) and (2) above, the provisions of Chapter VII of this Bill shall apply to restricted tendering proceedings.

59. Two-Stage Tendering (2ST).

- (1) The same provisions of Chapter VII of this Bill shall apply to the Two Stage Tendering proceedings. Two Stage Tendering is used in the case of turnkey contracts or contracts for large complex facilities or works of a special nature or complex information and communication technology, and where it may be undesirable or impractical to prepare complete technical specifications in advance. In such case, a two-stage bidding procedure may be used, under a first stage in which an un-priced technical proposal on the basis of a conceptual design or performance specifications are invited, which may be subject to technical and commercial clarifications and adjustments, to be followed by amended bidding documents and the submission of final technical proposals and priced bids in the second stage.
- (2) Two Stage Tendering may only be used after prior approval of the Tender Review Committee of the Unit. The Bidding Documents shall call upon Suppliers to submit, in the first stage of a Two Stage Tendering proceeding, an initial Bid containing only their technical proposal without a financial price. Depending upon the number of possible bidders, the Unit may use restricted tendering, if so desirable, after approval of the Tender Review Committee.
- (3) Where and when applicable, a consultation meeting may be held, or an on-site meeting may be held, where the potential Bidders may discuss in an open forum, any technical and commercial factors requiring clarification. Subsequently to the meeting the minutes of the meeting, may be sent to all the bidders who responded, whether they attended the meeting or not. During the revisions, which may involve several refining steps and consultations the Unit may ensure the competition is maximised.
- (4) Upon revision and finalisation of the bidding documents the Unit shall invite the final submission of both technical and financial offers in sealed envelopes. The Evaluation Committee shall determine in accordance with any criteria specified in the Bidding Documents which, if any, bids are rejected. Bidders whose bids are not so rejected shall be evaluated according to the bid evaluation criteria established and points awarded according to the merits of their proposal.
 - (a) The Evaluation Committee shall calculate the points of the financial and technical offers according to the predetermined formulae of allocation of points in the tender document. The winner of the tender is the bidder who obtains the highest total aggregated number of points.

60. Design Contest.

- (1) The rules for the organisation, invitation, publication and conduct of a design contest shall be in conformity with the provisions set forth for an invitation for a large value open tendering procedure and as detailed in the Regulations.
- (2) Where the object of the intended design restricts interest, or due to of its uniqueness which limits the number of contestants capable of providing a suitable artistic design or creation, it may be necessary to pre-qualify the design experts by establishing minimum professional, artistic or skill capabilities, on a pass or fail basis. Such qualification requirements shall be clearly defined, be objective and be non-discriminatory in requirement.
- (3) The design jury shall be composed of not case less than three (3) persons. If the participants are required to possess a specific professional qualification, at least two thirds of the members of the jury shall also have that qualification or its equivalent.
- (4) The jury shall decide the contest only on the basis of the criteria indicated in the design contest notice. In addition, the identity of the participants shall not be disclosed to the members of the jury. The opinions of the individual jury members shall be maintained as confidential by all jury members.
- (5) The jury shall make reasonable efforts to reach a consensus decision. If, after reasonable efforts, a majority of the members of the jury decide that a consensus decision cannot be reached, the jury shall decide the contest by majority vote.
- (6) The winner of the design contest is awarded the first prize, with the second and third placed participants lesser amounts.

61. Urgent Procurement.

- (1) An Urgent Procurement is subject to the prior approval of the respective Tender Review Committee, following receipt of:
 - (a) A request and justification of needs for the Urgent Procurement, in accordance with sections 38 and 40 of this Bill;
 - (b) Urgent Procurement is allowable where there has been an unexpected increase in consumption of Supplies, or where there is a delay in delivery of an already awarded Tender;
 - (c) Urgent Procurement is allowable, if it is not the result of an act, or omission, of the organisation and is not an excuse to alleviate bad management, planning, the lack of an annual procurement plan or approved budget. Regular offenders shall be refused approval and be removed from future procurement activities.

62. Emergency Procurement.

- (1) Emergency Procurement may only be used when there has been an unavoidable accident, a natural disaster, an epidemic, a national catastrophe, or a state of emergency has been declared, and where immediate action is a priority:
 - (a) Following a request for action, the Director General of the Unit may immediately sign approval of the removal of formal procedures, enabling procurement action to be taken without delay, and may regularly inform the Ministry of developments.
 - (b) Where applicable, the Director General of the Unit may head, appoint and co-ordinate an Emergency Committee of Experts, knowledgeable in subject matter areas sufficient to resolve the problem. Licensed Procurement Officers may be an integral part of the Committee.
 - (c) There may be established a set of rules, within the Regulations, that govern Emergency Committee of Experts operations.
 - (d) In an Emergency Procurement the Emergency Committee of Experts may decide the following:
 - (i) The quickest source of availability of materials
 - (ii) The time scale of the deliveries.
 - (iii) The logistics of distribution and verification to all locations,
 - (iv) If the quickest source of availability choice is either:
 - (1) Confined to Single Source, manufacturer, supplier, or authorized agency which may be either a domestic or international source of supply, or
 - (2). If the availability is a Restricted Source, or Multi-Source, readily available and may be acquired through normal competitive tendering, subject to the emergency needs of (d) (i - iii) above.
 - (e) Robust methods may be employed to verify all contracts, deliveries, receipts, installations, constructions, commissioning, storage, distribution, treatments, delivery notes and invoices. Strict rules concerning Separation of Duties may apply the provisions of section 73 of this Bill.
 - (f) Where applicable, authorisation of documentation and funding will be approved retrospectively.
 - (g) Depending upon the type of emergency procurement undertaken, the value of the proposed contract, and the award recommended by the Emergency Committee of Experts, the recommendation may require the final approval of the Commission provided under section (86) of this Bill.

63. Safeguard for Urgent and Emergency Tendering.

Urgent Procurement and Emergency Procurement may follow normal tendering procedures. Only due to exceptional or mitigating circumstances where there may

be a need to negotiate due to urgency of need and under such circumstances, negotiations may only commence with prior approval of the Tender Review Committee of the Unit and with Procurement Officers trained in negotiation techniques provide under sections 47 and 65 of this Bill.

CHAPTER IX

PROCUREMENT NEGOTIATIONS

64. Engaging in Negotiations.

- (1) Tender negotiations are a clarification of issues, outcomes and responsibilities of a proposal; they are not the renegotiation of a proposal prior to contract signature.
- (2) Under exceptional circumstances and only due to Single Source Procurement, an Urgent Procurement, or an Emergency Procurement and when it may be necessary to be quickly involved in negotiations, solely because of a pressing need, or due to clarification needs, or another reason, and negotiations may only be conducted with the prior written approval of the Tender Review Committee of the Unit.
- (3) Other procurement activities, of Restricted Procurement, Request for Proposals, Two Stage Tendering may require a certain amount of clarification which require negotiations. Such negotiations may only be conducted with the prior written approval of the Tender Review Committee.
- (4) All committees that need to become involved in tendering negotiations shall include Procurement Officers who have been trained in negotiation techniques,
- (5) Where it may become necessary to negotiate with the Suppliers, the Procurement Officer shall assemble a special Tender Negotiation Committee comprising of selected members of the Evaluation Committee, subject matter experts and trained negotiators, to conduct the negotiations. Political appointees are not allowed to be involved in or to influence any negotiations.
- (6) In negotiations with other than Single Source Procurement, where the Tender Negotiation Committee may need to investigate proposals, they shall make sure they engage in negotiations with a sufficient number of Suppliers to ensure effective competition. The general provisions of section 41 of this Bill, shall apply to the procedures preceding the negotiations.
- (7) Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that are communicated by the Tender Negotiation

Committee to a Supplier before, or during, the negotiations shall be communicated on an equal basis to all other Suppliers engaging in negotiations with the Tender Negotiation Committee, relative to the procurement.

- (8) Following completion of negotiations, the Tender Negotiation Committee shall request all Suppliers remaining in the proceedings to submit, by a specified date, a best and final offer with respect to all aspects of their proposals and shall specify in detail and in accordance with section 18 of this Bill, and the Bid Evaluation Criteria and procedures that may be used to determine the successful proposal.
- (9) The successful proposal shall be determined in accordance with the specified evaluation criteria and procedures detailed in the bidding documents.

CHAPTER X

CLASSIFYING AND VALUING PROCUREMENT CONTRACTS

65. Determining the Type of Contract which contains Mixed Elements.

- (1) If a Goods contract includes provisions requiring the Supplier(s) to deliver, site or install the concerned item(s), the existence of such provisions shall not affect the classification of such contract as a Goods contract.
- (2) A contract covering both Goods and Services shall be considered a Service Contract if the estimated value of the Services, exceeds the estimated value of the Goods. If the contract includes provisions for the delivery, sitting or installation of the concerned Goods, the estimated value of such activities shall be included in the valuation of the Goods component of such contract.
- (3) A contract having as its principal object the provision of a professional construction related Services (e.g., architectural or engineering services, geotechnical or geodetic site investigation services, structure or structure design, assessment services, or construction supervision or construction management services) shall be considered a Service Contract even if such contract also covers, by way of addition to the principal object, the performance of one or more activities referred to in the definition of Works Contract.
- (4) A contract having as its principal subject the conduct of activities referred to in the definition of Works Contract, but that also covers the provision of professional construction related Services, shall be considered a Works Contract even if such Services are necessary for the performance of such contract.
- (5) A contract that has as its subject both the Supply of products and the conduct of activities referred to in the definition “Works Contract” then it shall be classified

as a Works Contract unless such activities consist only of sitting or installation activities.

- (6) Any contract, regardless of its structure, that in substance provides that a Supplier is to receive, or retain a commission, or other form of compensation for the performance of any type of Service for, or on behalf of the Unit, is considered a Service Contract covered by this Bill.

66. Calculating the Estimated Value of a Goods Contract.

- (1) The estimated value of a proposed Goods Contract shall equal the estimated price to be paid by the Unit for all Goods, Services and other objects covered thereby. The estimated price of such objects shall be their estimated price on the day of dispatch of the initial invitation in the concerned procurement proceeding. In determining the estimated value of a proposed Goods Contract, the Unit shall include all reasonably foreseeable elements of the ultimate price to be paid by the Unit for the objects covered by the contract, including any and all applicable taxes, duties and other charges.
- (2) In the case of contracts for the lease, rental or hire-purchase of Goods, the value to be taken as the basis for calculating the estimated value of the contract shall be:
 - (a) In the case of a fixed-term contract, the total contract value including the estimated residual value; or
 - (b) In the case of a contract for an indefinite period, or where there is doubt as to the duration of the contract, the monthly value multiplied by 48.
- (3) Where a proposed contract contains an option, the basis for calculating the estimated contract value shall be the maximum potential total amount of the purchase, lease, rental, or hire-purchase, including any amounts that may become payable as a result of the exercise of the option clause.
- (4) A Unit shall not select, or use, a valuation method for the purpose of lowering the value of a Goods Contract, below a threshold specified in Annex A; nor shall any Unit split up a procurement requirement for a given quantity of Goods for the purpose of lowering the value of a Goods contract below a threshold specified in Annex A1 & A2.

67. Calculating the Estimated Value of a Services Contract.

- (1) The estimated value of a proposed Services Contract shall equal the estimated total remuneration and reimbursable amounts to be paid by the Unit under the contract throughout the term of the contract, taking account of the provisions set out in this section. In determining the estimated value of a proposed Services Contract, the Unit shall include all reasonably foreseeable elements of the ultimate price to be paid by the Unit for the Services and other objects covered by such contract, including any and all applicable taxes, duties and other charges.

- (2) Where a proposed Service Contract contains an option, the basis for calculating the estimated contract value shall be the maximum potential total amount to be paid under the proposed Service Contract, including any amounts that may become payable as a result of the exercise of the option clause.
- (3) For the purposes of calculating the estimated value of a proposed Service Contract covering insurance services, banking and other types of financial services, or design services, account shall be taken, where appropriate:
 - (a) In the case of Insurance services, of the premium payable;
 - (b) In the case of Banking and other Financial Services, of fees, commissions and interest and other types of remuneration; or
 - (c) In the case of Design Services, of fees or commissions.
- (4) Where Services are subdivided into several lots, each one the subject of a separate contract, the aggregate estimated value of all such lots shall be the value of each such contract under for the purposes of Annex A.
- (5) In the case of proposed Services contracts that do not specify a total price, the value to be taken as the basis for calculating the estimated contract value shall be:
 - (a) In the case of a fixed-term contract having a term of 48 months or less, the total estimated contract value for its duration; or
 - (b) In the case of a contract of indefinite duration, or with a term of more than 48 months, the average estimated monthly value multiplied by 48.
- (6) Where it is reasonably foreseeable that a proposed Services Contract may be extended, renewed, or followed by a successor contract, to the same Supplier for similar Services, the basis for calculating the estimated contract value of such proposed Services Contract shall be the maximum potential total amount to be paid under the proposed Service Contract, including the maximum potential total amount to be paid under any such reasonably foreseeable extension, renewal or successor contract.
- (7) The Unit shall not select, or use, a valuation method for the purpose of lowering the value of a Services Contract below a threshold specified in Annex A; nor shall the Unit split up a procurement requirement for a given amount of Services for the purpose of lowering the value of a Service Contract below threshold specified in Annex A1 & A2.

68. Calculating the Estimated Value of a Works Contract.

- (1) The estimated value of a proposed Works Contract (or Real Estate Contract) shall equal the estimated price to be paid by the Unit for all works, services, products, real estate, and other objects covered thereby; including, in the case of a Works

Contract (or Real Estate Contract) objects that are needed to execute such contract and that are to be made available to the Works Contractor (or Real Estate Contract) by the Unit. In determining the estimated value of a proposed Works Contract or (Real Estate Contract), the Unit shall include all reasonably foreseeable elements of the ultimate price to be paid by the Unit for such Works, Services, products and objects, including any and all applicable taxes, duties and other charges.

- (2) Where a Work is subdivided into several lots, each one the subject of a separate contract, the aggregate estimated value of all such lots shall be used to determine the classification of each such contract under Annex A1 & A2.
- (3) Where a proposed Works Contract contains an option clause, the basis for calculating the estimated contract value shall be the maximum potential total amount to be paid under the proposed Works Contract, including any amounts that may become payable as a result of the exercise of the option clause.
- (4) Where it is reasonably foreseeable that a proposed Works Contract may be extended, renewed or followed by a successor Contract for Works to the same Supplier, the basis for calculating the estimated contract value of such proposed Works Contract shall be the maximum potential total amount to be paid under the proposed Works Contract, including the maximum potential total amount to be paid under any such reasonably foreseeable extension, renewal or successor contract.
- (5) The Unit shall not split a Work or a Works Contract for the purpose of lowering the value of a Work or Works Contract below a threshold specified in Annex A1 & A2.

CHAPTER XI

BID VALIDITY, BID SECURITY AND CONTRACT PERFORMANCE SECURITY

69. Bid Validity.

- (1) A Bid Validity may remain valid for the period of time stipulated in the bidding documents, after the submission date which was stipulated in the bid documents. If the validity date is for a shorter period then the bid may be rejected.
- (2) Due to unforeseen circumstances, the Unit may request the Bidders to extend the validity period of the bids. The request may be communicated, in writing, to all participants, or to those who had satisfied the pre-qualification criteria. A Bidder may refuse and withdraw their offer, without forfeiting their bid security.

70. Bid Security.

- (1) In a procurement proceeding leading to the award of large or medium value procurement contract, the Unit may require a Bidder to post Bid Security. A Bid Security posted by a Bidder shall be forfeited in the event:
 - (a) The Bidder provided materially false or misleading information to the Unit in connection with the concerned procurement;
 - (b) The Bidder withdraws its Bid after the Bid submission deadline but prior to the expiration of the Bid validity period specified in the Bidding Documents; or
 - (c) The Bidder is selected as the successful Bidder on the basis of its Bid and the Bidder then refuses or fails:
 - (i) to post any required Contract Performance Security that was specified in the Bidding Documents;
 - (ii) to comply with any other condition precedent to the signing of the concerned contract that was specified in the Bidding Documents; or
 - (iii) to execute a contract that conforms to the Bid and the terms and conditions specified in the Bidding Documents.
- (2) If the Unit imposes a Bid Security requirement, such requirement shall apply to all Bidders. The Unit shall reject and not evaluate a Bid received from a Bidder that has failed to comply with all applicable Bid Security requirements.
- (3) If the Unit requires Bid Security, the amount of the Bid Security required shall, unless the Regulations provide otherwise, not be less than three percent (3%) and not greater than 10 percent (10%) of the estimated value of the contract.
- (4) If the Unit imposes a Bid Security requirement, the Unit shall set forth in the Bidding Documents:
 - (a) Any requirements regarding the nature, form, amount and other terms and conditions applicable to the Bid Security; provided, however, that such requirements shall be consistent with this Bill and the Public Regulations;
 - (b) The precise amount of the Bid Security and the required validity period thereof;
 - (c) A statement that the deadline for the receipt of the Bid Security shall be the same as that for the submission of Bids; and

- (d) A statement of the events specified in sub section (1) above that may cause the Bid Security to be forfeit.

71. Forms of Bid Security.

- (1) Bid security may be posted in the form of cash, a bank guarantee, bank draft, bank wire, bank transfer, surety bond, standby letter of credit, a cheque on which a bank is primarily liable, a cash deposit, promissory note or a bill of exchange. The Regulations may establish reliability and creditworthiness, but not nationality, requirements that the issuer and confirmer, if any, of such an item shall meet in order for the item to be acceptable as Bid Security. The Unit shall clearly specify in the Bidding Documents any issuer and confirmer reliability requirements established in the Bidding Documents.
- (2) Prior to presenting a Bid, a Supplier may request the Unit to confirm the acceptability of a proposed issuer or confirmer of Bid security. The Unit shall respond promptly to such a request.
- (3) If during the course of a procurement proceeding a previously acceptable issuer or confirmer does not meet, or no longer meets, applicable reliability and creditworthiness requirements, the Unit shall notify any concerned Bidder or Supplier, and such Bidder or Supplier shall be given a reasonable time under the circumstances of the concerned procurement, not to exceed five (5) business days, to replace its Bid Security.
- (4) The Unit shall establish in accordance with the applicable laws and regulations of South Sudan governing public financial management, an account for the purpose of receiving and holding cash funds received as Bid Security or from the liquidation of a Bid Security instrument.
- (5) A Unit shall not return, transfer, use or make any other disposition of any item received as Bid Security except as specifically authorized by section (11) – (13) of this Bill.

72. Forfeiture of Bid Security.

- (1) If no event specified under the provisions of this subsection, has occurred requiring the forfeiture of Bid Security, the Unit shall return the funds or other item(s) constituting such Bid Security within five (5) business days after the occurrence of any of the following events:
 - (a) The expiration of the validity period of the Bid Security;

- (b) The award and entry into force of the concerned procurement contract and, if noticed in the Bidding Documents, the provision of any required Contract Performance Security;
 - (c) The formal cancellation or termination of the procurement activity prior to the award or entry into force of the concerned procurement contract; or
 - (d) The withdrawal of the Bid prior to the deadline set for the submission of Bids, unless the Bidding Documents specifically state that no such withdrawal is permitted.
- (2) If a unit determines that an event requiring the forfeiture of Bid Security specified in subsection (1) above, has occurred, the Unit shall notify the concerned Bidder in writing of such determination. However, if the concerned Bid Security has been posted in the form of a letter of credit or bank guarantee, the Unit shall first take whatever measures may be necessary to obtain the concerned funds under such instrument before providing the Bidder with the notification required by the preceding sentence.
- (3) In the event of a Bid Security being forfeited, or intending to be forfeited, the Unit shall leave such funds on deposit in the account specified, until the concerned Bidder has been informed and allowed adequate due process to contest the proposed forfeiture, or has exhausted, or failed to timely exercise its rights to appeal the Unit's determination.
- (4) Once the Bidder has exhausted or failed to timely exercise its rights to appeal the Unit's determination, and no order has been received from the Procurement Compliance Unit, a review panel, or a court of competent jurisdiction requiring the Unit to make another disposition of the concerned funds, the Unit shall:
- (a) Treat the forfeited Bid Security as a fine or penalty and transfer the concerned funds to Ministry, which shall deposit such funds in the appropriate Revenue funds account, in accordance with the relevant provisions of the applicable laws and regulations governing public financial management; or
 - (b) Allow, if there is a public organisation, state-owned enterprise or subsidised organisation, having the authority given by the Unit to conduct a procurement activity, it shall (i) handle and dispose of such forfeited Bid Security in the manner prescribed by law or regulation; or (ii) if no law or regulation prescribes how such forfeited Bid Security is to be handled, or disposed of, the organisation shall transfer the concerned funds to its general operating account and treat such funds, for accounting and tax purposes, in the same manner as other general revenue of such an organization.
- (5) Any forfeiture under this section may align to and harmonize with, the rules relating to Offences, Penalties and Surcharges of the Public Financial Management and Accountability Bill, 2011.

73. Contract Performance Security

- (1) The Unit conducting a procurement proceeding leading to the award of a contract for which Contract Performance Security may be required, shall specify such requirement in the Bidding Documents.
- (2) The Unit shall require a Contract Performance Security:
 - (a) If the concerned contract is a Works Contract;
 - (b) If the concerned contract is a Works Contract and a mobilization fee is requested, the requested mobilization fee shall be no more than 20% of expected grand total cost, unless pre-approved by the Unit; and
 - (i) The mobilization fee may not be aggregated over a number of years.
 - (ii) It is the responsibility of each Accounting Officer to ensure that before a payment of a mobilization fee be paid, that the same amount is covered by a guarantee from the contractor, through payment of any acceptable type of financial instruments, as detailed under section 72 (1).
 - (c) If the concerned contract is a Services Contract for provision of Professional Services which are highly complex, or technical in nature.
 - (d) If there is a materially significant risk that a breach of the concerned contract may cause substantial damage to the Unit or require the Unit to incur substantial expense in obtaining the completion of such contract;
 - (e) If there is a materially significant risk that a breach of the concerned contract would result in workers, subcontractors, or material suppliers being left unpaid.
- (3) Within a maximum of ten calendar (10) days of the signing of the contract between the parties, the successful bidder is required to furnish the performance security. The Performance Security shall be valid for enough days after the contract completion date to enable a thorough assessment to be made that all obligations have been met. Failure of the successful bidder to comply with these requirements constitutes sufficient grounds for the annulment of the award and forfeiture of the tender security and in which event the Procuring Entity may make the award to the next lowest evaluated Bidder or call for new tenders.
- (4) The Unit shall ensure that the amount of any required Contract Performance Security is between three percent (3%) and ten percent (10%) of the value of the contract, the norm being ten percent (10%), with a maximum capped amount of fifteen (15%) or otherwise established at:
 - (a) A level that is consistent with usual and customary public and commercial practices applicable to the specific type and subject matter of the concerned contract, or

- (b) A level that is sufficient to cover any damages and expenses that the Unit reasonably expects it may incur in the event of a breach of such contract by the Supplier.
 - (c) Any percentage greater than those mentioned under sub-section 4 above, may be approved by the Tender Review Committee of the Unit.
- (5) The Unit shall specify in the Bidding Documents any Contract Performance Security requirements, including:
 - (a) Any requirements regarding the nature, form, amount and other terms and conditions applicable to the Contract Performance Security; provided, however, that such requirements shall be consistent with this Bill and the Public Regulations; alternatively
 - (b) The precise amount of the Contract Performance Security and the required validity period thereof; and
 - (c) The deadline for the receipt of the Contract Performance Security.
- (6) The Unit shall ensure that the concerned contract specifies the nature, form, amount, status, term, forfeiture, and return conditions of any required Contract Performance Security. Such provisions shall conform to usual and customary public and commercial practices applicable to the specific type and subject matter of the concerned contract. In particular, the concerned contract shall include provisions requiring the Unit to provide the Supplier with written notice of any alleged failure of the Supplier to perform the contract, and giving the Supplier a usual and customary amount of time to correct such failure.
- (7) The provisions of sections 70 – 74 shall apply *mutatis mutandis* to Contract Performance Security.
- (8) The Unit shall accept all forms of security permitted by the Regulations in respect of tender security as provided under section 72 (1) of this Bill. Prior to the deadline for the receipt of Contract Performance Security, a Supplier may request the Unit to confirm the acceptability of a proposed issuer, or confirmer, of Contract Performance Security. The Unit shall respond promptly to such a request.
- (9) Notwithstanding anything to the contrary in the foregoing sub-section, if a Supplier is determined to have submitted an abnormally low Bid, and the Unit desires to nevertheless award the contract to such Supplier pursuant to section 25 (4) (b) of this Bill, the Unit shall require the Supplier to post Contract Performance Security, regardless as to whether any requirements with respect to

Contract Performance Security have been specified in the Bidding Documents. In such event, the required Contract Performance Security shall be:

- (a) If the Bidding Documents have not specified a Contract Performance Security requirement, in the amount specified in section 22 (4) (b); or
 - (b) If the Bidding Documents have specified a Contract Performance Security requirement, in an amount that is equal to the greater of (i) the amount of Contract Performance Security specified in the Bidding Documents or (ii) the amount required by section 24 (4) (b) of this Bill.
- (10) If a previously acceptable issuer, or confirmer, of Contract Performance Security does not meet, or no longer meets, applicable reliability and creditworthiness requirements, the Unit shall notify the Contractor, and the Contractor shall be given a reasonable time under the circumstances, not to exceed ten (10) business days, to replace its Contract Performance Security.
 - (11) A Unit shall not return, transfer, use or make any other disposition of any item received as Contract Performance Security except as provided in paragraphs (11) and (12) below.
 - (12) The terms of the contract shall govern the forfeiture or return of Contract Performance Security, or any part thereof.
 - (13) If the Unit has declared Contract Performance Security, or any part thereof, forfeit, and the Contractor has exhausted or failed to timely exercise its rights to appeal to the Unit's determination, and no order has been received from a court of competent jurisdiction or, if applicable, an arbitration tribunal requiring the Unit to make another disposition of the concerned funds, the Unit shall treat and handle such funds in accordance with the applicable requirements provided under section 73 (5) of this Bill.

74. Cost variations during the Contract

- (1) When a contract is to be awarded covering a period of greater than 12 months:
 - (i) Cost adjustment mechanisms covering materials, commodity prices, time, labour rates, trade related agreements or other factors shall be included in the contract, to an agreed formulae.
 - (ii) All price increases and decreases shall be linked to provable changes. Claims for increases or decreases in price shall be monitored and invoices adjusted accordingly.

- (2) Where there has been an unexpected delay caused by a government organisation on the commencement of a contract, that unduly penalises a Contractor, then the Contractor is entitled to seek the award of compensation for the delay.

CHAPTER XII

PROCUREMENT INSTITUTIONS AND OFFICIALS

75. Separation of Duties and Functions

- (1) There may be a clear Separation of Duties between the activities of the various departments, officials, specialists who are involved in the contract process. Though not exclusive, the main areas of functional responsibilities are:
- (a) Finance functions
Budget appropriation, budget planning, commitments, certification, invoice payments;
 - (b) Procurement functions
Procurement process, compliance monitoring, tender and contract preparation, bid evaluation, contract award, contract supervision;
 - (c) Receiving functions / Project Management functions
Approving of Services delivered, Warehousing, Goods received, Equipment installed, Project management, Project commissioning, Works & Engineering construction;
- (2) It is prohibited for any person to authorise activities, or sign for, or to approve activities or works, or to attempt to influence a person(s) to take any of the aforementioned actions, which are outside of their area of authority and responsibility. Performing or executing of which may result in legal proceedings being taken against the individuals concerned and be liable for all costs incurred.
- (3) A person from a department, organisation, consultant, specialist, a supplier or commercial operation, who prepared the specification or the terms of reference, or who gives advice, determines quality, standards, prepares drawings or plans, cannot approve, give an order, sign for any of the activities mentioned in subsection (1) (a - c) above, nor take part in the procurement process, or be appointed to a Procurement Committee, or sign for approval or completion of a procurement project, activity, or any commissioning phase.
- (4) Following the transition period and the proposed establishment of the PPRA, there may also be a clear separation of functions between the oversight function of the regulator (PPRA) and the procurement function (Unit).
- (5) Following the transition period and the proposed establishment of both the PPRA and the Procurement Compliance Unit, there may also be a clear separation of

functions between the oversight function (PPRA) and the legal decisions of the Procurement Complaints Board (Procurement Compliance Unit) to avoid Conflicts of Interest.

- (6) Any person holding a position due to political process or as the result of a political appointment is bound by the same constraints provided under sub-section (2) above, and cannot participate or take part in any procurement activity.

76. Procurement Division.

- (1) The Unit shall have a Procurement Section headed by a Procurement Director who shall be principally responsible for directing and conducting the procurement activities, on behalf of Unit, or with, authorized Procuring Entities and government organisations, in accordance with this Bill and the Regulations.
- (2) All Procurement Officers, following the transition period, may be required to be Licensed Procurement Officers in order to sign legally binding Contract documents. No other person may have the legal capacity to sign a government contract, however, solely for Public Relations purposes, a Minister, or Senior Government Official may sign a Contract, which may only become legally valid, when the contract contains the signature of a Licensed Procurement Officer.
- (3) All procurement may be undertaken by Licensed Procurement Officers who are legally authorized to sign government contracts. Pending the introduction of national standard qualifications and certificates of procurement and licensing, the Procurement Officers will be allowed to sign contracts in accordance with section 32 (3) of this Bill.
- (4) A person may only serve as a LPO, if such a person holds, at a minimum, the “Professional Procurement Certificate,” issued in accordance with the national training and certification requirements, specified in the Code of Conduct, promulgated by the Ministry pursuant to section 124 (2), and finally developed nationally by the Unit.
- (5) Where the authority is given to a Procuring Entity during the transition period of the Unit, to undertake a procurement activity with a Licensed Procurement Officer, the Unit may also allow two or more Procuring Entities that have limited joint procurement work and temporarily designate the same person as their LPO.
- (6) To the extent necessary, the Unit shall ensure that its Procurement Section is staffed by a sufficient number of LPO’s and trained support personnel to ensure efficiently and profession conduct the in procurement activities, in accordance with this Bill and the Regulations.

- (7) No person may serve as a LPO, or as a staff member of a Procurement Section, if he or she may be ineligible to participate in a procurement activity by reason of any provision set out under section 12 (2) of this Bill.
- (8) If the Unit, on a temporary basis, does not have a CPO, its procurements shall be directed by the Unit's next most senior Licensed Procurement Officer.

77. Functions and Responsibilities of Procurement Division

- (1) Procurement Officers shall not be liable for any act or omission committed in the exercise or performance of his or her duties; provided that such acts or omissions are committed in good faith, and they may be protected from unfair dismissal when the procurement activities were undertaken with facts provided to them and of the knowledge that was known, at that point in time, of the procurement activities, notwithstanding the provisions of sections 77, 109, and 124 (2) of this Bill.
- (2) A LPO, who has studied the mandatory national qualifications and obtained a license, cannot have the license removed, unless they broke the Code of Ethics or the provisions of sections 77, 109, and 124 (2) of this Bill.
- (3) Except as provided under section 32 (3) of this Bill, the CPO, Procurement Unit staff shall, with respect of every procurement activities, be responsible for, upon receipt of a signed Procurement Needs Assessment and a signed Confirmation of Availability of Funds, promptly initiating the procurement and ensuring that all aspects of such procurement are conducted in accordance with this Bill and the Regulations, including, inter alia:
 - (a) Choosing the most appropriate procurement method taking into account the value, type and complexity of the concerned procurement, any restrictions and requirements of this Bill and the Regulations;
 - (b) Preparing and ensuring the timely invitation publication and distribution of any and all documents required in connection with the procurement;
 - (c) Conducting Supplier meetings and issuing clarifications, in writing, of the procurement documents;
 - (d) Conducting any concerned pre-qualification proceedings or other pre-selection proceedings, and preparing preliminary evaluations of applications and making recommendations with respect thereto for the Tender Review Committee, as specified by Annex A1; and
 - (e) Conducting the tender preparations and bidding proceedings and preparing evaluations of Bids and making recommendations with respect thereto for the Selection Authority specified in Annex A1.

- (4) Committees, or individuals, appointed to undertake specific procurement task(s) are bound by the provisions of Chapter XIII of this Bill, and the Regulations
- (5) The authority and duties of, and the rules governing CPO's and staff of Procurement Section shall be provided in and regulated by the Regulations.

78. Procurement Committees.

- (1) Procurement Committees are an ad-hoc group of experts appointed, in accordance with this Bill that may be created, as the need arises, to assist in any type of procurement activities necessary to move the procurement process forward.

79. Bid Opening Committees

- (1) Bid Opening Committees shall be selected from the Procurement Section well versed in the process and recording of offers. Observers may be elected to observe in an opening session, and not to take part in its operation.
- (2) The Bid Opening Committee members shall be regularly changed every 6 months and not include permanent members.
- (3) Bid Opening Committee Members may not be subsequently involved in a Bid Evaluation Committee

80. Bid Evaluation Committee

- (1) During the course of the tender proceedings Bid Evaluation Committee shall be appointed to examine, assess, rank and recommend the best offer submitted by Bidders, according to criteria stated in the tender documents.
- (2) The Bid Evaluation Committee shall be a combination of subject matter experts, procurement staff, finance, administration and senior managers who offer neutrality. No appointee may become a permanent member of the committee and appointments shall be rotated every 12 months, unless there are mitigating circumstances.
- (3) An Evaluation Committee shall be composed of a minimum of three members or another odd number, and shall not include any person who was involved in the conduct or preparation of the procurement process, or an elected or politically appointed official. Furthermore, a person shall not be a member of an Evaluation Committee if he or she may be ineligible to participate in a procurement activity by reason of any one of the same provisions as applied to potential Suppliers under section 12 of this Bill.

- (4) The Chairperson shall either be the CPO, or a Licensed Procurement Officer, versed in the methodology and process of evaluation. The Chairperson manages the work load of the Committee, but takes no part in the evaluation other than management of the procedure; give advice, clarification of duties, points of order and recording of the evaluated points and preparing recommendation of Bid award, before submission to a Tender Review Committee.
- (5) Members of Evaluation Committee shall satisfy any other requirements established by the Regulations, including signing of their evaluation sheets and Declaration of Impartiality.
- (6) The authority and duties of, and the rules governing, an Evaluation Committee shall be regulated by the Regulations.
- (7) As part of the evaluation of bids or expression of interest procedure, each member of the Evaluation Committee has a specific obligation of confidentiality and may sign an appropriate declaration.
- (8) The Chairperson collates the scores of individuals and written comments made by the committee members. The report, with accompanying evidence and award recommendation may be presented to the Tender Review Committee for review and authority to award the contract.

81. Functions and Authority of Tender Review Committee.

- (1) The Unit, or an approved Procuring Entity, may appoint a Tender Review Committee, whose functions are to review and approve, or reject, all procurement submissions placed before it and to ensure that the applications for approval or review are consistent with the requirements of this Bill.
- (2) The Tender Review Committee may review and approve, or reject, the award recommendation of an Evaluation Committee. The Tender Review Committee acts as a final arbitrator and as a committee of experts, to offer a neutral and unbiased assessment of supplier complaints, a proposed contract, the contract type, proposed award, within specified monetary thresholds, prepared by a Procurement Officer, or Evaluation Committee, or to approve or reject a particular method of procurement.
- (3) The Tender Review Committee may review decisions of the Procurement Complaints Unit. The Tender Review Committee may ensure that Suppliers, who have suffered monetary loss through error or inappropriate procurement activity, are suitably compensated, and steps being taken to correct omissions and deficiencies.
- (4) The Tender Review Committee members shall be proposed by the CPO and senior officials of Unit and approved by the Director General of the Unit. On

examining the evidence placed before it, the Tender Review Committee may request additional information, or the presence of an individual to explain any query or irregularity. The Tender Review Committee shall be responsible for final reviewing and approving, or rejecting, of the evidence placed before them.

- (5) After the Tender Review Committee has made a decision of the award of a contract, in accordance with the provisions of this Bill and the Regulations, the Chairperson and the members of the Tender Review Committee may sign the appropriate documentation and prepare the minutes of the meeting.
- (6) Upon receiving the final approval document from the Tender Review Committee, the contract may be prepared and signed by a Licensed Procurement Officer.
- (7) The Unit, a Tender Review Committee, or any other committee appointed by the Unit, or any approved Procuring Entity, may not grant retrospective approval of any procurement activity, or payments, that have not previously undergone the procedural and approval processes, as laid down under this Bill.

82. Contract Compliance Teams.

- (1) The Contract Compliance Teams may be composed of a team of procurement specialists who periodically examine completed contracts, contracts in process or pending, or when there may be a suspicion, or a rumour, of alleged malpractice or impropriety, or when otherwise requested to investigate a tender, or contract activity, upon the request of a senior government official or head of an organisation.
- (2) The Compliance Teams may have the authority to request data and documents, information in hard copy or digitally in computer systems, hard drives, flash drives, email, correspondence, records, bids and proposals, telephone records, access to safes and other storage facilities and archives.
- (3) All bodies that are authorized as a Procuring Entity or conduct procurement activities or are subjected to section 7 of this Bill, may be inspected for compliance by the Compliance Teams of the Unit at least once a year, or more frequently, if there is a request, or a strategic or security sensitive procurements, or if there is a suspicion of actions identified under sections 83 (1-2) of this Bill.
- (4) The Compliance Teams may assist with audits undertaken by Auditors of the National Audit Chamber.

83. Legal Services.

- (1) The Legal Services Division of the Unit with the assistance of the Contract Division may be responsible to prepare Standard Bidding Documents, Templates,

Regulations, Contract Documents, Operational Guides, Managing Contract Implementation and Compliance and Contractual Advice.

- (2) Until the PCB comes into existence, the Legal Services Division of the Unit may be responsible to manage the Supplier Complaints Unit.

84. Administration Services.

- (1) The Unit shall establish an Administration Unit designated to formulate national procurement qualifications, standards and curricula which allow Procurement Officers to study graded procurement courses leading to professional procurement qualifications.
- (2) During the transition period the Unit shall establish minimum national standards which a Procurement Officer shall attain to be considered and approved as a Licensed Procurement Officer in accordance with the provisions of section 77 (2) and (3) of this Bill.
- (3) The Unit shall establish a computerised system that advertises Tenders and allows access to tender documentation and to published contract awards data.
- (4) The Administration Division may publish procurement data relative to national procurement activities and the consolidated annual report.
- (5) The Administration Division will support the operations of the Unit.

85. Commission.

- (1) Where Annex A1 specifies that a proposed (a) very high value procurement award, or (b) contracts of strategic and national importance are involved, or (c) when there has been a State of Emergency, or a National Disaster declared and the result of which requires an emergency procurement, which due to the nature of the activity may require that the project shall require oversight and final approval by a Commission, the Council of Ministers shall immediately establish such commission, which shall be composed of five members and a Secretary who is a Licensed Procurement Officer of the Unit. The Ministry of Finance and Economic Planning, and Ministry of Justice shall, unless prohibited by section 86 (3 - 4) of this Bill, may be members of Commission. The members of Commission shall select one of the members to serve as its Chairperson.
- (2) The Commission shall act as the final arbitrator and as a committee of experts to offer a neutral assessment of the recommended or proposed high value, or emergency procurement, submitted by the Emergency Committee of Experts of the Unit, within the specified monetary thresholds.

- (3) Any Ministry, Government Organisation, an independent Board, an autonomous organisation, or a regulatory authority, which is the subject of the procurement activity, may not serve on the concerned Commission; however it may be called to express an opinion.
- (4) A person shall not be appointed or continue as a member of the Commission if he or she may be ineligible to participate in a procurement activity by reason of any one of the same provisions applied to potential Suppliers under section 12 of this Bill. A person shall also satisfy any other requirements established by the Regulations for membership on a Commission.
- (5) Any Procurement Officer of the Unit or a member of any Procurement Committee, when requested, shall provide the Commission with whatever information, advice or assistance such Commission may request.
- (6) The authority and duties of, and the rules governing, a Commission shall be regulated by the Regulations.

86. Central Procurement Unit.

- (1) During the procurement transition period of Phase 1 and Phase 2 and until the creation of the PPRA and PCB, the Unit may operate with a Director General and consist of three divisions primarily responsible, but not limited to, the following activities:-
 - (a) Administration Division
 - Curriculum, Training and Procurement qualifications
 - Data Center or Statistics generation
 - Office Support Services
 - (b) Legal Services Division
 - Help Desk (Advice Center)
 - Compliance Checks
 - Legal Services
 - Supplier Complaints Unit
 - (c) Contract Division
 - Works
 - Services
 - Supplies
 - (d) Tender Review Committee
 - Independent Assessments and Reviews
- (2) By default, the Unit shall conduct all procurement on behalf Ministries , municipalities, government organisations, institutions, independent bodies and

autonomous organisations unless an organisation has been given the authority to become a Procuring Entity provided under section 77 of this Bill.

- (3) Subject to need, or during the transition period or with increasing decentralization, or subject to the organization providing adequate resources, the Unit may approve an organization to conduct a procurement activity, whereupon it becomes a temporary Procuring Entity, and the Unit will provide a Licensed Procurement Officer to oversee procurement activities of organization and to sign contracts as provided under section 77 (1 – 3) of this Bill.
- (4) Over time, the classification of a temporary Procuring Entity may be upgraded to an authorized Procuring Entity, if the support structure and resources are available.
- (5) The LPO shall promptly initiate the procurement after the organisation provides receipt of the Procurement Needs Assessment and Confirmation of Availability of Funds from the CFO of the organisation. The LPO shall ensure that all aspects of such procurement are conducted in accordance with this Bill and the Regulations, including, inter alia, the functions specified under section 78 (3) (a - e) of this Bill.
- (6) Cooperate with and support, as and when required, public procurement training and educational instruction to ensure the attainment and maintenance by Procurement Officers and other procurement professionals of a high level of competence with respect to the implementation of sound procurement practices and the observance of the present Bill and the Regulations;
- (7) The Unit shall initiate, support and maintain a well organized and user-friendly information website and the development of electronic procurement methods, that provides the public with unrestricted access to:
 - (a) The current Procurement Bill;
 - (b) The Regulations;
 - (c) Administrative notices;
 - (d) Operational guidelines,
 - (e) Policies and procedures, and
 - (f) All information contained in the Public Procurement Registry, except information that requires to be withheld from public disclosure; by the provisions of this Bill.
- (8) The LPO shall involve the organization's most senior management of this organization to the greatest extent practicable, and the LPO shall report to and take direction from the Unit.
- (9) When conducting a procurement activity for an organization, the LPO shall be acting in the capacity of the representative of the Unit, and shall therefore be

subject to the same requirements as those imposed upon Unit staff members by this Bill and the Regulations.

87. Advice and Assistance

- (1) The organisation may provide the sufficient support staff to the LPO to gather data and conduct the procurement process, and in supplying members to positions in any of the Procurement Committee(s).
- (2) The LPO shall provide advice and assistance to the organisation and other staff aimed at ensuring the use of good procurement practices and compliance with this Bill and the Regulations.
- (3) The Unit may also assist any organisation by providing contractual advice from the 'Help Desk' established at the Unit.

88 Responsibilities at an Authorized Procuring Entity

- (1) In addition to the responsibilities specified under sections 87 and 88 of this Bill, and where through decentralisation process has decided that organisation becomes classified as an authorized Procuring Entity, on a permanent or temporary basis and have established and staffed a Procurement Section, with support staff and with one or more LPO's, the Unit, through the LPO shall;
 - (a) Establish procurement practices consistent with and required by this Bill and the Regulations, replicating the procurement activities of the Unit.
 - (b) Establish an Electronic Public Procurement Registry that shall serve as the repository for electronic copies of all notices, invitations, declarations, tender dossiers, reports, complaints and decisions filed or issued in connection with each and every procurement activity conducted or initiated by the organization and Unit;
 - (c) The Unit and where applicable each Procuring Entity shall establish an archive of original documents.

89. General Responsibilities.

- (1) The Ministry, through the Unit, shall initially be responsible, in the year transition period, for the overall development, operation and supervision of the public procurement system in South Sudan and shall carry out the functions assigned by the provisions of this Bill.
- (2) In addition to the initial responsibility for developing and issuing of the Regulations, the Standard Bidding documents, and other documents, in the year

transition period, and as required by section 124 of this Bill, the Ministry, through the Unit, shall also have the responsibility and authority to:

- (a) Prepare and disseminate procurement manuals, brochures, guides, highlighting the benefits to authorized and temporary Procuring Entities and local Suppliers;
- (b) Initiate efforts to raise the awareness among authorized and temporary Procuring Entities and Suppliers, of the requirements and public policy objectives of this Bill and the Regulations;
- (c) Provide technical assistance and advice to both authorized and temporary Procuring Entities and Suppliers on the application and interpretation of the provisions of this Bill and the public Regulations;
- (d) Provide and publish written administrative interpretive rulings to both authorized and temporary Procuring Entities and Suppliers on the application and interpretation of the provisions of this Bill and the Regulations;
- (e) Collect, analyze and publish information related to public procurement procedures and awarded contracts;
- (f) Towards the end of each financial year ensure an annual procurement plan is prepared by all bodies provided under section 7 of this Bill. Bodies not identified within the said section, and receiving revenues shall not be exempt from production of the annual procurement plan.
- (g) At the end of each financial year, prepare and submit to the Council of Ministers, the Government, and the Assembly an annual procurement report analyzing public procurement activities in South Sudan occurring in that financial year and setting forth recommendations for the improvement of the public procurement system under this Bill, such report to be submitted no later than the end of February of the following calendar year;
- (h) Develop and maintain a list of authorized Procuring Entities that identifies all those entities subject to this Bill and publish it in the annual procurement report provided, however, that if the list fails to include a given entity, such failure shall not be determinative of the question as to whether or not such an entity, is or is not, an authorized Procuring Entity within the meaning of this Bill; and
- (i) Liaise and cooperate with other authorities and organizations both in South Sudan and abroad on matters associated with public procurement.

90. Ministry Monitoring and Supervisory Responsibilities

- (1) The Ministry shall have the authority and responsibility, during the transition stage of the Unit to decentralization, to monitor and supervise the compliance of the Unit or any Procuring Entities, only within the provisions set out under this Bill and the Regulations. The Ministry shall, support, develop and operate an appropriate reporting methodology and mechanism supported by an electronic information reporting and management system that may enable the Ministry to:

- (a) Monitor the compliance of all Procuring Entities with this Bill and the Regulations;
 - (b) Produce output and performance reports identifying strengths and weaknesses in the implementation of this Bill, the Regulations and the procurement system generally;
 - (c) Clearly identify areas that are in need of improvement and development;
 - (d) Produce the annual reports required by section 90 (2) (f) of this Bill, in a manner that provides a general but accurate assessment of the state of the national procurement system and specific assessments of the degree of compliance or non-compliance by individual Procuring Entities;
 - (e) Make appropriate recommendations for amendments to this Bill;
 - (f) Make appropriate recommendations of changes in the Regulations;
 - (g) Establish, regularly update and disseminate to authorized Procuring Entities a list of Suppliers who have been determined:-
 - (i) Meet the basic eligibility requirements of section 12 of this Bill, or
 - (ii) Do not to meet the basic eligibility requirements of Section 12 of this Bill;
 - (h) Identify and refer violations of this Bill or the Regulations to the South Sudan Anti-Corruption Commissions and relevant authorities for public prosecution or other remedial action; and Develop and implement measures aimed at developing professional human resource procurement capacity, including recruitment and training programs, and providing for the certifications required under the provisions of this Bill, to be issued by highly qualified and independent procurement professionals based solely on merit and demonstrated procurement competence.
- (2) The monitoring and supervisory responsibilities assigned to the Ministry by this Bill shall not suspend or diminish any similar responsibilities assigned by other applicable law to another Public Authority.
- (3) All Public Authorities, Procuring Entities, officials and other organisations and persons involved in or having been involved in, procurement activities shall provide full co-operation with Ministry, Ministry of Justice, the Auditor General, PCB, and other Public Authorities exercising monitoring and supervisory responsibilities over public procurement pursuant to this Bill or other applicable law of South Sudan.

91. Revising Contract Value Levels Specified in Annex A

- (1) Until the creation of the PPRA, the Unit, with the assistance of the Ministry, shall have the authority, exercisable every two calendar years from the enactment of this Bill, to modify the values assigned in Annex A1 and A2 to “large”, “medium”, “low”, and “minimal” value contracts. Subsequent to the establishment of the PPRA, the Unit may relinquish the authority.
- (2) When considering such a modification to Annex A1 and A2, the Ministry, through Unit, shall consult with relevant Public Authorities;
- (3) A revision to Annex A1 and A2 made by the Unit shall be immediately distributed to the Procurement Officers of the Unit, including authorized Procuring Entities and Public Authorities. Any such revision shall also be published in the Official Gazette and on the website maintained by the Unit pursuant to the provisions of section 89 (1b) of this Bill.

92. Establishment of the Public Procurement Regulatory Authority

- (1) Upon the principle of gradual procurement decentralization, in the future, to be determined, and following the recommended transition period of the Unit there shall be established a Public Procurement Regulatory Authority. Which may assume the regulatory, legislative and executive authority previously granted to the Unit. The Authority shall be responsible for formulating, implementing and monitoring the regulations, templates, bidding documents and for the development of national public procurement and the training requirements, in accordance with this Bill.
- (2) The Authority may be an independent legislative and regulatory Board. No person, or public official, may exert or attempt to exert, political or other influence over the Authority, an employee of the Authority, a Tender Review Committee, any of its committees, or committee members, or hired experts, appointed by the Authority, with respect to any matter or issue under consideration by the Authority in the course of its work. Appropriate sanctions may be applied to those who infringe the rules.
- (3) After the transition period and upon the establishment the Authority, the Authority may take over the executive and legislative role of the Unit and its mandate may encompass the responsibilities provided under the provisions of this Bill, and the regulation issued thereof.

93. Establishment of the Procurement Compliance Unit.

- (1) The Unit may take action on supplier complaints through a Procurement Complaints Unit. The Legal department of the Unit may review all

procurement and supplier complaints, through the establishment of a Procurement Compliance Unit.

- (2) The Procurement Compliance Unit shall be a review Unit, affiliated to the Unit and provide an administrative support. No member of the Unit, or its Authority, or natural person, public official, or organization may exert, or attempt to exert, a threat, intimidation, gift, an enticement, offer of employment, any political influence or other influence over the Procurement Compliance Unit, a member of the Procurement Compliance Unit, a review panel, or a review expert appointed by the Procurement Compliance Unit, with respect to any matter or issue under consideration by the Procurement Compliance Unit in a review proceeding.
- (3) There may be a conflict of interest between the operations of the Unit and the Procurement Compliance Unit, a potential in the future, to be determined, and following the establishment of the Authority, the Procurement Compliance Unit shall be considered to be transformed into an independent Procurement Compliance Board.

94. Organization of the Procurement Compliance Unit

- (1) The Director General of the Unit shall represent, manage and organize the daily work of the Procurement Compliance Unit and be responsible for oversight of the administration and operations of the Procurement Compliance Unit, without unduly interfering with the independence of its decision making process. The Director General shall have the authority to designate a member, or a team, to organize and manage any of the work activities of the Procurement Compliance Unit.
- (2) The meetings of the Procurement Compliance Unit may be convened, as and when needed, to complete the received work activities. The decisions of the Procurement Compliance Unit may be adjudicated by the Tender Review Committee.
- (3) The Unit may provide accommodation and administrative support to host the activities of the Procurement Compliance Unit.

CHAPTER XIII

REVIEW PROCEEDINGS

95. Right to Review

A Supplier that claims to have suffered, or claims that it may suffer, loss or injury due to alleged non-compliance with the provisions of this Bill or the Regulations may seek review of the alleged non-compliance under this sections and 102 of this Bill or under the provisions of other applicable laws, including any alleged improper actions or decisions taken during or pursuant to review proceedings.

96. Review by the Unit (or an authorized Procuring Entity)

- (1) Until establishment of the Procurement Compliance Board, complaints may be reviewed by the legal department of the Unit and be known as Procurement Complaints Unit.
- (2) Without prejudice to the right of a Supplier to seek review directly before the Procurement Compliance Unit in accordance with section 99 of this Bill or judicial review, a Supplier having the right under section 97 above, may first submit a complaint to the Unit or, if applicable, may first submit a complaint to an authorized Procuring Entity, as the participant in a contract.
- (3) A complaint shall be submitted in writing within the following time periods:
 - (a) If it regards the manner or terms of the concerned invitation, it shall be submitted no later than the closing deadline for making the concerned submission in response to the invitation;
 - (b) All other complaints arising from the procurement proceedings shall be submitted within ten (10) calendar days after the date on which the Supplier became aware of the circumstances giving rise to the complaint or on which the Supplier shall have become aware of those circumstances, whichever is earlier, provided that no complaint may be submitted after the expiration of the concerned Standstill Period.
- (4) Unless the complaint is resolved by mutual agreement of the parties the Procurement Compliance Unit or the Unit or, if applicable, in the first instance, the authorized Procuring Entity, as appropriate, shall within ten (10) calendar days after the submission of the complaint, issue a written decision. The decision shall include:
 - (a) The name of the Complainant,
 - (b) The nature of the complaint and the alleged infringement,

- (c) An explanation of the facts examined, evidence submitted, either physically, photographically, in writing or by testimony,
 - (d) The reasons for the decision; and what legal or financial grounds under other applicable law that was broken, that upholds the complaint
 - (e) If the complaint is upheld in whole or in part, state the corrective measures that shall be undertaken.
- (5) If the Procurement Compliance Unit, the Unit, or the authorized Procuring Entity, does not issue a decision within the time specified under sub-section (3) above, the Supplier submitting the complaint or the Procurement Compliance Unit, as the case may be, is entitled immediately thereafter to institute proceedings under Section 105 or 108 of this Bill. Upon the institution of such proceedings, the authority of the Procurement Compliance Unit, the Unit, or the authorized Procuring Entity to decide on the complaint ceases.

97. Review by the Procurement Compliance Unit

- (1) Without prejudice to the right of suppliers or contractors to seek judicial review, a Supplier entitled under Section 103 of this Bill, to seek review may submit a complaint to the Procurement Compliance Unit.
- (2) The complaint shall be submitted in writing within the following time periods:
 - (a) A complaint as regards the terms of a invitation shall be submitted no later than the deadline for making the concerned submission unless the deadline expired in the course of the review under Section 104 of this Bill; in which case, the provisions of sub-section 2(b) and (3) below, shall apply;
 - (b) All other complaints arising from the procurement proceedings shall be submitted within ten (10) calendar days after the date on which the Supplier became aware of the circumstances giving rise to the complaint or on which the Supplier shall have become aware of those circumstances, whichever is earlier.
- (3) The timely submission of a complaint under section 101 of this Bill, shall suspend the time period for the submission of a complaint under section 102 of this Bill, for the whole duration of the proceedings under section 101 of Bill, up to the maximum period required for the Procurement Compliance Unit, the Unit, or the authorized Procuring Entity, as the case may be, to take a decision in accordance with section 101 (3) and to communicate such decision to the Supplier in accordance with the provisions of section 103 (5) of this Bill.
- (4) Upon receipt of a complaint, the Procurement Compliance Unit shall immediately give formal notice of the complaint to the Unit and all parties involved, and any

Public Authority whose interests may reasonably be expected to be affected thereby, about the complaint and its substance, and where applicable, the course of action and the next steps.

- (5) Subject to the oversight and final approval of the Tender Review Committee, the Procurement Compliance Unit may recommend one or more of the following remedies, unless it dismisses the complaint:
 - (a) Declare the legal rules or principles that govern the subject matter of the complaint;
 - (b) Prohibit any of the parties involved or, if applicable, the authorized Procuring Entity from acting or deciding unlawfully or from following an unlawful procedure;
 - (c) Require any of the parties involved, and if applicable the authorized Procuring Entity, that has acted or proceeded in an unlawful manner, or that has reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
 - (d) Annul in whole, or in part, an unlawful act or decision of the Unit, or of an authorized Procuring Entity;
 - (e) Revise an unlawful decision by the Unit, or an authorized Procuring Entity, where applicable, or substitute its own decision for such a decision;
 - (f) Order the payment of compensation for any reasonable costs incurred by the Supplier submitting the complaint, in connection with the procurement proceedings, or related activities, as a result of an unlawful act, or decision of, or an unlawful procedure followed by, the Unit, or the authorized Procuring Entity, and for any loss or damages suffered, which shall include documented costs for the preparation of the complaint and the costs relating to the review proceeding,
 - (g) Order that the procurement proceedings be terminated; or
 - (h) Annul the procurement contract that entered into force unlawfully and, if notice of the procurement contract award has been published, order the publication of notice of the annulment of the award.
- (6) The Procurement Compliance Unit shall within twenty one (21) calendar days issue a written decision concerning the complaint, stating the reasons for the decision and the remedies granted, if any.

98. Rules Governing the Review Proceedings of the Procurement Compliance Unit

- (1) Promptly after the submission of a complaint under section 98 or section 99 of this Bill, the Procurement Compliance Unit shall notify all Suppliers participating in the procurement proceedings to which the complaint relates and the Unit, the authorized Procuring Entity, or any Public Authority whose interests may reasonably be expected to be affected thereby with respect to the complaint and its substance.

- (2) Any such Supplier, or the Unit, an authorized Procuring Entity, or any Public Authority affected has the right to participate in the review proceedings. A Supplier, or the Unit, an authorized Procuring Entity, or any Public Authority that fails to participate in the review proceedings is barred from subsequently submitting a claim or complaint based on the same facts giving rise to the complaint under review.
- (3) The participants in the review proceedings shall have access to all proceedings and shall have the right to be heard prior to a decision of the Procurement Compliance Unit, being made on the complaint, the right to be represented by counsel, the right to request that the proceedings take place in public subject to restrictions of section 100 (6) below, and the right to submit and require the submission of evidence, whether documentary, physical or testimonial.
- (4) Subsequent to the provisions of sub-section (2) above, a review by the Procurement Compliance Unit, the Unit or an authorized Procuring Entity, the involved parties shall immediately provide that the review board all documents pertinent to the complaint, supporting evidence of the complaint and including record of prior procurement proceedings.
- (5) A copy of the decision of the review board shall be furnished within two (2) calendar days after the issuance of the decision to the participants to the review proceedings. In addition, after the decision has been issued, the complaint and the decision shall be immediately made publicly available.
- (6) No information under sub-sections (3) to (5) of this section shall be disclosed if its disclosure may be contrary to law, may impede law enforcement, may not be in the public interest, may prejudice the legitimate commercial interests of the Suppliers, may impede fair competition or may compromise essential national security interests.
- (7) Any decision by the review board and the reasons and circumstances therefore shall be made part of the record of the procurement proceedings and shall be publically available.

99. Suspension of Procurement Proceedings.

- (1) Except as provided under sub-section (2) below, the timely submission of a complaint suspends the procurement proceedings for the period necessary to complete the review of the complaint by the Procurement Compliance Unit, the Unit, or an authorized Procuring Entity.
- (2) The Procurement Compliance Unit may remove the suspension required by sub-section (1) above, upon application by the Unit, or an authorized Procuring Entity, and if the Unit, or an authorized Procuring Entity certifies in writing that urgent public interest considerations require the procurement to proceed. The

certification shall state the reasons for the finding that such urgent considerations exist and shall be made a part of the record of the procurement proceedings. If the Procurement Compliance Unit determines that the certification appears valid on its face, it shall remove the suspension required by sub-section (1).above, In such event, the facts and reasons alleged in the certification shall be deemed conclusively established with respect to all levels of review except judicial review.

- (3) Any decision of the Procurement Compliance Unit on an application submitted by the Unit, or an authorized Procuring Entity, under paragraph (2) shall be in writing, and shall contain the reasons of Procurement Compliance Unit, for the decision, and shall be promptly communicated to all participants to the review proceedings.
- (4) Any decision under this section and the reasons and circumstances therefore shall be made part of the record of the procurement proceedings.

100. Judicial review

Any complaint or application for judicial review, shall be considered by the high court which shall be subject to the generally applicable procedural requirements governing judicial review of administrative matters.

CHAPTER XIV OFFENCES AND PENALTIES

101. Unlawful Influence, Retribution, Restraining Competition, Procurement Fraud

- (1) It shall be an offence for any person:
 - (a) To provide, offer, solicit or accept or express or indicate a readiness to provide, offer, solicit or accept anything of value including, but not limited to, money, an offer of employment, tangible or intangible property, a favour or service for the direct or indirect benefit or enrichment of an employee, former employee, official or former official of a Procurement Compliance Unit, or the Unit or of an authorized Procuring Entity, or a Public Authority, or any person or Organization related to or associated with such an employee, former employee, official or former official partly or wholly for the purpose of influencing or attempting to influence a decision or action affecting or connected with the initiation, conduct, outcome of or participation in a procurement activity or review;
 - (b) To take any action, or to express or indicate a readiness to take any action, for the purpose of intimidating, coercing, harming or causing harm

physically, financially, or otherwise to any person or organization, wholly or partly for the purpose of influencing, attempting to influence, or retaliating for, a decision or action related to the initiation, implementation, outcome of or participation in a procurement activity or review, or conspiring to partake in any of the above;

- (c) To solicit or enter into any agreement, arrangement or understanding with any other person or organization, if such agreement, arrangement or understanding has the purpose or effect of preventing, restricting or distorting competition for any procurement contract; provided, however, that shall not apply to the negotiation or execution of a formal written agreement by a group of Suppliers falling within the scope of section 17 of this Bill, or
 - (d) To engage in acts of concealment, or acts of procurement fraud, described in Annex C; or
 - (e) To act in a way that contravenes any provisions of this Bill,
 - (f) To facilitate or encourage any person or organization to engage in any conduct specified in section 109 (a - d) of this Bill.
- (2) Where an offence is alleged to have been committed referred thereunder the provisions of sub-section (1) above, by or on behalf of an organization, the natural person, or persons, actually involved in the events giving rise to such offense shall also be liable thereof. Furthermore, any director or senior executive officer of such undertaking who knew or in the exercise of reasonable managerial diligence should have known of the events giving rise to such offense shall also be liable thereof.
- (3) Any person or member of a government organization, or having any involvement in any organization identified under section 103 (1) and committing a violation described under the same sub-section, shall be subject to the penalties prescribed under section 104 and exclusion under section 23 of this Bill.
- (4) Every civil servant, employee, consultant or official of a government organisation Public Authority who becomes aware, by any means, of an offense described under subsection (1) above, or an event or facts that may reasonably be expected to involve such an offense shall immediately notify the South Sudan Anti-Corruption Commission or the Office of the Public Prosecutor, thereof.

102. Penalties.

Whoever contravenes the provisions as :

- (1) Section 103 and annex (c) of this Bill, commits an offence, and upon conviction shall be liable to a fine or imprisonment for period to be prescribed by the Competent Court or both. However when deemed appropriate, the Court shall apply the provisions of the Penal Code , 2008.

- (2) The penalties imposed, under the provisions of sub-section (1) above, shall be in addition to, any other criminal or civil penalties or liability for the same acts constituting the violation, whether provided for in this Bill or in any other law applicable in South Sudan.
- (3) The period of debarment or delisting, referred thereunder the provisions of section 23 (4) of this Bill, and shall be as follows;

Classification	Period	Penalty
Class A	5 years	The most serious of actions, deliberate intent to deceive, fraudulent claims, dishonesty or actions that cause major disruption, delays and cost increases
Class B	3 years	Falsification, actions to deceive, deficiencies that cause disruption or delays or additional costs
Class C	1 year	Minor falsification and less important deficiencies that create problems, time or cost increases

CHAPTER XV

MANAGEMENT AND DISPOSAL OF ASSETS

ACQUISITION OF ASSETS

103. Management Accountability

Government Institutions or entities or their employees, that have the mandating obligation to manage or account for this organizations assets, both fixed or movable, shall be required to ensure that the procedures related to the organization or disposal of assets are complied with, in an open fair process that ensure:

- (a) A high degree of competition and optimum value to the economy of South Sudan;
- (b) That all the potential bidders or buyers are given adequate notice and opportunity to make a competitive bid, or offer;

104. Responsibilities.

- (1) Accountable Officers shall have a duty to ensure that the assets for which they are responsible are properly managed and well maintained, and suitably tagged with a unique identification number.

- (2) Asset and Investment Registries may be maintained on a regular basis, clearly identifying each asset. The Asset and Investment Registries may be adjusted at the end of each financial year to reflect the current monetary value of an asset, or where appropriate, to adjust the asset by the agreed depreciation method as laid down in the PFMA. The ledger records may be adjusted accordingly at the end of each financial year.
- (3) Systems shall be formulated for the management of stores and their inventories.
- (4) Systems shall be formulated for the management of all equipment, both fixed and moveable.
- (5) Systems shall be formulated for the management of all Real Estate, Real Property and Land Registry, both fixed and moveable.

RECORDING OF ASSETS

105. Recording of Assets.

- (1) Accountable Officers shall ensure that the Assets for which they are responsible including land, buildings, other properties, investments, equipment both fixed and moveable, and stores, are properly registered and well managed. Robust systems shall be formulated to ensure that the accuracy and integrity of information held on registries, databases and inventories are safeguarded, constantly updated, backed up and readily available for inspection.
- (2) Each organisation, division, department or reporting Unit shall maintain a room data sheet of equipment and an asset registry for the relevant business areas for which they are responsible and for providing information to ensure that the registry is accurate up to date. Relevant business areas are also responsible for maintaining local asset and investment registries, records of attractive items and systems for the management of stores and equipment.
- (3) The asset registries of each Unit within an organisation may be aggregated by the finance department and presented in the annual accounts, and represent the total assets of each individual organisation.
- (4) when applicable, the assets identified under sub-section (3) above, may be sent, in sufficient time, to the parent organisation at the end of each financial year and prior to finalisation of the annual accounts.

106. Asset Registries.

Asset registries shall be updated on a regular basis, or at least on an annual basis. The registries shall contain details of all assets owned, the location, condition,

original purchase price and current value. Asset registries may be computerised wherever possible.

107. Investment Registries.

Certain organisations may keep investment registries, loans, shares held, and securities. Asset registries, referred under section 108 (1) above, shall be kept of all such holdings.

108. Land and Property Assets

Physical records originals or copies of land and property assets shall be readily available for inspection, include: property titles, leases or sub-leases, licences or grazing lets, title plans showing ownership boundaries, the boundaries of different leasehold interests, the line of any servitudes, pipelines or way leaves, covenants, easements, servitudes, building restrictions, tenancy agreements of any dwellings, covenants, grazing lets, planting agreements, mineral extraction rights, lists of any tenants' improvements, and full information on the last rent review including the level of rent, the basis of assessment, and any third party decision, and any photographic record of the condition of the property, and where appropriate, recording the exact location co-ordinates by a Global Positioning System (GPS).

109. Stores and Equipment

Systems shall be formulated for the management of stores inventory, spare parts and equipment, including records of receipts and issues.

110. Loans of Assets or Stores and Equipment

Loans of assets or stores and equipment shall be for a specified period. The terms of loans shall be clearly defined, and shall cover the question of liability for damage or non-return. As a general rule, a commercial hire or rental charge shall be made.

111. Rents, Lease and Loan of Assets

Any organisation mentioned thereunder the provisions of section 105 (1 - 2) of this Bill, may rent, lease or loan an asset(s) which belongs to it, alternatively, it may rent, lease or loan asset(s) from another organisation. Appropriate safeguards, including contract documents and signatures, by both the contracting parties, may be for a fixed term, which may be renewable.

112. Depreciation

Assets may be recorded to reflect the actual value, according to the rules on annual depreciation, as laid out in the PAFM.

113. Annual Accounts

Identification reference number, organisational ownership, location, acquisitions, disposals, transfers, losses and current value of all assets may be recorded in the annual accounts at the end of each financial year.

SALE, RENTAL OR DISPOSAL OF ASSETS

114. Disposal

- (1) Organisations identified under section 105 (1 - 2) of this Bill. may occasionally need to sell, rent or dispose off assets, obsolete supplies, equipment, land, buildings, investment, shares or other assets. Such activities may be carried out in the most cost effective, equitable and accountable manner.
- (2) Where assets become unserviceable obsolete, surplus, or where it is reasonable to obtain financial benefits by sale or rental of assets, officers responsible for the management of the assets may prepare a technical report which states the condition of the item(s) and the justification for sale, rent or disposal.
- (3) Prior to any disposal the assets may be removed from the Asset registry
- (4) All sales, rents or disposals may be managed and executed by the Procurement Unit and follow the procedures laid down for the Disposal of Assets provided under this Bill and the Regulations.
- (5) When disposing assets, a Procuring Entity shall maximise the number of assets to be disposed off at any time in order to reduce the administration and transaction costs.
- (6) All sales and disposals may be subjected to a clause inserted into advertisements of bid or sale related documents, which states that no warranty is given or implied and that all sales are undertaken “as seen” and “as is” and that usage of such items is solely at “the risk” of the users.

115. Initiation of Sale, Rent or Disposal Requirements.

- (1) Each item considered for disposal, rent or sale may be officially approved for release and appropriate signatures may be obtained, prior to any advertising of the activity.
- (2) Bidding documents shall be drafted using the Standardised Bidding Packages templates. The information shall include, but not limited to:
 - (a) A description of the assets;
 - (b) The location of assets;
 - (c) The closing time, the location for submission and the submission method
 - (d) Qualification requirements to be fulfilled by bidders where appropriate.
 - (e) Evaluation method, the criteria and basis for award
 - (f) Details of any reservation scheme in place
 - (g) The conditions of the sale, rental or disposal, where appropriate.
 - (h) The requirements for payment of the sale, or pre-payment, before the transfer of the assets.
- (3) The Procurement Unit of the organisation shall publish a public invitation notice in at least one newspaper of wide circulation in South Sudan and on the public notice board. Where possible the same information shall be advertised on a suitable government website.

116. Management of Bids and Offers

- (1) The process for the receipt of Bid and Offer submissions, withdrawals, and closing and opening procedures may follow the management procedures as set down under this Bill, and the Regulations.
- (2) Inspection of assets, by interested parties, shall be arranged at least two days before the closing date.
- (3) The evaluation of offers and bids are normally based on the best offered price only, but may also be based on other factors where there is need to attach certain conditions to the sale; including citizen empowerment schemes, end-user restrictions, export restrictions.
- (4) Where two or more offers or bids tie are received at the same price then only the bidders who submitted the highest identically priced offers may be allowed to submit revised bids.
- (5) Records and values of all offers may be recorded and archived.
- (6) A reserve price may be established for items of known or similar values

- (7) A reserve price may be placed on items where there is a known market value.
- (8) At a public auction, the award of the contract shall be by a declaration of the successful bidder, at the time of bidding.
- (9) For all other methods of sale or disposal, an award of contract shall be after the submission of an evaluation report on the offers received.

117. Sale by Public Auction

When undertaking disposal by Public Auction, a Licensed professional auctioneer shall be appointed, if available. Alternatively, a member of the Procurement Unit may conduct the auction.

118. Sale by Sealed Public Bidding

- (1) The bidders may be required to submit written, sealed bids which shall be kept in a locked container in the Procurement Unit until the public bid opening. A record of each bid received including the name, address and contact details may be recorded as provided under section 47 of this Bill.
- (2) The holding of bids and opening procedure and examination and evaluation may be subject to the same rules as provided under section 49 and section 50 of this Bill.
- (3) The minimum bidding period allowed shall be 10 days

119. Other Types of Disposal.

- (1) When it is decided that the Disposal of Assets by Public Auction or Sealed Bids is not the most appropriate method to use, the following types of disposal may be used:
 - (a) Trade-In while in the process of a procurement
 - (b) Transfer to another Procuring and Disposing Entity
 - (c) Transfer to a Charity or similar organisation
 - (d) Conversion of assets into another form, or cannibalisation
 - (e) A re-classification of the Assets
 - (f) Payment to dispose of the item, subject to environmental considerations
 - (g) Destruction of Assets
- (2) Other types of activities described under this section may be accompanied by the justification of the method to be used, including approval of the activity and be subjected to procedures of this Bill and the Regulations.

120. Revenue from the Sale of Assets.

All the revenue proceeds from the sale of assets shall be deposited into the Revenue Fund.

121. Transfer of Ownership.

No assets shall be approved to be removed from a location, or titles given, or change of ownership certificates given, until the full sale value is confirmed received in the Government Revenue account.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

122. Amendment of Schedules.

The Minister may by order published in the Gazette amend the Schedules analysed to this Bill.

123. Procurement Transition Phase.

- (1) The procurement transitional phase, set out in this Bill or shall be applicable upon the commencement of this Bill
- (2) Subsequent to the transition period of phase 1 to phase 2, only licensed Procurement Officers of the Unit or a procuring entity may legally conduct and authorise a procurement procedure.
- (3) This Bill establishes, regulates and governs the procedures and methods that shall be used by Unit and authorized procuring entities when procuring goods, works and services. No other procurement methods shall be permissible other than exemptions and exclusions stipulated under section 8 of this Bill.
- (4) This Bill also establishes, regulates and governs the procedures and standards that shall be followed and observed in reviewing and deciding on complaints filed by persons alleging to have been damaged by a violation of the procedural or other requirements of this Bill.

124 Assumptions and Considerations.

- (1) During the transition phase and until the PPRA and the PCB are established, the UNIT may have the authority and be empowered to manage, plan, and develop public procurement, under the direction of the Ministry, as described in this Bill,
- (2) During the transition period, which may be determined, the legal, compliance checks, educational, standards, rules, standard bidding documents, supplier complaints, contract departments may be transferred from the Unit to the new independent board to be known the PPRA which may also host the PCB.
- (3) With the assistance of Ministry of Justice, the Unit shall establish and issue Regulations (Bye laws), Standard Bidding Documents, and associated financial and administrative instructions and authorise Contracts selected through the Tendering processes described in this Bill.
- (4) Following the formation of the regulatory procurement bodies, over a period of time and according to availability of resources, there may be a controlled degree of decentralisation, as licensed Procurement Officers may be seconded to Ministries and State organisations who may remain employees of the Ministry of Finance and Economic Planning, unless employed by either the PPRA or the Procurement Compliance Board.
- (5) The Unit, following the establishment of PPRA and Procurement Compliance Board may remain responsible to the Ministry and may conduct government procurement.

125. Regulation.

- (1) The Minister, upon the recommendation of the Unit, may make such rules, regulations and procedures as may be necessary and appropriate for the effective and efficient implementation of the provisions of this Bill.
- (2) The Regulations referred thereunder the provisions of sub-section (1) above, include a binding Code of Conduct for the Procurement Officers, officers, officials and employees of the Unit, or of a Procuring Entity granted authority to undertake a procurement activity, addressing, inter alia, the prevention of conflicts of interest in procurement and, and where appropriate, include measures to regulate matters regarding the persons responsible for, or involved in, the conduct of procurement, including declarations of conflict of interest, impartiality, confidentiality, in particular procurements, screening procedures, training and qualification or certification requirements.

- (3) The Regulations may stipulate that a comprehensive sub-set of model solicitation, standard bidding documents, other procurement documents and forms, including forms of contract. The approved model documents and standard bidding documents shall not be modified by the Unit, a Procuring Entity granted authority to undertake a procurement activity, or any individual engaged in a procurement activity, and they may maintain compliance with this Bill and the mandatory requirements of the Regulation.

SCHEDULES

(ANNEX A1)

THRESHOLD TYPES FOR PROCUREMENT METHODS

Type of Procurement	Value of Contract	Authority to conduct procurement proceedings	Selection Authority	Approving Authority	May be Conducted as a Domestic Procurement?
<u>Emergency</u> or National Disaster	High	UNIT	Emergency Committee of Experts	Tender Review Committee or ³ <i>Special Procurement Commission</i>	No
<u>Emergency</u> or National Disaster	Medium & Low	UNIT	Evaluation Committee	Tender Review Committee	Yes, only <i>if</i> there are a sufficient number of Domestic Suppliers to ensure substantial competition

<u>Urgent</u>	High	UNIT	Evaluation Committee	Tender Review Committee	No
<u>Urgent</u>	Medium & Low	UNIT	Evaluation Committee	Tender Review Committee	Yes, only <i>if</i> there are a sufficient number of Domestic Suppliers to ensure substantial competition
	High	UNIT ¹	Evaluation Committee	Tender Review Committee	No
	Medium	UNIT ¹	Evaluation Committee	Tender Review Committee	Yes, only <i>if</i> there are a sufficient number of Domestic Suppliers to ensure substantial competition
	Low	UNIT ¹	LPO	None	Yes
	Minimal	UNIT ^{1,2}	LPO or ²	None	Yes
	Petty Cash	UNIT ^{1,2}	^{1,2}	None	Yes

¹ May also be an Authorized Procuring Entity.

² If no Procurement Division, the Office of the Administration Department may conduct minimal value and Petty Cash procurements

³ When and where applicable, if during a national disaster, an emergency, or very sensitive, political or high value procurement, then the proposed award and contract may be reviewed by Commission, appointed by the Council of Ministers,

(ANNEX A2)

THRESHOLD VALUES FOR PROCUREMENT METHODS

Category	Procurement Type	Monetary Value
High Value	Goods & Services	≥ SDG 750,000
High Value	Works	≥ SDG 2,250,000
Medium Value	Goods & Services	SDG 75,000 – SDG 749,999
Medium Value	Works	SDG 150,000 – SDG 2,249,999
Low Value	Goods & Services	SDG 3,000 - SDG 74,999
Low Value	Works	SDG 3,000 - SDG 149,999
Minimal Value	All	SDG 300 - SDG 2,999
Petty Cash	All	SDG 0 - SDG 300

≥ **Equal to or Greater Than**

* **Thresholds values may be updated every two years**

**TIME LIMITS TO RESPOND
TO TENDER ADVERTISING**

			Recommended Calendar Days		
Type of Procurement	Procurement Method	Value	Request to Participate	Receipt of Tenders	
International	Open Tender	High	15	30	(45)*
International	Open Tender	Medium	10	20	(25)*
International	Open Tender	Low	7	15	(20)*
Domestic	Open Tender	High	N/A	N/A	-
Domestic	Open Tender	Medium	10	20	(25)*
Domestic	Open Tender	Low	7	15	(20)*
	Expression of Interest		10	30	(45)*
	Request for Quotation		10	30	-
	Request for Proposal		10	30	-
	Single Source		7	20	-
	Two Stage		10	30	(45)*
	Urgent		N/A	7	-
	Emergency		N/A	-	
	Minimal Value		N/A	-	
	Petty Cash		N/A	-	

- 1) N/A = Not Applicable
- 2) * = The calendar days (X) means maximum calendar days allowed for highly complex or technical projects, which include allowances for the level of difficulty or complexity involved in the preparation of a responsive tender. The Procurement Officer shall decide number of days. Calendar days means the total number of days allowed, whether a working day or a holiday (*For a prolonged period of Public Holidays, additional days should be added, particularly for domestic procurements*).
- 3) Request to Participate means the Number of Days counted from the day *after* the date advertised being day no. 1.
- 4) Receipt of Tenders means the total Number of Days allowed for responding to a advertised Tender, which includes the Bid Closing Day (last day)

Procurement Fraud (In Support Of Chapter Xiv)

Submission of False Information: The submission of materially false information during the conduct of a procurement proceeding or the performance of any procurement contract.

Procurement Document Collusion: Colluding with any government official, Supplier or potential Bidder concerning the formulation, creation of, selection or evaluation of any document or method used in a procurement proceeding.

Cost/labour mischarging: Any scheme by one or more Contractors to fraudulently inflate the cost of labour, materials or time.

Defective pricing: When a contractor does not submit or disclose to the concerned authority, prior to reaching a price agreement, required cost or pricing data that is accurate, complete, and current prior to reaching a price agreement.

Price fixing and bid rigging: Any activity to suppress and eliminate competition for contracts, including, but not limited to, an agreement or arrangement where, in response to a Solicitation of Bids or pre-qualification applications, one or more Suppliers agree not to participate, or two or more Suppliers agree to submit Bids that have been prearranged among themselves.

Bid Suppression: When one or more Suppliers who otherwise would be expected to Bid, or who have previously Bid, agree to refrain from submitting a Bid or agree to withdraw a previously submitted Bid so as to enhance another Bidder's chance of winning.

Complementary Bidding: when some Bidders agree to submit Bids that either are too high to be accepted or contain special terms that will not be acceptable to the participating authority. Such Bids are artifices merely designed to give the appearance of genuine competitive bidding. Complementary bidding schemes are the most frequently occurring forms of bid rigging, and they defraud Procuring Entities by creating the appearance of competition to conceal secretly inflated prices.

Bid Rotation: In bid rotation schemes, all conspirators submit bids but take turns being the low Bidder. The terms of the rotation may vary; for example, competitors may take turns on contracts according to the size of the contract, allocating equal amounts to each conspirator or allocating volumes that correspond to the size of each conspirator company.

Anti-competitive Sub-contracting Arrangements: Subcontracting arrangements are often part of a bid-rigging scheme. Competitors who agree not to bid or to submit a losing bid frequently receive subcontracts or supply contracts in exchange from the successful low bidder. In some schemes, a low bidder will agree to withdraw its bid in favor of the next low bidder in exchange for a lucrative subcontract that divides the illegally obtained higher price between them. Almost all forms of bid-rigging schemes have one thing in common: an agreement among some or all of the bidders, which predetermines the winning bidder and limits or eliminates competition.

Market Division: Market division or allocation schemes are agreements in which competitors divide markets among themselves. In such schemes, competing firms allocate specific customers or types of customers, products, or territories among themselves. For example, one competitor will be allowed to sell to, or bid on contracts let by, certain customers or types of customers. In return, he or she will not sell to, or bid on contracts let by, customers allocated to the other competitors. In other schemes, competitors agree to sell only to customers in certain geographic areas and refuse to sell to, or quote intentionally high prices to, customers in geographic areas allocated to conspirator companies.

Product substitution: The introduction of counterfeit or substandard material and other forms of unauthorized product substitution, or alternatives, without permission into the procurement process.