Public Procurement, Concessions and Disposal Manual

Part 2

Public Procurement Concessions Manual

2015
# Public Procurement Concessions Manual

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<td>AN</td>
<td>Activity Number</td>
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<tr>
<td>CBEP</td>
<td>Concession Bid Evaluation Panel</td>
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<tr>
<td>CBD</td>
<td>Concession Bidding Documents</td>
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<tr>
<td>CC</td>
<td>Concession Contract</td>
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<td>CE</td>
<td>Concession Entity</td>
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<tr>
<td>CM</td>
<td>Concession Manual</td>
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<td>CMF</td>
<td>Concession Management Framework</td>
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<td>CMP</td>
<td>Concession Management Plan</td>
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<td>CMT</td>
<td>Concession Management Team</td>
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<td>CP</td>
<td>Concession Project</td>
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<td>Concession Project Team</td>
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<td>CS</td>
<td>Civil Society</td>
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<td>EOI</td>
<td>Expression of Interest</td>
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<td>FGS</td>
<td>Federal Government of Somalia</td>
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<td>FGS</td>
<td>Federal Government of Somalia</td>
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<tr>
<td>FP</td>
<td>Financial Proposal</td>
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<td>GNOI</td>
<td>General Notice of Investment Opportunity</td>
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<tr>
<td>ICB</td>
<td>International Competitive Bidding</td>
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<tr>
<td>IMCC</td>
<td>Inter – Ministerial Concession Committee</td>
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<tr>
<td>IRR</td>
<td>Internal Rate of Return</td>
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<td>KPI</td>
<td>Key Performance Indicators</td>
</tr>
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<td>NCB</td>
<td>National Competitive Bidding</td>
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<tr>
<td>PC</td>
<td>Procurement Committee</td>
</tr>
<tr>
<td>PPCDA</td>
<td>Public Procurement, Concession and Disposal Act</td>
</tr>
<tr>
<td>PPCDB</td>
<td>Public Procurement, Concession and Disposal Bill</td>
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<tr>
<td>RFP</td>
<td>Request for Proposal</td>
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<td>SPV</td>
<td>Special Purpose Vehicle</td>
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<td>Value for Money</td>
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<td>VGF</td>
<td>Viability Gap Funding</td>
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<tr>
<td>WLCC</td>
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1. Definition and Objectives of Concession Agreements

1.1 Introduction

1.1.1 The Federal Government of Somalia (FGS) recognizes the importance of improving and expanding infrastructure services for sustainable social and economic development both in its medium and long-term development agenda. Most importantly, improving the quality and service coverage in power and water supply, health and education, sewerage treatment, transport and logistics are among the vital components for Somali economy and the livelihood of its people. However, just like many other countries in the world, fiscal constraints have seen supplementary and innovative approaches to infrastructure provisioning and funding, away from the traditional role of the Government as the only infrastructure service provider, to include the expertise and finance of the private sector. The substantial investment in the infrastructure required in Somali can be provided through concessions framework mechanisms and hence this Concession Manual (CM) will provide the prerequisite standards and guidelines to follow by the government concession and procuring entities. Further, this Concession Manual has provided step by step procedures and guiding principles on how the government procuring entities can manage concessions approach system of procurement in a transparent, competitive and in an effective manner to ensure the FGS and its people gets Value for Money (VfM) used for concession projects.

1.1.2 The adoption of concession framework therefore reflects the government desire to improve the quality, cost effectiveness and timely provision of public infrastructure and services in Somalia. The government is mindful that concession are not panacea for all public infrastructure investment needs and therefore the concession framework should be viewed as a compliment to and not a substitute for the government continued commitment to open up key service market to competition. In this regard therefore, it is viewed that concession approach would only be considered where they can provide greater value for money than other fully – private or fully – public service delivery options.

1.2 Defining Concession

1.2.1 Concessions means the grant of an interest in a public asset by the government or its agency to private sector entity for a specified period of time during which the asset may be operated, managed, utilized or improved by the private sector entity who pays fees or royalties under the condition that the government retains its overall interest in the asset and that the asset will revert to the government agency at a determined time. Concessions under the PPCDB can cover a broad range of activities; for the purpose of these guidelines the focus is on concessions where the concessionaire shall be responsible for any capital investments required to build, upgrade, or expand the system, and for financing those investments out of its resources and from the tariffs paid by the system users. The concessionaire shall also be responsible for working capital. These guidelines recommend that the period of concession for projects should normally be between 25 – 30 years in order for the concessionaire to recover its capital investment, unless a different period is justified in the context of the particular project. The concession period should be specified in the concession project agreement. The long period is vital so that the operator has sufficient time to recover the capital invested and earn an appropriate return over the life of the concession. The above statement in regard to concessionaire working capital does noes preclude the public authority from contributing to the capital investment cost if necessary. For example the Concession Entity (CE) can provide some subsidy through Viability Gap Funding1 (FGF) to achieve commercial viability of the concession.

Viability Gap Funding1 (VGF) is the ‘gap’ between the revenues needed to make a project commercially viable and the revenues likely to be generated by user fees paid mostly by poor customers. VGF is designed to make projects that are economically viable over the long term, commercially viable for investors & helps to mobilize private sector investment for development projects, while ensuring that the private sector still shares in the risks of infrastructure delivery and operation.
A concession contract’s typical structure is shown in figure 1 below.

Figure 1: Structure of Concession Contract

1.3 Types of concessions and when applied

1.3.1 Under this Concession Manual, the term concession shall comprise of all its variants including but not limited to the following:

a) “Build / Refurbished Modernize-Operate-Transfer (BOT)” Where a private entity finances the department of infrastructure/facility/utility and operates it for a specified period after which the project is handed over to the government/public entity free of lien or at a cost to the public entity.

b) “Build/Refurbished (BOOT)” Where the Government/public entity contracts a private entity to build or complete a facility the ownership of which is transferred to the Government/public entity on completion after which the facility is leased back to the private entity for a fixed or renewable term.

c) “Build/Refurbished /Modernize-Own-Operate (BOO)”: Where the private entity obtains a franchise for a fixed period, whether exclusive or not to develop, operate, maintain, manage and collect user fees for a public facility over a fixed period at the end of which title to the facility reverts to the Concession entity/Government.

d) “Build/Refurbished/Modernize-Own-Operate (BOO)”: Where the Government / public entity either transfers ownership and responsibility for a public facility or contracts with a private entity to build, own and operate a new facility is subject to terms and conditions laid down by the Government/concession entity for the operation of the facility.
e) The Authority may identify other business arrangements that shall be defined as concessions.

1.4 The Objective of Concessions

1.4.1 The key objectives of the manual shall be to promote one or more of the following:

a) Increased Government revenue from concessions.

b) Harnessing of private sector financial, human and technical resources for economic development

c) Competition in the provision of services, supplies, goods or infrastructure and reduce monopolies.

d) Accelerate the development of infrastructure, human capacity and the provision of services

e) The growth of the Somali private sector.

f) Partnerships between the public and private sectors

g) To provide a framework for developing efficient risk sharing mechanism

h) Encourage and promote indigenous Somali private sector participation in the delivery of public infrastructure and service

1.4.2 This CM is designed to encourage the provision of a wide variety of quality and timely public infrastructure and service by articulating step – step process of procuring, executing and managing the government concessions. The guidelines contained herein will help the Concessions Entities to achieve faster project implementation, maximum leveraging of public funds, enhanced accountability and a shift to a whole- life coasting and infrastructure management by the CEs.

1.5 Guiding Principles of Concessions

1.5.1 The guiding principles should be consistently applied in the determination and delivery of concession projects. Guidelines set out in this manual have been designed to support these principles. The following sub-sections provide further context of the guiding principles in a more elaborative way.

1. Achieving Value for Money (more on section 1.6.2)

   Demonstrating value for money is a fundamental criterion for all procurement involving the public sector. Value for money for concessions is supported by:

   a. Risks being systematically allocated to the party best able to manage it
   b. Competition being achieved;
   c. Innovation and productivity improvements and synergies being realised; and
   d. Evidence-based net benefits being clearly demonstrated.

2. In planning, working on, implementing or doing anything connected with concessions, or performing any concession related tasks, all persons in both the public and private sector shall be guided by the principles set out in this sub-part of the concession manual.
3. All Concession Entities shall ensure that the need to attain maximum Value for Money is made paramount in all concession arrangements and that concession Projects are designed to give greater value for money than what could be attained if the project was otherwise carried out under a realistic public sector funded options under traditional public procurement mechanism.

4. Concession Entities shall consider end-user affordability as one of the key considerations in making decisions related to the feasibility of concession Projects.

5. Concession Entities shall ensure that concession activities conform to the environmental laws of Somalia and maintain the highest standards of environmental, climate and social safeguards required under the laws of Somali and applicable international standard and conventions.

6. Every Concession Entity seeking to undertake a concession Project shall specify the expected outputs of each project, allowing for optimal risk transfer to the private party and thereby ensure greater Value for Money for the public entities.

7. The procurement procedure relating to a concession Project shall be fair and transparent, cost effective and based on a competitive selection criterion.

8. There shall be equal opportunity and access to information to all qualified bidders who comply with the solicitation process as set out in the solicitation documents.

9. The Concession entity shall have the primary responsibility for managing all the required processes and delegation of any of its function shall not derogate from its responsibility for the actions undertaken.

10. Concession Entities shall ensure that adequate stakeholder consultation is carried out as prescribed in PPCDB Bill Article 120.

1.6 Key Features / Characteristics of Concessions framework

1.6.1 As noted in sub-section 1.5.1 (1 & 3), concessions is a form of public procurement model in which the value for money as shown in Box 1 is optimized through efficient allocation of risks, whole life service approach, private sector innovation and management skills as well as synergies from inter-linking the design, finance, construction and operations. Some of the key features/characteristics of concessions projects are indicated below:

   a) Relationship between public and private sectors is based on partnership
   b) Public sector procures specified outputs or outcomes of a service for a concession period
   c) Private sector determines the required inputs to achieve the specified output and the private sector is given latitude to introduce innovation into their designs and development to reduce overall costs
   d) Payment for services is based on pre-determined standards and performance
   e) Promotes ‘maintenance culture’ where the concessionaires will be responsible for the long term maintenance of the assets throughout the operational tenure agreed upon;
f) Transfer of assets at the end of the concession period becomes an option to the Government;
g) Optimal sharing of risks whereby risk is allocated to the party who is best able to manage it; and

1.6.2 The main guiding factor that compels government or the CEs to engage in concessions as an alternative method to traditional procurement methods is Value for Money (VfM) aspect.

Box 1 – Value for money

The main driver of concessions Programs is Value for Money (VfM), defined as ‘the optimal combination of whole life cost and quality to meet the users’ requirements’. Generally, VfM is achieved through:

a. risk transfer which allocates risks optimally between the public and private sectors
b. long term nature of contracts (which embodies whole life costing)
c. the use of output specification which allows bidders to innovate
d. competition that provides fair value of the project
e. performance-based payment mechanism
f. private sector management expertise and skills

1.7 Differences Between Concessions and other conventional Procurement methods

1.7.1 Generally through the concessions approach, emphasis is given on delivery of services (output driven) and private sector innovation and skills in maintaining the assets/facilities throughout the concession period. Other main characteristics that differentiate concessions system of acquiring works and services with other procurement methods are shown in Table 1 below

**Table 1: Differences between Conventional procurement and concessions**

<table>
<thead>
<tr>
<th>Conventional procurement system</th>
<th>Concession system of procurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurements are funded directly via public budget.</td>
<td>Funding via private financial resources without public sector’s explicit guarantee</td>
</tr>
<tr>
<td>Immediate impact on public sector financial position.</td>
<td>Impact on public budget spreads over the duration of the concession.</td>
</tr>
<tr>
<td>Risks are entirely borne by public sector.</td>
<td>Risks are allocated to parties which can manage them most efficiently</td>
</tr>
<tr>
<td>Extensive public sector involvement at all stages of project life.</td>
<td>Public sector’s involvement is through enforcement of pre-agreed Key Performance Indicators (KPIs)</td>
</tr>
<tr>
<td>Relationship with private contractor is short term.</td>
<td>Long duration of relationship with private contractors.</td>
</tr>
<tr>
<td>Applicable for projects with high socio-economic returns and those justified on strategic considerations.</td>
<td>Applicable for projects with commercial viability.</td>
</tr>
</tbody>
</table>
1.8 Scope and Application of Concessions

1.8.1 The part shall apply to all activities relating to concessions and shall in particular apply to the following:

a) The implementation of concessions including, but not limited to the:
   i. Identification and certification for Concessions
   ii. Planning of the process for concession agreements
   iii. Preparation of concession bid documents
   iv. Invitation and evaluation of bids, negotiations and signing of concession agreements
   v. Implementation, supervision and monitoring of concession agreements

b) The grant of concessions of whatever form in all sectors including but not limited to:
   i. Mineral exploration and mining
   ii. Fishing
   iii. Timber
   iv. Telecommunications
   v. Electricity, water and other utilities
   vi. Forestry
   vii. Agricultural concessions including plantations
   viii. Oil exploration and extraction
   ix. Development of public infrastructure including but not limited to airports, terminals, toll roads/bridges, shopping malls, etc.
   x. The grant of special licenses including licenses for imports, exports, services, works or for the performance of functions on behalf of the public sector.
   xi. Other sectors as determined by the Minister responsible for Economic Affairs.

c) All Concession Entities or Government institutions and agencies legally mandated to undertake concessions.

d) All private sector entities that participate in concessions.

1.9 Disqualified Private Sector Persons or Entities

1.9.1 The following private sector entities, whether local or foreign, shall be disqualified from participating in any concession process.

a) Partnerships
b) Sole Proprietorships
c) Natural Persons
d) Not-for-profit entities or Non-Governmental Organizations
e) Unincorporated Associations
2. Concessions Procurement Structures

2.1 Role of Procurement Units in processing concessions agreements

2.1.1 The procurement Unit set up under the PPCDB shall be responsible for the performance of the following concessions functions under the oversight of the Procurement Committee.

   a) Prepare the Concession Procurement Plan
   b) Plan and administer concession up to but excluding evaluation and award of concession contracts
   c) Prepare concession bid documents in collaboration with technical experts
   d) Receive and safeguard bids received
   e) Conduct bid opening procedures in accordance with PPCDB
   f) Perform secretarial services for the Concession Entity

2.1.2 Concession Entity: Any entity that is issued with a certificate for concessions in accordance with the PPCDB shall be a Concession Entity (CE) and shall be responsible for the concession process.

2.2 The role of the Ministry in charge of Economic Affairs in Concessions

2.2.1 The Ministry responsible for Economic Affairs shall have the sole responsibility to issue the Certificate for Concession to all the CEs implementing government concessions

2.2.2 Every concession implementation process shall commence with the issue of a Certificate for Concession and no concession shall be implemented unless the proposed project has been issued with a Certificate for Concession.

2.3 Criteria for issuance of certificate of concessions to the CE.

2.3.1 The Ministry responsible for the issuance of certificate of concessions shall work closely and in consultations with the head of the CE implementing or affected by specific concessions

2.3.2 Before the issuance of certificate for concessions as described in the PPCDB, the ministry responsible for Economic Affairs shall ensure the following criteria are met by the CEs applying for concessions certificate:

   a) The concession falls within the area of the economy in which concession arrangements may be carried out in furtherance of national economic objectives.
   b) The proposed concession has not already been allocated with public funds for the same purpose envisaged under the proposed project.
c) The barriers or bottlenecks that need to be addressed prior or in the course of the concession procurements process have been clearly identified by the Concession Entity or by the Ministry responsible for Economic Affairs and brought to the knowledge of the Entity.

2.4 The Role of the Head of Concession Entity in Concessions process

2.4.1 The head of the Concession Entity shall be held accountable and responsible for any action taken in pursuit of his or her responsibilities under this part and shall not be absolved from accountability because he or she delegated the function.

2.4.2 The head of a Concession Entity shall, prior to commencing any activity for the purpose of implementing a concession, request the Minister responsible for Economic Affairs to issue a Certificate for Concession for the specific concession.

2.5 Technical Assistance in Concessions Process

2.5.1 A Concession Entity and or the Inter - Ministerial Concession Committee (IMCC) may where it is conducive to the national interest, engage private sector entities or experts to advise on any of the processes of concessions other than approvals and such experts shall work with the Procurement Unit for the purposes of the specific concession.

2.5.2 Such experts shall be referred to as transaction advisors and /or specialist advisors and may include the lawyers, financial analysts, financiers, economists, sociologists, and sector specialists to support the CE or the IMCC. These advisors can be procured as a team or recruited individually, in which case coordination among the team members should be ensured. Advisors will pay an important role in maintaining momentum, developing strategies for CE consideration, helping to develop public messages and information, performing analysis of concessions options, and supporting the bidding and negotiation processes.

2.5.3 The specialist advisors should be brought into the process early and should be paired with CE counterparts. As concession is considered, CE should be identifying potential local counterpart staff and should be training staff to take on new responsibilities. The local capacity building should be supported through working relationships with any advisor.

2.5.4 Technical advisors would continue to support through to contract signing and possibly beyond. The bid and negotiation process involves repeated clarifications and interactions of the bid documents, often occurring swiftly. The process must be well organized and must lead to a good outcome. If external support (financial, legal, and technical) to the CE is not available at this stage, key government officials must have received training in negotiation and be completely familiar with the content and intent of the bid package (the contract, bid documents, and bid forms). Similar technical assistance will also be necessary to build capacity at the entity charged with monitoring contract compliance and progress targets.

2.5.5 The selection of a advisors / technical assistance in form of a firm or individual for the purposes of this section shall be made in accordance with the procedure rules as set out in Chapter 12 of part 1 of this Public Procurement Concessions and Disposal Manual (PPCDM) for the selection of the consultants.
2.6 Inter – Ministerial Concession Committee and its role in Concessions Processing

2.6.1 An adhoc Inter-Ministerial Concessions Committee (IMCC) shall be established for specific concession project and shall be responsible for the review of the concession and approval of the report of the Concessions Bid Evaluation Panel and the review of the annual concessions plan for submission to the Cabinet for approval.

2.6.2 IMCC shall be comprised of seven (7) committee members as follows

   a) The Chairperson of the National Investment Commission who shall be the chairperson of the committee
   b) The Minister of Justice
   c) The Minister responsible for Finance
   d) The Minister responsible for Economic Affairs
   e) Two other Ministers appointed by the President representing the collective interest of various sectors of the economy connected with the concession other than the Minister responsible for the sector.
   f) The Head of the Procurement Unit of the specific Concession Entity - shall serve as the non-member secretary to the Inter-Ministerial Concessions Committee for the purposes of its work for the Concession Entity.

2.6.3 The Inter-Ministerial Concessions Committee may co-opt experts to its meetings for a particular concession under review for advisory purposes refer to section 2.4 of this concession manual.

2.6.4 Functions of the IMCC shall include but not limited to the following

   a) Review and approve concession bid documents prior to the invitation of bids.
   b) Review the evaluation reports to ensure that procedures were in strict conformity with the criteria set. Hence approve or otherwise, the evaluation reports to enable the Concession Entity to continue with the next step of the process.
   c) Approve the minimum benchmarks for the negotiations with the concessionaire as proposed by the Concession Entity.
   d) If negotiations breakdown, and if acceptable, authorize the Concession Entity to negotiate with the next highest ranking bidder.
   e) Constitute the Concession Bid evaluation Panel and the Negotiations Team.
   f) Make recommendations to the head of the Concession Entity and the Commission as and when necessary

2.6.5 No entity other than the Inter-Ministerial Concessions Committee set up under the PPCDB shall perform the functions of the Inter-Ministerial Concessions Committee and the purported performance of the functions of the Inter-Ministerial Concessions Committee by any other person or entity shall be void.

2.6.6 Meetings of the IMCC is explained below:

   a) The Inter-ministerial Concessions Committee shall be convened at the instance of the Head of the Concession Entity through a written request submitted to the President and the Chairperson of the National Investment Commission.
b) The President, on receipt of the request from the Head of the Entity, shall nominate two (2) persons for specific purpose and the chairperson of the National Investment Commission, shall on receipt of the notice of the President’s nominees convene a meeting of the committee for the purpose of the specific concession.

c) Apart from the chairperson and the Ministers responsible for Finance, Justice and Economic Affairs, no person shall have permanent representation on the Inter-Ministerial Concessions Committee.

d) When the concession contract is entered into, the Inter-Ministerial Concession Committee shall be deemed to be dissolved for the purpose of the particular concession.

e) No member of the Committee shall delegate his role as a member. Where absolutely necessary any of the members may send a Deputy Minister as a proxy to represent the member at a meeting of the Committee. The member shall be responsible for any decisions made by the proxy.

2.6.7 Quorum for the members of the IMCC

The Inter-ministerial Commission Committee shall not be properly constituted for its work without the presence of the ministers responsible for Finance, Economic Affairs,Justice, The head of the Concession Entity or in the absence of any of them & the duly authorized deputy

2.7 Disclosure of Interest by members participating in Concessions proceedings

a) A member of the IMCC or a person appointed /co-opted by the committee who has any interest, direct or indirect, in any matter to be considered by or on behalf of the Commission shall disclose the nature of his or her interest to the Commission and such disclosure shall be recorded in the minutes of the committee.

b) A member of IMCC with any interest shall not take part in any deliberation or decision of the committee relating to that matter, and a member who contravenes this section shall be guilty of misconduct and liable to be removed from the committee and/or suffer any penalty that may be applicable under the PPCDB

2.7.1 Sample Template for the declaration of conflict of interest by members involved in concessions Proceedings is shown in box 2 the next page.
Box 2 – Sample template statement of conflict of interest declaration

Below is a sample of a full list of all the bidders, including the names of all the consortium members of each bid, who have responded to the [insert name of institution] call for a transaction advisor or concessions (delete as appropriate) bids for [insert name and tender number of project].

As a member of the bid evaluation panel 2 you are required to declare any interest, as far as you are aware that you have, in any of the bidders and their consortium member companies.

<table>
<thead>
<tr>
<th>All bidders' names and names of all consortium members</th>
<th>Interest Yes / No</th>
<th>Extent of Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extent of interest</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

An interest includes, but is not limited to:

a) Your shareholding in a bidding company or any of its consortium member companies. Clearly indicate the extent of your shareholding and links to this bid.

b) Family members, friends or associates employed by a bidding company or any of its consortium members. Clearly indicate the extent of this relationship and links to this bid.

c) Family members, friends or associates' shareholding in a bidding company or any of its consortium members. Clearly indicate the extent of their shareholding and links to this bid.

d) Family members, friends or associates contracted to provide services to a bidding company or any of its consortium members. Clearly indicate these individuals' links to this bid.

e) you, or any of your family members, friends or associates receiving, or in agreement or receive, any gifts, favors, payments, sponsorships, subsidies, or any other benefits from any bidders or any members of any of the consortia, within the last 12 months of the date of this declaration.

f) Any other personal interest that may reasonably be deemed relevant to protecting the integrity of the bid evaluation.

2For the evaluation of concessions bids, this declaration of interest must be signed by all members of concessions bid evaluation panel, IMCC members and any and any other officer involved in concessions proceeding.
2.7.2 Illustration for declaring conflict of interest is shown in the Box 3 below

**Box 3 - Sample declaration format by concessions evaluation committees**

I, [insert name of member], a member of the bid evaluation panel for the [insert name of institution and name and number of project] declare that the above information is true (information given in section 2.6.1) and correct to the best of my knowledge. I declare further that in the event of any such interests arising during the course of bid evaluation, these shall be promptly and accurately declared in writing to the accounting officer / authority.

Signed: ______________________ Date: ___________________

[signature of member] [insert date]

Witnessed: ______________________

[signature of witness]

2.8 **Concession Bid Evaluation Panel**

2.8.1 Concessions Bid evaluation Panel (CBEP) shall be constituted by IMCC for the purposes of evaluating EOI (in case of prequalification using Restricted Competitive Bidding) as well as concessions bids (both technical and financial).

2.8.2 When the concession contract is entered into, the CBEP shall be deemed to be dissolved for the purposes of the particular concession. Concession evaluation committees shall be temporary and dissolved upon the signing of concession contract with the winning concessionaire.

2.8.3 All the members of CBEP, shall declare by signing the declaration form on the conflict of interest as discussed in section 2.7 of this concession manual
3. **Concession Project Cycle and Structure**

3.1 Structure of the concession guide is shown in Table 2 below; the structure of the Guide follows the four simple and easy to understand key phases of the concession project cycle.

**Table 2: Concession cycle phases, stages and steps**

<table>
<thead>
<tr>
<th>Phases</th>
<th>Stages</th>
<th>Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Project Identification</td>
<td>1.1 Project selection and</td>
<td>a) Identification</td>
</tr>
<tr>
<td></td>
<td>definition</td>
<td>b) output specifications</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Pre-feasibility study</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Issuance of certificate for concession</td>
</tr>
<tr>
<td></td>
<td>1.2 Feasibility Study</td>
<td>a) Affordability</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Value for money</td>
</tr>
<tr>
<td>2. Detailed Preparation</td>
<td>2.1 Getting organized</td>
<td>a) Detailed concession design</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Procurement method</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Bid evaluation criteria</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Draft concessions contract</td>
</tr>
<tr>
<td></td>
<td>2.2 Before launching the bid</td>
<td>a) Notice and prequalification EOI (if applicable)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Evaluation of EOI (if applicable)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Invitation to bid</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Bid clarifications / amendments</td>
</tr>
<tr>
<td></td>
<td></td>
<td>e) Evaluation of concessions bids</td>
</tr>
<tr>
<td></td>
<td></td>
<td>f) Contract award</td>
</tr>
<tr>
<td>3. Procurement process begins</td>
<td>3.1 Bidding process</td>
<td>a) Contract negotiation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Final concession contract Financing agreements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Financial close</td>
</tr>
<tr>
<td></td>
<td>3.2 concession contract and</td>
<td>a) Management responsibilities</td>
</tr>
<tr>
<td></td>
<td>financial close</td>
<td>b) Monitoring service outputs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Changes to concession contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Dispute resolution</td>
</tr>
<tr>
<td></td>
<td></td>
<td>e) Concession contract termination</td>
</tr>
<tr>
<td>4. Project Implementation</td>
<td>4.1 Contract management</td>
<td>a) Institutional framework</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Analytical framework</td>
</tr>
<tr>
<td></td>
<td>4.2 Ex post evaluation</td>
<td>a) Management responsibilities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Monitoring service outputs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Changes to concession contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Dispute resolution</td>
</tr>
<tr>
<td></td>
<td></td>
<td>e) Concession contract terminations</td>
</tr>
</tbody>
</table>
Chapter 4

4. Concession Entities and Justification for Concession

4.1 Concession Entity

4.1.1 Any government entity issued with a concession certificate by the ministry responsible for economic affairs shall under this concession manual be referred to as a Concession Entity (CE).

4.1.2 As discussed in chapter 2 and sub – section 2.1.2 & 2.2.2 of this CM, Every concession implementation process shall commence with the issue of a Certificate for Concession and no concession shall be implemented unless the proposed project has been issued with a Certificate for Concession. The Ministry responsible for Economic Affairs shall have the sole responsibility to issue the Certificate for Concession.

4.1.3 Every CE shall be managed by the Head of Concession Entity and who shall be responsible and accountable for all the action taken with regards to concession activities in his / her entity.

4.2 Selection / Identification Procedures for a Concession Project (CP) by CE

4.2.1 This Part provides a rational basis for selecting prospective concession projects for implementation by Concession Entities. The ultimate objective of the project selection process is to ensure that the investment offers value for money. Value for money refers to the best available outcome for the society, account being taken of all benefits, costs and risks over the whole life of the project. This is normally tested by undertaking a cost-benefit analysis of the project and its requirements.

4.2.2 Each Concession Entity and its sector Ministry may develop a Strategic Plan from the National Development Framework of the Government and consequently formulate projects or program and activities necessary to fulfill the development mandate of the sector.

4.2.3 The Concession Entity shall select from its Strategic Plan or other relevant Planning framework, projects which have a potential for being undertaken through a concession. These projects may include but not limited to:

a. Mineral exploration and mining
b. Fishing
c. Timber
d. Telecommunications
e. Electricity, water and other utilities
f. Forestry
g. Agricultural concessions including plantations
h. Oil exploration and extraction
i. Development of public infrastructure including but not limited to airports, terminals, toll roads/bridges, shopping malls, etc.
j. The grant of special licenses including licenses for imports, exports, services, works or for the performance of functions on behalf of the public sector.
k. Other sectors as determined by the Minister responsible for Economic Affairs.

4.2.4 The selection criteria for projects to be undertaken through concessions shall be guided by the principals outlined and discussed in chapter 1 and sub – section 1.5 of this CM.

4.3 **Performance of Preliminary / Pre-Feasibility Studies**

4.3.1 The aim of this process is to determine the best method of delivering the project. The identified project may be delivered either by the normal procurement method or by using the concession approach. The concession approach should be used only where it can deliver better value for money than the normal procurement method. A Concession project is more likely to be successful if the private sector has the capabilities to add value to the delivery of public services.

4.3.2 The Concession Entity shall undertake a Pre-Feasibility study on the identified project to assess its potential as a concession project. The Pre-Feasibility study may be undertaken by internal human and financial resources of the Concession Entity. If an external advisor or technical assistance of whichever form is required, the contracting process and procedures to be followed are prescribed in Chapter 12 of the procurement manual.

4.3.3 The pre – Feasibility or Preliminary study shall include but not limited to the following.

**Box 4: Sample Content of the pre-feasibility / preliminary studies**

1. The Project title
2. The nature and the scope of the project
3. Key objectives and strategic importance of the concession project
4. Measurable outcomes of the project
5. Benefits of private sector participation
6. Implementation schedule
7. Risks sharing arrangement
8. Issues to be addressed before the concession contract award
9. Environmental and Social Impacts
10. Funding requirements
11. CE financial and human resource capacity to undertake the concession project

4.3.4 The pre – feasibility studies may be carried out in consultation with the Minister responsible for Economic Affairs and other experts whether from the private or public sector as appropriate.

4.3.5 The Concession Entity shall submit the Pre-Feasibility study report(s) to the ministry of economic affairs or the relevant authority for approval.

4.3.6 With approval of pre – feasibility study, the CE shall proceed to prepare an annual concession procurement plan for submission and approval by the Ministry responsible for economic affairs.
4.3.7 Identification and the justification of concession undertaking are summarized in figure 2 in the next page.

**Figure 2: Preliminary activities of CE when undertaking of a concession project**

- **Stage 1**: Identify Project
- **Stage 2**: Justify selection of Project
- **Stage 3**: Prepare CE annual concession procurement plan

4.3.8 Stage on the preparation of the CE concession procurement plan will be discussed in details in chapter 7 of this concession manual.
5. Concession Certification and Feasibility study

5.1 Introduction

5.1.1 This section provides guidance on the requirements for the issue of Concession Certificate (CC) and how to undertake a Feasibility study to support the decision to proceed with a proposed project as a concession project, where required.

5.1.2 The feasibility study is a critical part of the project preparation period and it provides an opportunity to assess the likely success of the project.

5.1.3 The purpose of the feasibility study at this stage is to allow the CE to determine the following:

a) The role of the public sector in the particular concession
b) The method of concession to be used for the project
c) How the project will be structured
d) The affordability of the project
e) The identification, quantification, allocation and mitigation of risks
f) That a proper business/commercial case is developed for the project

5.2 Issuance of Concession Certificate by the Ministry responsible for Economic Affairs

5.2.1 The Concession Entity shall make a request to the Ministry responsible for Economic Affairs for a Certificate of Concession for the specific concession project. This is only after the project has been included in the Annual Concession Plan approved by the Cabinet. Also the CE request shall be supported with the report of the Pre-Feasibility/preliminary study or an update of the Pre-Feasibility study as appropriate.

5.2.2 In regard to the issuance of the certificate, the ministry in consultation with the head of the CE implementing the concession shall ensure that the concession falls within the area of the economy in which the concession arrangement may be carried out and also the proposed concession by the CE has not already been allocated with public funds for the same purpose envisaged under the proposed project.

5.2.3 Upon receipt of the request for a Certificate of Concession, the Ministry in charge of Economic Affairs shall set up a team to determine if the Pre-Feasibility report has covered all pertinent issues and meets the necessary criteria.

5.2.4 The team shall submit their advice in a written report to the Ministry for Economic Affairs within fourteen (14) days from the date the team was constituted.

5.2.5 Depending on the findings of the team constituted as per section 5.2.3, the Minister for Economic Affairs shall proceed to do any of the following:

a) Issue a written approval as the Certificate of Concession for the procurement of the project as a concession or
b) Issue a conditional approval, if additional information is required to make a decision

c) Reject the request to issue a Certificate of Concession (CC)

5.2.6 If the Ministry issues the CC as per section 5.2.5 (a), shall ensure that the same CC is copied to the IMCC which is responsible for overseeing concessions implementation ranging from concession bid preparations to the final signing of the contract by the winning concessionaire.

5.2.7 The CC shall include state at minimum the following:

a) The project registration number
b) The proposed period of the concession
c) The key objectives and strategic benefits of the concession
d) Any bottlenecks and/or barriers that need to be addressed in the course of the concession procurement process and before the contract award
e) Whether the CE have the capacity to implement the specific concession project or they may require the services of an Advisor/s. If the services of an advisor / technical assistance are required, there is need to specify the phase of the procurement process such services would be required.
f) Any other requirements as may have been identified by the technical team set under section 5.2.3.

5.3 Conducting a feasibility Study for a concession project

5.3.1 The Feasibility study is an evolving, dynamic process. While it is done primarily to decide the optimum service-delivery option, it is also used throughout the procurement phase: for guidance on the formulation of the bidding documents and continuous risk tracking.

5.3.2 The Concession Entity shall initiate a Feasibility study for a proposed concession only after the Ministry in charge of Economic Affairs has included the project in the Annual Concession Plan. The requirement to undertake a Feasibility study for a project will be communicated to the Concession Entity by the Minister for Economic Affairs.

5.3.3 The Feasibility study may be undertaken by an external Advisor(s), who shall be contracted in accordance with the Chapter 8 of the procurement manual depending on the proposed selection method. If an external Advisor is to be procured at this stage and it is deemed that his services may be required for the entire concession proceeding period after the issue of the Certificate of Concession, then the Terms of Reference shall be drafted to cover all the critical stages of concession procurement.

5.3.4 The Advisor shall conduct the Feasibility study in consultation with the head of the CE and other relevant Agencies; including but not limited to stakeholders directly affected by the project, Ministries and Agencies.

5.3.5 The Feasibility report shall be submitted to the Head of the Concession Entity for review. Upon approval, the Head of the Concession Entity shall submit a copy of the report to the Minister for Economic Affairs for approval.
5.3.6 If the Feasibility report indicates that the key objectives of the Government will not be met when the project is implemented, the Head of the Concession Entity shall discuss the report with the sector Ministry for further action.

5.3.7 Once all the preliminaries have been met as per Chapter 4 and 5 of this concession manual, the CE shall commence the engagement of the key stakeholders. The importance of Stakeholders in the concession projects are discussed in details in the next chapter.

5.3.8 Summary of key steps in this chapter is summarized in figure 3 below

![Figure 3: Chapter Summary of the key steps](image)

5.3.10 Sample Feasibility Study Checklist is shown in the next page
### Table 3: Sample Feasibility Study Checklist

<table>
<thead>
<tr>
<th>AN</th>
<th>Particulars in the applicable box</th>
<th>provided</th>
<th>Not provided</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>General</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>Name of the Project</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>Type of concession (BOT, BOOT, BOO etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.3</td>
<td>Location (Province/District/Town)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.4</td>
<td>Responsible Ministry/Department</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Project Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>Brief description of the project &amp; justification for the project.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.2</td>
<td>Possible alternatives, if any</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.3</td>
<td>Estimated capital costs with break-up under major heads of expenditure also indicate the basis of cost estimated</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td>Phasing of investment (if required)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Financing Arrangements</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Sources of financing (equity, debt, mezzanine capital etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>Indicate the Net Present Value (NPV) of revenue streams with appropriate discounting</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.4</td>
<td>Who will fix the tariff / user charges? Please specify in detail</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.5</td>
<td>Have any financial institutions been approached? If yes, their response may be indicated</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Internal Rate of Return (IIRR)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>Economic IRR (if computed)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>Financial IRR (project and equity), indicating various assumptions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Government Clearances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1</td>
<td>Status of environmental clearances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.2</td>
<td>Clearance required the local bodies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Federal Government of Somalia Support</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.1</td>
<td>Viability Gap Funding, (VGF) if required</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.2</td>
<td>FGS guarantees being sought, if any</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Concession Agreement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.1</td>
<td>Term sheet of the proposed Concession Agreement</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Criteria for short listing at RFQ stage</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.2</td>
<td>Indicate the criteria for short listing</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6. Consultation Process with Concession Stakeholders

6.1 Introduction

6.1.1 The early involvement of all stakeholder / public in the concession process helps develop an enabling environment. The stakeholders provide valuable information on the points of concern, the performance expectations, and potential risks. This input is also critical to assess whether key business assumptions of the proposed concession (in particular tariffs/fees) are realistic and enforceable. Avoiding consultation invites the risk of later opposition, which slows or derails the process. Ongoing consultation with stakeholders is important at every stage.

6.1.2 Consultation with potential bidders and partners is also critical to ensure that the proposed concession design meets their requirements and objectives. Otherwise, there could be risks that the design includes an unrealistic combination of undesirable features such as high-level service, low prices, no subsidies, and short concession periods that will make the project unattractive to bidders or unsustainable. Collecting informal feedback from the market during the preparation stage is therefore critical. More formal consultations can take place during project implementation.

6.2 Presentation of Concession Option to the Public

6.2.1 A concession Entity shall pursuant to the receipt of the Certificate for Concession as per section 5.2 of this CM, CE shall undertake public stakeholder consultations as part of the concession implementation process.

6.2.2 The importance of Stakeholders consultations is summarized in Box 5 below

**Box 5: Importance of Stakeholders’ consultations in concession projects**

- a) Inadequate consultation or communication with stakeholders increases the danger of opposition, potentially late in the process, leading to delays or even cancellation of the concession project.

- b) Stakeholders in concession projects and processes are considered critical to the sustainability of a concession in both short, medium and long – term even if the contract is awarded despite opposition, the difficulty and risk of the project increase drastically if public support is not present.

- c) Stakeholders provide valuable input to the design and practicality of an approach. Allowing stakeholders to comment on concession strategies allows for a sense of buy-in and can lead to innovative approaches

- d) Broad public support and understanding of the reform agenda encourage the government to stay committed

- e) Dissemination of information leads to increased credibility, openness, transparency and accountability of project partner
6.3  Key Stakeholders in Concession Process / Implementation

6.3.1  The following stakeholders are considered as key in concession projects. Their roles are as discussed in table 4 below.

Table 4: The Role of Different Stakeholders in Concession Process

<table>
<thead>
<tr>
<th>#</th>
<th>The name of the Stakeholder</th>
<th>The role of the stakeholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Government</td>
<td>a) Establish and prioritize goals and objectives of PPP and communicate these to the public</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Approve decision criteria for selecting preferred concession option</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Approve recommended concession option</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Approve regulatory and legal frameworks</td>
</tr>
<tr>
<td>2.</td>
<td>Development partners</td>
<td>a) Assist the government in Prioritizing Concession projects</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Technical support</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Financial support</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Assist in project Monitoring and evaluations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>e) Assist in CEs staff capacity building</td>
</tr>
<tr>
<td>3.</td>
<td>Implementing Concession Entity</td>
<td>a) Identify company-specific needs and goals of concession</td>
</tr>
<tr>
<td></td>
<td>staff.</td>
<td>b) staff Provide company-specific data as may be required</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Assist in marketing and due diligence process</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Implement change made on the concession plans</td>
</tr>
<tr>
<td></td>
<td></td>
<td>e) Prepare concession bid documents in collaboration with technical experts</td>
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<tr>
<td></td>
<td></td>
<td>f) Receive and safeguard bids received</td>
</tr>
<tr>
<td></td>
<td></td>
<td>g) Conduct bid opening procedures</td>
</tr>
<tr>
<td></td>
<td></td>
<td>h) Perform secretarial services for the Concession Entity</td>
</tr>
<tr>
<td></td>
<td></td>
<td>i) Such other functions as may be conferred by the head of the entity accordingly</td>
</tr>
<tr>
<td>4.</td>
<td>Consumers / the Public and the</td>
<td>a) Communicate ability and willingness to pay for service</td>
</tr>
<tr>
<td></td>
<td>Civil Society (CS)</td>
<td>b) Express priorities for quality and level of service</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Identify existing strengths and weaknesses in service</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Civil Society to provide third party monitoring services (monitoring the concession</td>
</tr>
<tr>
<td></td>
<td></td>
<td>implementation progress)</td>
</tr>
</tbody>
</table>


### The role of the stakeholder

<table>
<thead>
<tr>
<th>#</th>
<th>The name of the Stakeholder</th>
<th>The role of the stakeholder</th>
</tr>
</thead>
</table>
| 5. | Investors                   | a) Provide feedback on attractiveness of various concessions options  
|    |                             | b) Provide Financing as per the agreed terms and conditions set  
|    |                             | c) Management and sharing potential risks  
|    |                             | d) Follow rules and procedures of competitive bidding process  
|    |                             | e) Perform thorough due diligence resulting in competitive and realistic bidding  |
| 6. | Strategic consultants       | a) Provide unbiased evaluation of options for concessions  
|    |                             | b) Review existing framework and propose reforms  
|    |                             | c) Act as facilitator for cooperation among stakeholders  |

6.3.2 The range of Stakeholders Interests in concessions projects are displayed in Figure 4 below

**Figure 4: The range of Stakeholders’ Interest in Concessions Projects**

- **Government**
  - Maximize revenue  
  - Provide universal access to service  
  - Ensure affordable basic service  
  - Promote fair competition  
  - Attract investors  
  - Improve public welfare

- **Public / consumers / CS**
  - Ensure fair pricing  
  - Improve quality and Reliability of service  
  - Increase accountability and responsiveness

- **Investors**
  - Ensure stable, transparent regulatory process  
  - Enable organizational restructuring and asset allocations that favor efficient operations  
  - Provide trained human resources  
  - Generate more investment opportunities

- **PE / CE Employees**
  - Ensure fair treatment of Present employees  
  - Provide career opportunities  
  - Improve productivity, Efficiency and morale
6.4 Information at the Stakeholders’ Forums

6.4.1 At the stakeholder forum, the Concession Entity shall at least provide information on the following:

a) The strategic importance of the Project
b) The extent of investment or private resources i.e. financial, human, capital, technology etc. to provide the needs of the community.
c) The technical and financial feasibility of the Project.
d) Measures instituted and / or may be instituted to address any environmental challenges and adverse externalities for the population.
e) Any other reason that may justify choosing the concession option.

6.5 Types of consultative methods to engage with Stakeholders’

6.5.1 For stakeholders to play an active role in the concession process, they must be given not only a forum for participation but also the information they need to participate effectively.

6.5.2 The appropriate forum to communicate and build support for concession is through an iterative dialogue with stakeholders. Each communications program must be tailored to the local context and concession project, but would include some or all the components below:

a) **Conducting an Opinion research**: The CE with the help of technical advisor where necessary can conduct an opinion research to gather data on stakeholders, their perceptions, and behaviors with respect to the issues concerning a specific concession project. The research gathered may influence the content and media of the communications program as well as the reforms themselves. The research shall be conducted on a relatively formal basis through questionnaires, polling, etc.

b) **Stakeholder consultation**: Consultation is a less formal process through which themes and policies of interest are discussed within or across stakeholder groups. It is usually intended to gather information and build an understanding among the reformers as to current perceptions and understanding and the basis of those opinions. A key part of stakeholder consultation is to manage expectations with respect to how feedback will be incorporated into the reform process; that is, the feedback may not translate into direct change in the concession design or process but will be one stream of influence. This might be accomplished through focus groups or stakeholder discussion groups

c) **To create public awareness**: Public awareness efforts are aimed at a broad range of stakeholders and designed to increase general awareness of an issue that is intended for discussions. This is considered as a proactive distribution of information that will help inform public reaction to the proposed concession. This might be done through TV, radio, town meetings, and newspapers.
d) **Conducting Public education**: Public education is the process of providing stakeholders with the tools and information required to increase understanding of an issue or to take on a new role. This is a more specific and detailed program than public awareness.

6.5.3 Concession Entities can use either or the combination of the above methods to engage with the stakeholders.

6.5.4 CE’s communication activities are required to begin early in the process and continue through to closure and even during implementation of the concession project. The project structure should incorporate mechanisms to ensure ongoing communication with the public and customers.

6.5.5 The communication program associated with concession has to occur not only at all key stages of concession process, but also on several levels: e.g. at the policy or key decision-makers’ level, the level of the enterprise, among the stakeholders specifically affected by a concession, and among the public at large as may be needed.
Chapter 7

7. Concession Procurement Planning

7.1 Introduction

7.1.1 A key initial task for the Concession management team or its advisers shall be to develop a detailed project plan, including a timetable for concession project preparation and procurement. The plan needs to take into account all the key steps in the concession process, including and not limited to the following:

- Concession document development;
- Stakeholder consultation meetings;
- The bidding process and private sector interface; and
- The government approval process.

7.1.2 Concession preparation is a complex undertaking with parallel activities feeding into critical paths. It is important that activities that are on the critical paths be initiated at the right time and monitored closely to ensure that they proceed as planned and do not cause delays to other activities. It is helpful to use project-planning software to create the timeline in the form of a “Gantt” chart. The chart can then be easily updated from time to time. If the CE does not have the capacity to prepare the procurement plan or the Gantt chart should hire a consultant experienced in project planning.

7.2 The Concession Procurement Plan

7.2.1 The concession procurement plan shall spell out the processes, timelines, approvals as well as the Agencies responsible for various actions. The Procurement Plan is required to ensure that the procurement is undertaken in a timely and cost effective manner by the Concession Entity. Once the concession Plan is developed and approved by the head of the procuring entity and also the ministry in charge of the economic affairs, the plan shall be made available to IMCC in order to help them in planning critical meetings concerning concession implementation project.

7.2.2 The CE shall be responsible for the development and also for seeking approvals of the concession procurement plan. The concession procurement plan shall include the following details outlined in Box 6 in the next page.

Box 6: Contents of a concession procurement plan

(a) The allocation of responsibilities and deadlines for all pre-implementation activities and necessary for the concession procurement process including the engagement of consultants to advice at any stage of the concession process.

(b) Arrangements to ensure co-ordination with other institutions where necessary.

(c) Procurement option recommended and endorsed in the IMCC

(d) The method to be employed in the procurement of the concession indicating whether it is a National Competitive Bidding or an International Competitive Bidding and the reasons for same.

(e) The proposed dates for the General Notice of Investment Opportunity, Expression of
Interest, Invitation to Bid, evaluation, negotiation and all processes leading to the concession agreement.

(f) The timetable for the key milestones and approvals required from
- Head of the CE
- Ministry of Economic Affairs
- IMCC
- CBEP

g) In addition to the above, the following additional report shall be attached to the procurement plan.
- Contingency plan for dealing with deviations from plan in case they occur
- Intended concession records storage and documentation for easy auditing and referencing

7.3 Submission and Approval of procurement plan

7.3.1 The Head of the Concession Entity shall review the procurement plan. If satisfied with the plan, shall forward to the IMCC for approval and subsequent forwarding to the Cabinet for the final approval.

7.3.2 The IMCC shall where necessary and to ensure compliance with the procurement Bill, request for changes in the Concession Procurement Plan within the twenty-one days (21) days of receipt of the Concessions Implementation plan from the Head of CE as per article 110 of the PPCDB.

7.3.3 The IMCC shall convey their decision to the Head of the Concession Entity in writing. The IMCC shall where applicable, indicate any areas of the plan that requires an amendment. The Concession Entity shall effect the necessary amendments to the Plan as proposed by the IMCC and thereafter, the Concession Entity shall proceed to comply with the Plan as amended.

7.3.4 Summary of the key steps are shown in figure 5 below:

**Figure 5: Summary of the key steps in concession procurement plan**

Stage 1
- Prepare the concession procurement plan

Stage 2
- Submission and approval of procurement plan
7.4 Concession procurement plan update

7.4.1 The Head of the CE shall appoint a project officer or a process consultant who shall regularly be updating the concession procurement plan throughout the concession implementation period. Once the procurement is updated and approved by the head of the CE, it shall be circulated and shared with other members of various concession project working committees.

7.4.2 Issues or items identified but not yet on the concession project plan should be brought to the attention of the head of the CE who then shall initiate discussions within the Working Committee to determine how to resolve various issues or document the items in the project plan.

---

3 The procurement plan should be one component of the general project management planning tool required of the project officer. Refer to the appropriate project management literature and international best practice for overall project planning and management.
### Table 5: Concession Procurement Plan Checklist

<table>
<thead>
<tr>
<th>AN</th>
<th>✔ (tick) <strong>Particulars in the applicable box</strong></th>
<th>Yes</th>
<th>No</th>
<th>Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Are the project budget and timetable under control?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Explanatory Notes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Does the project team have adequate skills and resources, including appropriate external advisors?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Explanatory Notes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Have remaining project activities been timetabled, defined and resourced?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Explanatory Notes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Are all relevant project approvals in place?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Explanatory Notes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Are sufficient financial resources available to the Authority to cover the costs of the preparation and Procurement phase?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Explanatory Notes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Are project governance structures and processes established to ensure effective decision making?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Explanatory Notes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Have all relevant stakeholders been identified and consulted to check their commitment to the project?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Explanatory Notes</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
8. **Concession Bid Document**

8.1 **Preparation of Concession Bidding Document**

8.1.1 This section of the CM provides guidance on the consultative process required for the development of the Concession bidding documents. The bidding document should include the outcome of the consultative meeting with the stakeholders as per chapter 6 of this CM and also should incorporate technical issues generated from the feasibility study conducted as per chapter 5 of this concession manual. This will in essence give a comprehensive concession bidding document that accommodates the interest of all the various parties that includes stakeholders, the government and the investors.

8.1.2 In case there is lack of adequate technical capacity to develop a Concession Bidding Document (CBD) within the CE, it is advisable for the CE to hire the services of a technical advisor to assist in this activity. The hiring of an advisor shall be done in accordance with the procuring of consulting services procedures outlined in chapter 12 of the Procurement Manual (part 1 of this manual).

8.1.3 Preparation of the CBD shall be done consultatively and it is advisable for the CE to establish a Concession Project Team (CPT) that will work closely with the advisor for the purposes of ensuring that a credible bidding document is developed that is clear and unambiguous to:

a) Reduce problems during the procurement process regarding bidding, evaluation, and contract award by setting out clearly the evaluation criteria and the key stages of the procurement process.

b) Set up rules and expectations for contract performance— including timely delivery of key outcomes of the project.

c) Enable bidders to provide all the appropriate information required about their firms/consortium

8.2 **Scope of Concession Bid Document**

8.2.1 Table 6 in the next page gives a summary of crucial information that should be contained in the concession bidding document.
### Table 6: Sample Contents of a Concession Bidding Document

**Contents of the concession bidding documents**

<table>
<thead>
<tr>
<th>#</th>
<th>Project information memoranda</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>a) Project description, background and overview</td>
</tr>
<tr>
<td></td>
<td>b) Social economic requirements</td>
</tr>
<tr>
<td></td>
<td>c) Pre/Feasibility Study</td>
</tr>
<tr>
<td></td>
<td>d) Performance parameters/output specifications</td>
</tr>
<tr>
<td></td>
<td>e) Legal requirements and statutory regulations related to the concession</td>
</tr>
<tr>
<td></td>
<td>f) Financing requirements</td>
</tr>
<tr>
<td></td>
<td>g) Identified revenue parameter</td>
</tr>
<tr>
<td></td>
<td>h) Risk transfer</td>
</tr>
<tr>
<td></td>
<td>i) Objectives of the proposed concession</td>
</tr>
</tbody>
</table>

2. **Invitation to Bid as applicable**

3. **Instructions to bidders**

   a) Preparation and submission of proposals
   a) Submissions
   b) Technical Proposals
   c) Financial Offer
   d) Alternative Bids
   e) Format and Signing of Proposal
   f) Sealing and Marking of Proposal
   g) Bid Submission Date
   h) Late Bids
   i) Modification/Substitution/Withdrawal of Bid
   j) Criteria for responsiveness
   k) Status and composition of Bidders
   l) Project inspection and site visits
   m) No contact policy
   n) Pre-bid meeting
   o) Bidder’s responsibility
   p) Grounds for disqualification
   q) Concession Entity contact details.

3. **Procurement Process**

   a) Schedule of bidding process
   b) Language of the bid
   c) Clarification processes
   d) Changes to the composition of consortiums
   e) Participation in more than one consortium
### Public Procurement Concessions Manual

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>f)</td>
<td>Bid security</td>
</tr>
</tbody>
</table>
g) | Confidentiality |
h) | Form of agreement |
i) | Negotiations |
j) | Non-Discriminatory and Transparent and Objective Manner |

#### 4. Information required about the bidder

- a) Current workload of consortium members
- b) Bidder’s capability and strength
- c) Proposed consortium composition and structure
- d) Covenant between consortium members, subcontractors and lenders (if applicable)
- e) Financial and market standing
- f) Equity, ownership and directorship
- g) Ability to fulfill the project’s social / economic objectives
- h) Historical and current approach to social responsibility
- i) Approach to the concession including innovations and methodology
- j) Commitment and capacity to meet project timetable
- k) Ability to raise debt and equity or corporate finance and to provide security
- l) Project management capability
- m) Risk management capability
- n) Demonstration of understanding key project demands/complexities
- o) Disclosure of legal processes underway that affect bidding consortiums
- p) General issues raised by bidders

#### 5. Evaluation Process

- a) Methodology
- b) Opening and evaluation of technical proposals
- c) Determination of Proposal Responsiveness
- d) Technical Evaluation Criteria including Margin of Preference (if applicable)
- e) Opening and Evaluation of Financial Proposals
- f) Financial evaluation criteria

#### 6 Draft Concession Agreement will be part of the bidding document

#### 8.3 Approval Process of the CBD

8.3.1 The Procurement Unit shall prepare the full set of the concession bid document as outlined in section 8.1.and 8.2 of this CM and shall submit same to the head of the Concession Entity for review and approval.

8.3.2 Upon the review and approval by the head of the CE, the head of CE shall submit the draft CBD to the Inter - Ministerial Concessions Committee (IMCC) for the final approval.

8.3.3 To undertake the above responsibility in a credible manner, the IMCC shall establish an appropriate technical team to review the concession bid document. The IMCC may approve or not approve the CBD with reasons. If for some reasons the IMCC does not approve the CBD, shall state the
reasons for non – approval and shall make appropriate recommendations in writing to the head of the CE within 21 days of the receipt of the draft CBD

8.3.4 The Concession Entity shall resubmit the corrected draft concession bidding documents to the IMCC for its approval within 7 days.

8.3.5 In the event that the CBD is approved by the IMCC, the Concession Entity shall publish a General Notice of Investment Opportunity (GNIO), Expression of Interest (EOI), Invitation to Bid (IFB) or all of them in successive order as the context may require in accordance with the bidding document and the provisions of this Concession Manual.
Chapter 9

9. Concession Bidding Methods

9.1 General

9.1.1 The Concessions bidding proceedings shall as a default method follows open competitive bidding method (refer to chapter 10 of this CM). However, in justified cases other methods given in Table 7 below may be used. Chapter 10 of this concession manual shall give details of the concession procurement process that the CE shall undertake to ensure that all the concessions procurement proceedings are procured in accordance with the concession procurement Principals as set out in Chapter 5 and sub – section 1.5 of this CM.

9.1.2 Table 7 is a summary of the procurement methods and the conditions under which they can be applied.

Table 7: Summary of Concessions Procurement Methods

<table>
<thead>
<tr>
<th>#</th>
<th>Method</th>
<th>When applicable</th>
<th>Approval required</th>
<th>Bidding period</th>
</tr>
</thead>
</table>
| 1 | National Competitive Bidding (NCB)          | (1) An Entity shall use National Competitive Bidding where it is concluded that:  
(a) There is the availability of adequate technology in Somalia for the project of the Concession.  
(b) The expected capital outlay is feasible to be raised by local businesses.  
(c) The concession falls within the area of the economy which is by law restricted to Somalia  
(2) Only domestic firms shall be invited to participate in the particular bid but does not restrict regional or foreign companies. | Not required      | Not less than 4 weeks |
| 2 | International Competitive Bidding (ICB)     | (1) International Competitive Bidding shall be used where one or more of the following conditions may prevail:  
(a) The project requires international expertise  
(b) Local suppliers cannot deliver the required services/goods/works.  
(c) The project requires technology not available in Somalia  
(d) The project requires capital outlay not ordinarily available in Somalia. | Not Required      | Not less than 6 weeks |
## Public Procurement Concessions Manual

<table>
<thead>
<tr>
<th>Method</th>
<th>When applicable</th>
<th>Approval required</th>
<th>Bidding period</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) Domestic Firms to Participate In the International Competitive Bidding</td>
<td>In all instances of ICB, domestic business which meets the minimum criteria for participation shall, without restrictions, be qualified to participate either solely or in association with foreign entities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) Criteria for the Application of Margin of Preference In Concessions</td>
<td>a) Where a concession is awarded on the basis of ICB, a Concession Entity may allow for Margin of Preference, once the methodology of its application for concession agreements is laid down by the appropriate authority empowered to do so.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 2. Other procurement methods

3. **Restricted Competitive Bidding**

   1) A Concession Entity may use limited or restricted competitive bidding in lieu of open competitive bidding when it has a list of prequalified bidders.

   2) All prequalified bidders shall be asked to submit their bids to the CE and upon which procurement process outlined in chapter 10 of this CM shall apply.

   Approval by IMCC Not less than 4 weeks

4. **Sole Source Method**

   1) Method to be used if it fulfills the following conditions:
      a) The Concession requires specialized expertise that is available only to one specific bidder.
      b) The Concession involves an innovation the patent for which is held by one particular bidder.
      c) The Concession requires specialized research, or experiment that only one bidder is prepared to undertake.
      d) The Concession is in respect of strategic national interest to have only a particular bidder.

   Approval by IMCC Not less than 4 weeks
Chapter 10

10. Concession Bidding Process

10.1 General

10.1.1 Concession projects should as a default method undergo an open competitive bidding process. Open competition not only provides transparency in the process but also provides a mechanism for selecting the best-value proposal. However, in justified cases other methods as stipulated in Chapter 9 may be used. Unlike conventional procurement, concession competitive bidding procedure requires a significantly higher level of preparation by the CE.

10.1.2 Prequalification: In case of Restricted Competitive Bidding process, in the first stage applications to qualify are invited as per technical and financial criteria specified in a Request for Expression of Interest document. The firms are then prequalified based on their technical and financial capabilities. The purpose of the request for the EOI stage is simply to determine whether or not an interested firm has the technical and financial capabilities to implement the project.

10.2 The Concession Bidding Process

10.2.1 The bidding process begins once the IMCC approves the CBD as per section 8.3.5 of this CM. The process involves a series of steps summarized in the flow chart in the next page. The goal of the bidding process is to maximize value for money by creating appropriate incentives through a competitive process for the award of concession contract.

10.2.2 During the bidding process, sufficient attention should be placed on the key good procurement principles of transparency and non – discrimination which will help to bolster the legitimacy of the concession and its acceptance by stakeholders.

10.2.3 Procurement principles must be upheld from the time the formal bidding process begins. As soon as the procurement notice is published, all potential bidders must be given equal treatment and a careful audit trail of all contacts with potential bidders must be kept. The equal treatment principle dictates that information provided to one potential bidder should be made available to the other potential bidders in a timely manner.
10.2.4 The above concession procurement flow chart is explained in details in the following subsections

10.3 **Step 1: Issue General Notice of Investment Opportunity (GNIO)**

10.3.1 Upon the approval of the concession bid document, the Concession Entity shall publish a General Notice of Investment Opportunity. The advert for GNIO shall apply to all concessions to be procured under National Competitive and International Competitive Bidding. A minimum of two notices must be placed locally and internationally in wide circulated newspaper, journals, tender websites as well as official gazettes and government websites. The publication shall remain open for a period of not less than 30 days.

10.3.2 A sample format for the advertisement of the GNIOI is provided in table 8 below

<table>
<thead>
<tr>
<th>Table 8: Contents of the GNIO</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Notice of Investment Opportunity</strong></td>
</tr>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
</tbody>
</table>
10.4 Step 2 - Request for Expression of Interest / prequalification of firms or consortia (applicable only in case of Restricted Competitive Bidding)

10.4.1 In case of Restricted Competitive Bidding, the purpose of prequalification is to include only those bidders that appear to be capable of carrying out the concession project in an adequate manner. The requirements for pre-qualifications shall be reasonable and efficient and must not unnecessarily create constraints that limit the number of bids or the possibility of maximizing competition.

10.4.2 The request for pre-qualification shall be announced and publicized well in advance of the date for bid submission, in two or more national and international newspapers of wide circulation, on the website of (relevant Ministry) and any website available to the Concession Entity to ensure maximum publicity for the purposes of achieving maximum competition.

10.4.3 The CE shall publish the intention to award the concession project, describing clearly the characteristics of the project (brief overview of the project and scope of services) and the minimum technical, financial and operational qualifications and requirements for participation.

10.4.4 The notice inviting for the EOI / Prequalification will also provide full details of where the interested parties can obtain EOI documents and the Project Information Memorandum, which provides details of the required qualifications and eligibility criteria and other related information about the project. Invitation to express interest shall remain open for a period of not less than 30 days.

10.4.5 A sample format of the Notice to invite the Expression of Interest is shown in the next page - table 9.
Table 9: A sample format of a notice to invite the EOI / Prequalification Notice

<table>
<thead>
<tr>
<th>Notice for Expression of Interest / Prequalification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 The Government’s objectives in seeking a public-private partnership</td>
</tr>
<tr>
<td>2 A brief description of the project</td>
</tr>
<tr>
<td>3 The role that will be played by the successful private sector partner</td>
</tr>
<tr>
<td>4 The location and deadline for submissions</td>
</tr>
<tr>
<td>5 The expected format of submissions:</td>
</tr>
<tr>
<td>6 A profile of the potential partner making the application (if the partner is to be a consortium formed for the purpose of providing a proposal, each person or firm in the consortium should provide information on its principal business and the length of time that it has been in operation)</td>
</tr>
<tr>
<td>a) The identification of the contact person for the private partner;</td>
</tr>
<tr>
<td>b) A statement of financial stability (that can be evaluated on a pass/fail basis)</td>
</tr>
<tr>
<td>c) A statement of financial capability including access to capital (debt and equity) – Bankability of the firm</td>
</tr>
<tr>
<td>d) A statement of performance capability that includes an overview of overall experience such as</td>
</tr>
<tr>
<td>i. experience in similar projects,</td>
</tr>
<tr>
<td>ii. senior management expertise,</td>
</tr>
<tr>
<td>iii. expertise of those staff members who will work on the project,</td>
</tr>
<tr>
<td>iv. ability to obtain necessary resources, references</td>
</tr>
<tr>
<td>7 The names, positions and means of communicating with the employees of the Concession Entity who are authorized to communicate directly with bidders.</td>
</tr>
<tr>
<td>8 An address where the full EOI / Prequalification document can be obtained</td>
</tr>
</tbody>
</table>

10.4.6 Pre – Application meeting and issue of clarification

10.4.6.1 A pre – application meeting may be held to clarify and respond to questions that the bidders could have regarding the project and the information provided in the EOI. The purpose of this meeting is to provide a forum for any general inquiries about the EOI process. If some clarifications sought may lead to a change in any clause of the EOI, the change shall be incorporated in the EOI and such changes shall be communicated in writing to the entire participants. Depending on the nature of the clarifications, the CE may decide to extend the date for EOI submission or may decide to retain the
original date for submission. The updated EOI shall be uploaded as appropriate in the websites and in other relevant advertising materials clarifying the changes made.

10.4.6.2 Any private sector firm or consortium fulfilling the technical, financial and operational expertise requirements will have the right to present an expression of interest to qualify.

10.4.7 Submissions and opening of the EOI

Before the submissions of the EOI by the potential / interested bidders, the head of the CE shall appoint / constitute a committee to receive and open the EOI. The committee shall after receipt of EOI forward them to CBEP. The CBEP shall complete its work within 14 days of its constitution and shall forward its evaluation report to IMCC for review and approval. The IMCC shall be expected to finalize its work within 7 days of the receipt of EOI evaluation report from CBEP.

10.4.8 Process of EOI Evaluation is summarized in Box 7 below

Box 7: Summary of EOI evaluation process

a) The constituted CBEP by the IMCC shall evaluate the expressions of interest and verify that the interested firms comply with the pre-qualification requirements on operational and technical expertise, and financial capability.

b) The CBEP shall make an evaluation report advising the IMCC of the list of firms that submitted expressions of interest and were rejected, explaining for each one the technical, operational or financial requirements that were not fulfilled. The IMCC will review the proposed rejections and may require the CBEP to clarify or review the rejections of one or more firms that CBEP considered should be rejected if the reasons for such rejection were not consistent with the requirements established in the conditions of the request for qualifications / EOI

c) Once the IMCC has reviewed and has issued a letter of no objection to the pre-qualification process, the CE will provide list of the pre-qualified bidders to the interested bidders. The Concession Entity will also publish the list of pre-qualified bidders on its website.

d) IMCC shall also copy its letter of no – objection to the Ministry in charge of Economic Affairs, Ministry of Finance and the Ministry of Justice.

e) Pre-qualified bidders shall not be permitted to join with any other pre-qualified bidder to submit a bid.

10.4.9 A sample format of the evaluation criteria for evaluating the Expressions of Interest is shown in Table 10 in the next page.
### Table 10: Sample Format of EOI Evaluation

<table>
<thead>
<tr>
<th>1. Structure of Firms and Composition</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Proposed firm/consortium composition and structure</td>
</tr>
<tr>
<td>b) Strength of covenant between firm/consortium and key subcontractors</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Technical capacity and Deliverability</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Commitment and capacity to meet project timetable</td>
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<tr>
<td>a) Project management capability</td>
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<tr>
<td>b) Current workload of consortium members</td>
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<td>c) Risk management capability</td>
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<tr>
<td>d) Skill and experience of relevant firm/consortium and key subcontractors</td>
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<table>
<thead>
<tr>
<th>3. Track record and experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Projects of similar size and nature</td>
</tr>
<tr>
<td>b) Experience in the area of the Concession option</td>
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<thead>
<tr>
<th>4. Financial capacity</th>
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</thead>
<tbody>
<tr>
<td>a) Financial and market standing</td>
</tr>
<tr>
<td>b) Ability to raise debt and equity and to provide security</td>
</tr>
</tbody>
</table>

### 10.5 Step 3: Invitation to Bid (IFB)

10.5.1 Based on the bidding document (prepared by CE as per the detailed guidelines provided in Chapter 8), the CE shall publish an **Invitation to Bid (IFB)** notice. In case of NCB, it should be published in at least two national newspapers of wide circulation besides on website(s) (of relevant ministry or any other popular website if available.) In case of ICB, in addition, it should also be published on website(s) of international repute (such as dg Market and, “UNDB on line”.) The invitation to bid should contain all the relevant information such as the brief description of the project, place and mode of obtaining the complete bidding document, bid security requirement, date and place of bid submission and bid opening etc.

10.5.2 In case of NCB and ICB, the bidding document shall be issued by CE to all bidders making request in accordance with the procedure laid down in the IFB. In case of restricted competitive bidding the CE will send to each pre-qualified firm the IFB and complete bidding document. In case of single source bidding, the IFB and bidding document shall be sent to the single source identified.
10.5.3 Bidders’ Conference and Processing of Clarifications

10.5.3.1 In order to maximize the benefits of concessions and obtain maximum value for money, it is critical to manage the bid process well. For instance, shortly after issuing the invitation to bid it is important to hold a bidders’ conference to explain issues and take questions from the bidders. Written clarifications should be provided to all bidders.

10.5.3.2 The complexity of large concessions projects requires a high degree of interaction between the CEs project management team and the bidders. However, the terms and conditions for an interactive process, including the procedures, protocols and rules, should be included in the bidding document detailing the broader set of conditions, rights and obligations to which bidders consent. The objective of developing this iterative process is to improve the quality of the proposals by:
   a. Fostering innovative solutions from different bidders;
   b. Clarifying any technical, financial and commercial issues; and
   c. Providing timely, direct and specific feedback to all bidders on key aspects of their bids.

10.5.3.3 The CE project management team has to take particular care to protect each bidder’s commercial in-confidence material and intellectual property. More generally, the project management team will have to consider probity principles and rules as part of the implementation of the interactive process.

10.5.3.4 A Bidders’ Conference is a key element of the communication strategy that helps the CEs to build substantial trust and confidence with the bidders and other stakeholders. Key elements include the following:
   a) Adequate time should be provided between the issue of IFB and the date of the Bidders’ Conference and the deadline for submission of bids.
   b) All information, including answers to any one firm’s questions, should be made available to all shortlisted bidders.
   c) Bidders should provide their queries in writing within a specified number of days before the Bidders’ Conference.
   d) The Bidders’ Conference should be attended by senior representatives of the CE together with their project advisors on the project. All shortlisted firms are invited to attend.
   e) Further project details should be provided at the Bidders’ Conference, including answers to all the queries submitted in writing, and additional questions may be entertained at the Bidders’ Conference.
The Bidders’ Conference may be followed by a visit to the project site or service area arranged by the CE.

g) The discussions at the Bidders’ Conference will be duly documented and all responses and clarifications must be communicated in writing to all shortlisted firms. The responses should also be published on the CE’s website.

10.6  Step 4: Submission & Opening of Bid and Technical & Financial Evaluation

10.6.1 Submissions of bids:

10.6.2 All responses to Invitation to Bid shall be submitted at the place and before the deadline for bid submission mentioned in the bidding document.

10.6.3 The bidder shall seal the original copy of the technical proposal, the original copy of the price proposal and each copy of the technical proposal and each copy of the price proposal in separate envelopes clearly marking each one as: “ORIGINAL TECHNICAL PROPOSAL”, “ORIGINAL PRICE PROPOSAL”, “and COPY NO. 1 – TECHNICAL PROPOSAL”, “COPY NO 1- PRICE PROPOSAL” etc. as appropriate.

10.6.4 The Bidder shall seal the original bids and each copy of the bids in an inner and an outer envelope, duly marking the envelopes as “ORIGINAL” and “COPY”.

10.6.5 The inner and outer envelopes shall be addressed to CE and bear the identification number and deadline date of submission of the bid.

10.6.6 In addition to the identification required in Sub-Clause 10.6.5, the inner envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared “late.”

10.6.7 If the outer envelope is not sealed and marked as above, the CE will assume no responsibility for the misplacement or premature opening of the bid. Bids must be received by the CE at the address specified in the bidding document.

10.6.8 The CE may, at its discretion, extend the deadline for submission of bids by issuing an addendum. In such a case all rights and obligations of the CE and the bidders previously subject to the original deadline will thereafter be subject to the extended new deadline. Any bid received by the CE after the deadline for submission of bids prescribed in 10.6.7 will be rejected and returned unopened to the bidder.

10.6.9 The bidder may modify or withdraw its bid after bid submission, provided that written notice of the modification or withdrawal is received by the CE prior to the deadline for submission of bids. The bidder’s modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of Clause 10.6.3 with the outer and inner envelopes additionally
marked "MODIFICATION" or "WITHDRAWAL", as appropriate. A withdrawal notice may also be sent by fax but must be followed by a signed confirmation copy.

10.6.10 No bid shall be modified by the bidder after the deadline for submission of bids.

10.6.11 Withdrawal of a bid during the interval between the deadline for submission of bids and the expiration of the period of bid validity specified shall result in the forfeiture of the bid security or in the execution of the bid securing declaration respectively which is applicable as per the terms and conditions of the bidding documents.

10.6.12 Opening of Bids

10.6.13 The CE will open the technical proposal, including modifications made pursuant to Clause 10.6.9, in the presence of bidders representatives who choose to attend, at the time and place indicated in the bidding document. The bidders' representatives who are present shall sign a register evidencing their attendance besides signing the bid opening checklist.

10.6.14 The price proposals will remain unopened and will be held in the custody of the CE until the time of opening of the price proposals after evaluation of the technical proposals. The time and date and location of the price proposal opening will be communicated to all concerned bidders in writing by CE.

10.6.15 Envelopes marked “WITHDRAWAL” shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to 10.6.9 shall not be opened.

10.6.16 The bidders' names, bid modifications and withdrawals, the presence or absence of bid security or bid securing declaration, and such other details as the CE may consider appropriate, will be announced and recorded by the CE at the opening. The bidders' representatives will be required to sign this record.

10.6.17 The Employer shall prepare minutes of the bid opening, including the information disclosed to those present in accordance with Sub-Clause 10.6.16.

10.6.18 Evaluation of bids

10.6.19 The criteria for the technical and financial evaluation shall be stated clearly in the Concession Bidding documents to focus bidders’ attention on the assessment areas of the IFB.

10.6.20 Evaluation of concession bids shall be undertaken by a Concession Bid Evaluation Panel (CBEP)

10.6.21 The CE if necessary may make recommendations to the head of the Entity regarding the composition of the Concessions Bid Evaluation Panel and the head of the Entity may direct that specific persons with expert knowledge on the subject be co-opted for the effective evaluation of bids.

10.6.22 The Concessions Bid Evaluation Panel shall be an ad hoc body and shall be deemed to be dissolved once its report is approved by the Inter-Ministerial Committee.
10.6.23 **Concession Bid Evaluation Criteria**

10.6.24 No criteria shall be used for evaluation that was not set out in the Concession bid documents made available to bidders and a Concession Entity shall not change the evaluation criteria after the bids have been received.

10.6.25 Minimum Contents of the Evaluation Criteria shall be as follows:

i. Technical feasibility of the proposal
ii. Effectiveness of the methods and resources to be deployed
iii. Planned improvement over the concession period
iv. The effect of the proposal on the overall strategic objectives and national development plan spelt out by the Ministry responsible for Economic Affairs
v. Technology transfer
vi. Expected effect of the concession on national income, employment of Somalis, the environment, related industries and other sectors of the economy
vii. Application of Margin of Preference in accordance with the criteria as established by the Authority.

10.6.26 **Prohibited Criteria in Concession Evaluation:**

The criteria for the selection of responsive bidders shall not at any stage, includes any of the following:

a) Criteria that cannot be reasonably interpreted as a condition meant to elicit the attainment of any of the principles provided for under the Procurement Bill and in this Manual.

b) Criteria that is non-commercial in character and which will not lead to the attainment of the objectives of the concession arrangement.

c) Ambiguous criteria the interpretation of which can be subjective.

d) A criteria or condition that leads to the grant of the concession to particular persons or group of persons.

e) A criteria or condition designed to facilitate the selection of a known bidder in contravention of the competitive process.

f) A condition that will promote the corruption of the entire or part of the concession procurement process.

10.6.27 **Steps in bid evaluation**

Bid evaluation shall follow the following steps:

a) **Technical Evaluation:** The feasibility and standard of the proposed technical solution, covering the way in which the specified service outputs would be financed, produced, managed and delivered.

b) **Financial Evaluation:** The proposed whole-of-life cost or payment in the financial proposal.

c) **Final Evaluation:** Final evaluation which is based on the combined technical and financial evaluation.
10.6.28 Technical Evaluation

10.6.28.1 The technical evaluation would be carried out in line with technical requirements specified in the bidding document. The criteria of technical evaluation, the scores for various aspects of the technical requirements and minimum cut-off score for the technical proposal to be considered responsive to the requirements of the project will have been pre-determined and indicated in the bidding document. The relative weightage on different aspects of the requirements would vary depending on their importance to the particular project. Scores placed on individual technical aspects would be combined to arrive at an overall technical score that can be compared against the cut-off. Only the bids that meet specified minimum technical cut-off score would be carried over for financial evaluation.

10.6.29 Price proposal opening and Financial Evaluation

10.6.29.1 The CE shall inform the bidders, who have submitted bids, of the technical points assigned to each of them; and shall notify those whose proposals did not meet the minimum qualifying mark that their price proposals will be returned unopened after the contract is signed. The CE shall simultaneously notify the consultants that have secured the minimum qualifying mark of the date, time, and place set for opening the price proposals. The opening date shall allow adequate time for bidders to attend the opening of the price proposals. The price proposals shall be opened publicly in the presence of representatives of the bidders who choose to attend. The name of the bidder, the technical points, and the proposed prices shall be read aloud and recorded. The opening committee shall also prepare the minutes of the public opening.

10.6.29.2 Financial evaluation shall be carried out in the manner specified in the bidding document. Financial evaluation criteria generally would focus on one or a combination of the following, depending on the nature of the project:
   a) Price to be charged to users of the service
   b) Price or payment to be *charged* to the public sponsor or to the users for provision of the service. This may be:
      - On a per-unit basis (e.g. loading and unloading charges)
      - As an ongoing lump sum payment (e.g., an annuity)
      - As an ongoing fee based on performance (performance fee)
      - Upfront in the form of a grant
      - Price or payment to be *paid* to the public sponsor for the right to provide the service. For example, a negative grant, revenue share (as is common in ports projects), license fee etc.

10.6.29.3 It is common to take the net present values of the financial offers so that they can be compared like-for-like. Whatever the financial criteria, it should be specified in the bidding document and must be common to all bids so that bids can be scored accordingly.
10.6.30 Final Evaluation

10.6.30.1 The final evaluation shall be based on a weighted combination of the technical and financial evaluation of the bids using a pre-determined formula. The following weightage formula may be used as a guide and the specific weighting will be clearly indicated in the bidding document. The bidding document shall specify that the technical proposals and the financial offer shall each be scored out of 100 points. The scores achieved will be calculated into the bidder’s overall score using the following formula:

<table>
<thead>
<tr>
<th>Calculating the bidder’s overall score</th>
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<tbody>
<tr>
<td>( a \times (\text{technical score}/100) + b \times (\text{price score}/100) = c )</td>
</tr>
</tbody>
</table>

where:
- \( a \) is the weighting for technical (between 60% and 80%)
- \( b \) is the weighting for price (between 20% and 40%), and
- \( c \) is the total score achieved by the bidder.

10.6.31 CBEP Final evaluation Report

10.6.31.1 At the end of the above evaluation process, CBEP shall make a final report for the review and approval by the IMCC. CBEP shall conclude its evaluation within sixty (60) days of the opening of the bids. The Evaluation report shall comprise of the technical evaluation, financial evaluation, final evaluation and recommendation that the bidder with the highest overall score be invited for negotiations.

10.6.31.2 The head of the Entity shall not have the power to alter the report of the Concession Bid Evaluation Panel or to request for changes in the recommendations.

10.7 Step 5: Due Diligence – Evaluation stage

10.7.1 Due diligence of all recommended bidders shall be undertaken as provided below:

1) Prior to the submission of the evaluation report to the Inter-Ministerial Concession Committee the Concession Entity shall undertake due diligence on all responsive bidders.

2) The extent of the due diligence shall be determined by the Entity but shall at a minimum include a verification of the following:

   a) The capacity of the private sector entity to enter into the concession agreement.

   b) The authenticity of the certificate of incorporation and other statutory documents. If the private sector partner is of a foreign origin company, the validity of the document must be verified from the country of origin.
c) Authenticity of the persons purporting to represent the bidder for which purpose the public entity shall demand a board resolution of the prospective bidder authorizing the persons to negotiate or enter into an agreement on its behalf.

d) The fulfillment by the private sector entity whether wholly foreign owned or in partnership with a local counterpart of the requirements of the laws regulating business operation in Somalia.

e) Where the bidder is a consortium, proof that:
   i) None of the members is disqualified under the procurement laws.
   ii) Members of the consortium have bound themselves to assume joint and several liabilities for the private sector party’s obligations under the concession agreement or in the alternative that a member (s) of the consortium has consented to bear the risk of the other (s) and that a copy of the document evidencing same has been deposited with the entity.

f) Authenticity of the claims of technical and financial capability made by the bidder.

3. The Concession Entity may, if appropriate engage independent experts to carry out the due diligence.

10.8 **Step 6: Form of Contract**

10.8.1 Based on the form of contract included in the bidding document fine tuning would be done based on the specific bid being considered for negotiation and precise Concession Agreement shall be developed.

10.8.2 Bidders shall maintain the validity of their bids until negotiations are finalized and a Project Agreement awarded, or until the end of negotiations where no Project Agreement is awarded.

10.8.3 As a result of a successful competitive procurement process, a Project Agreement will be negotiated with the winning bidder with the lowest evaluated bid price that commits to finance, construct, maintain and operate the generation project under the conditions of the proposed Project Agreement.

10.9 **Step 7: Contract Negotiations**

10.9.1 The following shall be the contract negotiation procedures:

1. Within fourteen (14) days after the approval of the evaluation report by the Inter-Ministerial Concessions Committee, the Inter-Ministerial Concessions Committee shall constitute a Negotiations Team comprising of technocrats and relevant experts co-opted as necessary for the conduct of the negotiation with the highest ranked bidder.
2. Negotiations Team Shall comprise of a team of not less than three(3) but not more than seven persons appointed by the Inter-Ministerial Concessions Committee.

3. The Negotiations Team shall consist of technocrats and the head of concession Entity shall not be a member of the Negotiations Team.

4. The Negotiations Team shall be responsible for ensuring that the negotiations are concluded before the expiry of the original or extended date of the Bid Security submitted by the Bidder.

5. Negotiations shall be entered into with the highest ranked bidder indicated in the evaluation report and approved by the Inter-Ministerial Concessions Committee. In the event of the breakdown of the negotiations, the Negotiation Team Shall report to the Inter-Ministerial Concessions Committee. The Inter-Ministerial Concession Committee shall give approval if appropriate for the commencement of negotiations with the next highest bidder in that order of ranked bidders until negotiations are concluded and all applicable conditions are fulfilled.

10.9.2 Issues to be considered at negotiations

10.9.3 Negotiations will be based only on issues that the concessionaire may require further discussions on; or issues that the concession entity may need to make some further clarifications on.

10.9.4 Confidentiality Agreement

10.9.5 The Negotiations team shall not commence with the negotiations unless they have received a copy of the Confidentiality Agreement entered into between the bidder invited for the negotiations and the entity which restricts each of the parties from disclosing information in accordance with internationally accepted standards of confidentiality in such cases.

10.10 Step 8: Contract Signature

10.10.1 After finalization of the Contract Agreement between the Negotiations Team and the winning bidder, a relevant Officer appointed by the CE signs the contract on behalf of the government and is responsible for both the project procurement and its implementation. After the award of the concessionaire contract to the winning bidder, the bidder will be required to achieve the financial closure of the project within an agreed timeline in the Concession Agreement.

10.10.2 While government may have a role to play in assisting with financial closure, it is primarily the responsibility of the winning Bidder to secure the necessary financing to begin the project. Once the Contract Agreement is signed, the winning bidder becomes the Concessionaire Company (also referred to as the Special Purpose Vehicle (SPV) or Project Operator.

10.11 Step 9: Reach Financial Close

10.11.1 Financial close occurs when all the project and financing agreements have been signed and all the required conditions contained in them have been met. It enables funds (e.g. loans, equity, grants) to start flowing so that project implementation can actually start. Any remaining "conditions
precedent” contained in the financing agreements need to be fulfilled before funds can be disbursed.

10.11.2 All the conditions precedent to implementing the concession project needs to be met. Such may include the following:

1) All planning approvals have been secured
2) If acquisition of the land is required, the key land acquisition steps have been achieved;
3) The outstanding technical design issues have been clarified;
4) Any remaining key project and financing document has been finalized and signed
5) All funding approvals are in place and
6) Proper registration of the security for the loans has been confirmed.

10.11.3 The CE will need to confirm that the requirements of all internal approvals have been met. It’s the responsibility of the CE to ensure all the internal approvals required by the Concessionaire Company have been met and within the time lines given in the project agreement. These could include:

1) Confirmation of the legality of the procurement;
2) Approval of derogations from any standard contracting terms;
3) The value for money check;
4) The affordability check.

10.11.4 The Concessionaire Company and the CE often need to carry out a considerable amount of detailed work to reach financial close. The effort needed should not be underestimated. The CE will need to manage its tasks effectively and should seek the support of its advisers.
11. Post Contract Management

11.1 Introduction

11.1.1 Contract management defines the frameworks under which parties are legally obligated to meet their respective project development and service delivery obligations. Managing concessions contracts is never simple and requires the government and the CE to at least maintain a balance between over- and under-regulation during the term of the project contract. Over-regulation of the private party interferes with service delivery and limits innovation while under-regulation leads to increased risks of service delivery not meeting project objectives.

11.1.2 The approach followed in managing contracts is largely dependent on the sector in which the concession project operates, the risk profile of the project, and the particular phase which the contract has reached. In projects or situations where the consequences of private party performance failure would be severe, a rigorous monitoring regime would be required, linked to an agreed minimum service performance standards and backed up by an effective penalty regime. In less critical circumstances, a more flexible monitoring system can be used. Similarly, a penalty mechanism might be applied with greater flexibility during the development phase compared to during the implementation phase.

11.2 Contract Monitoring Framework

11.2.1 After the concession contract has been signed, responsibility for contract management will normally be transferred to a Contract Management Team (CMT) established by the procuring entity. The CMT is expected to also develop a Contract Management Plan to help in addressing and managing risks associated with project management and implementation. Contract Management Team and the Contract Management Plan forms two critical components of importance that are referred here as Contract Monitoring Framework. Contract monitoring framework will help the government and the CE to cover the following key elements: More of CMT and contract management plan will be discussed in the subsequent sections.

1) Risk Mitigation – This is the process of identifying, monitoring and managing risk to minimize and mitigate the project risks.

2) Service Delivery and Performance – This is to ensuring that the concession company is achieving required service delivery to contractually defined performance standards.

3) Relationship Management - Managing the structure of authority and accountability within the concession service delivery framework.

4) Contract Administration – to ensure administrative processes, all procedural and documentation requirements issues are followed. E.g. periodic reporting and service quality reviews.
11.3 Contract Management Team

11.3.1 A contract management team, reporting to the head of the CE will carry out many day-to-day contract management activities. In order to ensure effective management of concession contracts the CE will need a dedicated CMT comprised of experienced personnel. At minimum, a typical Contract Management Team should consist of the following personnel shown in Box 7 below

Box 8: Summary key roles of CMT personnel

<table>
<thead>
<tr>
<th>#</th>
<th>Title of the officer</th>
<th>Responsibilities in concession contract management</th>
</tr>
</thead>
</table>
| 1. | Project Director / Officer | a) Manage the concession project relationships on behalf of government / CE  
                                 a) Ensure the concession company meets its contractual obligations  
                                 b) Appoint and manage the concession technical advisory team with the necessary technical skills  
                                 c) Ensure that the concession project continues to be affordable, provides quality services and Value-for-money, and has appropriate risk transfer  
                                 d) Prevent and/or resolve disputes  
                                 e) Develop and implement the Contract Management Plan  
                                 f) Develop and manage any contract administration systems  
                                 g) Manage consequences of contract breach  
                                 h) Prepare an Exit Strategy for any transition of services post-concession |
| 2. | Accounting Officer        | a) Provide financial oversight  
                                 b) Review financial performance of PPP  
                                 c) Manage the financial flows to/from government                                                                                                                                  |
| 3. | Technical Advisor or Advisors | a) Design and construction  
                                 b) Business and product assurance  
                                 c) Facilities and services management  
                                 d) Information Technology  
                                 e) Statutory safety and regulatory responsibilities  
                                 f) Environmental impact and compliance  
                                 g) Legal and regulatory issues  
                                 h) Post-PPP transition                                                                                                                                                    |

The above is the key staff and very vital to the success of contract management of concessions and other PPP models of delivery. However, the Head of CE could add more experts to the team as deemed necessary but the team should be kept at minimum to avoid infectiveness and inefficiencies associated with large management teams.
11.3.2 Before the transfer of responsibilities by the CE to the CMT after the concession contract has become effective, the CE shall ensure the following key post-contract management arrangement are in place:

   a) Mechanisms for monitoring performance of the terms and conditions of the agreements
   b) Reports to be submitted on periodic basis and the methods for authentication of the reports
   c) Asset maintenance and improvement requirements if any
   d) Arrangement for handling public complaints

11.3.3 In addition to subsection 11.3.2 above, the CE shall also ensure the following is in place before the CMT take over the management of the project:

   a) CMT has its responsibility clearly defined and separate from other teams still involved in concession matters.
   b) That the provisions for handling contract changes and managing failure of the Concession Company are in place;
   c) That a system of on-going contract management review is in place; and
   d) That there are sufficient budgetary and staff resources to undertake the contract management responsibilities.
   e) That management rules are established to deal with the concession contract monitoring, adjustments to the contract and dispute resolution to maintain its integrity.

11.4 Contract Management Plan (CMP)

11.4.1 Contract management planning should start at an early stage during the procurement process. This ensures that the contract management requirements are included in the draft Concession Agreement and other key documents. A first step in the process is to develop a Contract Management Plan (CMP).

11.4.2 The CMP is a strategic management tool to guide the Contract Management Project team members throughout the concession project’s operational phase. It clarifies the key roles and responsibilities of either the government or the CE during project operations and identifies the resources that government CE will require to undertake these responsibilities.

11.4.3 Component of Contract Management Plan is shown in figure 6 in the next page.
11.4.4 The components of the CMP displayed in figure 4 above are discussed in the next page.

1) Tools and Processes: The CMP should identify the necessary tools and processes that are needed to effectively manage the contract during its lifecycle. These tools and processes (e.g. accounting software, risk management framework, performance targets) should help the Contract Management Team perform their regular day-to-day tasks efficiently and effectively. They should also specify how risks will be evaluated and risk adjustments will be made.

2) Resource Availability: The availability of the relevant resources plays an important role in determining the tools and processes defined within the contract management framework. Such resources can be in three forms: Human, Financial, and Technological.

3) Timeline for Development of Tools and Processes:

The CMP should contain the timeline needed to develop and install these tools and processes within the contract management framework, subject to the availability of resources. It should also detail the regular contract compliance reform milestones and reporting requirements to government.

11.4.5 The exact operating procedures for contract management should be provided in a contract administration manual or other form of guidance document. This manual is:

1) A repository of CMP procedures
2) A contact list for key stakeholders
3) A repository for key documents (e.g. Concession Agreement)
4) Training guidance for newly-appointed concession contract management staff and technical advisors.

11.4.6 With the development of the CMP and the associated tools and processes that will help and assist the CMT to successfully monitor concession project performance and associated risks, it is equally important to

1) **Monitor and manage project delivery and service outputs.** This in essence will help to
   a) Monitor the attainment of key performance indicators;
   b) Review quality control and quality assurance procedures to ensure that these systems are in place and effective;
   c) Establish and manage the day-to-day relationship with the PPP Company; and
   d) Report regularly to the stakeholders.

2) **Risk management.** Such risks includes
   a) Project risks contractually allocated between the parties;
   b) Intrinsic risks borne by the CE
   c) Project risks not contractually allocated; and
   d) Risks associated with changes to the concession contract.

3) **Managing changes permitted in the concession contract**

   The concession contract will set out the triggers and methodologies for agreeing and implementing changes to the concession contract. However, it may not specify all the logistical or administrative steps that need to be taken in order to agree or implement permitted changes. The contract administration manual should specify logistical and administrative details such as:

   a) the person to whom a request for a change must be sent;
   b) the person who will assess the impact of the proposed change;
   c) the persons authorized to agree a change on behalf of the CE and: the concession company;
   d) the person responsible for overseeing and verifying implementation of the change

Changes permitted under the concessions contract are often complex and need to be decided at senior level. They typically include material changes in output specifications, refinancing or the consequences of a change in the law. Many concessions contracts contain provisions governing the potential refinancing of the project, in particular the sharing of gains from such refinancing. Sometimes the PE may seek the consent of the concessions company’s lenders before certain changes to the concession contract are implemented.
4) **Managing changes not provided for in the PPP contract**

Given the long life of concession contracts, unforeseen changes in contractual specifications (during construction or operation) may occur. The contract management team needs to address these issues and strike a satisfactory balance between:

a) Encouraging the concession company to manage its risks; and

b) Preventing poor performance by the concession company from endangering the viability of the Concession contract.

11.4.7 Sample Contract Management Plan is shown in Table 11 in the next page
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<tr>
<th>Section</th>
<th>Subsection</th>
<th>Summary of Contents</th>
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<td>1.1 Purpose</td>
<td>Purpose of the concession contract management plan</td>
</tr>
<tr>
<td></td>
<td>1.2 Approach</td>
<td>Partnership principles&lt;br&gt;Benefits to the CE and the private party of a successful&lt;br&gt;partnership&lt;br&gt;The CE’s approach to concession contract management</td>
</tr>
<tr>
<td>2. Strategic Objectives and Key</td>
<td>2.1 Objective</td>
<td>Summary of project objectives</td>
</tr>
<tr>
<td>Deliverables</td>
<td>2.2 Key Deliverable</td>
<td>Summary of the output specifications and key deliverables</td>
</tr>
<tr>
<td>3. Transition Management</td>
<td>3.1 Transition Management</td>
<td>Listing of key issues in Transition Management&lt;br&gt;Strategies to be adopted to overcome the issues identified</td>
</tr>
<tr>
<td>Strategy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Relationship Management</td>
<td>4.1 Relationship Management Plan</td>
<td>Key elements of relationship management plan defined in section on Relationship Management</td>
</tr>
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<td>5. Service Management</td>
<td>5.1 Risk Management</td>
<td>Key elements of risk management plan defined in section on Risk Management</td>
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<td>5.2 Performance Management</td>
<td>Key elements of performance management plan defined in section on Performance Management</td>
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<tr>
<td>6. Contract Administration</td>
<td>6.1 Concession contract administration</td>
<td>Contents of concession contract management plan defined in section on Contract Administration</td>
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<tr>
<td>7. Contingency Plan</td>
<td>7.1 Business Continuity Plan</td>
<td>Key elements of Business Continuity plan detailed in section on Business Continuity Plan</td>
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<td></td>
<td>7.2 Step in Plan</td>
<td>Key elements of Step In plan detailed in section on Step in Plan</td>
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<td></td>
<td>7.3 Default Plan</td>
<td>Key elements of Default plan detailed in section on Default Plan</td>
</tr>
<tr>
<td>8. Exit Strategy</td>
<td>8.1 Exit Strategy</td>
<td>Evaluation of the options for continuing the service after termination/expiry based on the provisions of the concession contract&lt;br&gt;Outline of the procedures, roles and responsibilities and resources required for a smooth transition to the new service delivery arrangement.</td>
</tr>
<tr>
<td>9. Implementation Plan</td>
<td>9.1 Development</td>
<td>Table with key tasks, Target Dates, Responsibilities and CE Budget</td>
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<tr>
<td></td>
<td>9.2 Delivery</td>
<td>Table with key tasks, Target Dates, Responsibilities and CE Budget</td>
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<tr>
<td></td>
<td>9.3 Exit</td>
<td>Table with key tasks, Target Dates, Responsibilities and CE Budget</td>
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</tbody>
</table>
11.5 Dispute Resolutions and Management

11.5.1 Contractual disputes are sometimes common in concessions arrangement due to their long-term nature and unexpected circumstances are bound to arise and also because concessions arrangements tend to be complex.

11.5.2 The mechanisms available to resolve disputes and conflicts are a major part of the assessment of contract risks by private investors in concessions projects. The typical dispute resolution mechanisms may include any of the following.

   a) Discussion between both parties;
   b) Fast Track resolution process;
   c) Dispute resolution board;
   d) Expert determination;
   e) Mediation or conciliation; or
   f) Arbitration (In case arbitration between the CE and the Concessionaire is required, shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of the Concession Agreement.)
   g) If the above a) – f) mechanisms of dispute resolutions fails, the aggrieved party could seek for judicial review in the High Court.

11.5.3 Dispute Resolutions mechanisms is illustrated in figure 7 in the next page
11.5.4 The Contract Management Team shall provide guidance on the following relevant dispute resolutions issues:

1. Preferred resolution approach
2. Project continuity during dispute resolution
3. Dispute costs allocation

11.6 Concession Contract Contingency Planning

11.6.1 Contingency planning is an important element of the concession contract management process. In the event that the private party fails to deliver the services as specified under the concession contract, government / CE may have to act swiftly and should have the necessary planning in place to do so. Some types of additional contingency planning include:

a) Business Continuity and Disaster Recovery Plan - which cover events that disrupt service delivery but do not involve default by the private party.
b) Step-in Plan - This covers events that disrupt service delivery and involve a default by private party. Government may reserve the right to step-in directly to perform the services in an emergency, and the Direct Agreement will define the circumstances where lenders may step-in.

c) Default Plan - which covers private party defaults that do not result in disruption of service delivery

11.6.2 CE should identify all significant contingency events related to the concession Project and Develop appropriate contingency plans which should form part of the CMP.

11.7 Termination of Concession Contracts

11.7.1 The concession contract shall include detailed provisions dealing with its termination. The main issues to be addressed shall include the following:

   a) The circumstances in which the contract may be terminated by a party ahead of its scheduled expiry;
   b) The payment (if any) that must be made by the CE to the Concession Company upon termination (depending on the circumstances); and
   c) The condition of the assets when they are “handed over” to the CE following termination.

11.7.2 CE may terminate concession contract due to any of the following reasons listed below:

   a) Expiry of the concession contract term;
   b) Default by the concession company;
   c) Default by the CE or the government;
   d) Termination in the event of prolonged force majeure

11.7.3 In addition to the provisions provided in section 11.7.1, the concession agreement shall also articulate the following:

   a) Clearly specify the condition of the assets on the handover date
   b) Lay out a process for monitoring the asset condition standards over a period leading up to the contract end date
   c) Specify the financial consequences (e.g. a Retention Account to fund repairs) and other contractual remedies for failure to meet the required standards.

11.7.4 The Contract Management team shall also manage the handover of relevant documents and records and CE should plan for the continuity of service delivery and maintenance of service standards either with a successor contractor or other means.
### 11.8 Concession Contract Management Checklist

**11.8.1** During the operational phase of a concession project, the focus of the CE should be to manage the contract while maintaining operational performance. To achieve this, the CE and its team of advisers need to consider the items in the following checklist:

#### Table 12: Sample Contract Management Checklist

<table>
<thead>
<tr>
<th>✔️ If yes, tick</th>
<th>☒ If no, put X</th>
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</thead>
<tbody>
<tr>
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<tr>
<td>Has the possibility of engaging the same advisers employed in the procurement phase been considered (availability, potential engagement, required budget and conflict of interest)?</td>
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<tr>
<td>Have experienced advisers been consulted to help the contract management team address sensitive changes to the concession contract, including refinancing?</td>
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<tr>
<td>Has a contract administration manual been developed to help coordinate information on contract terms with contract management procedures, including the allocation of responsibilities and timetables?</td>
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<tr>
<td>Have guidelines been developed for users of the contract administration manual to help monitor contract performance in case this is envisaged?</td>
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<tr>
<td>In availability-based concessions, are payments to the Concession Company processed properly and in accordance with the concession contract?</td>
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<tr>
<td>Have all necessary steps been taken to ensure continuing review and monitoring of project risks using, for example, the risk register developed during the detailed preparation phase?</td>
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<tr>
<td>In the event of changes to the concession contract, what steps are envisaged to maintain monitoring of operational performance and not simply concentrate on managing changes to the contract? In particular, what mechanism has been developed to ensure that value for money is maintained after the changes if risks are transferred from the concession company back to the CE?</td>
<td></td>
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<tr>
<td>Have criteria and procedures been agreed to monitor the residual value of the concession assets so that the asset management and maintenance practices support the concession project objectives and maximize value for money?</td>
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<tr>
<td>Has a communication strategy been developed to provide the concession company, users and other relevant stakeholders with regular reviews and updates?</td>
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</table>
Chapter 12

12         Record management of the Concessions Bidding Process

12.1    General

12.1.1 Records management is the maintenance of the documents created during the course of the concession transactions. All the documents generated in all the concession project phases must be well documented and filed for future audit trail and referencing by any government authority.

12.1.2 In furtherance of transparency and accountability, every entity involved in any concession process shall maintain a written record of all proceedings.

12.2    Inspection of Concession records

12.2.1 The concession records shall be easy to access, retrieve and made available for inspection and review if necessary by the Commission and the Auditor-General or any person duly authorized by the IMCC Commission or relevant Government authority.

12.3    Specific Documents to be in writing

12.3.1 In particular and at all times, the CE shall ensure that the following documents are always made in writing and securely filed. The summary of such documents are given in box 9 below.

Box 9: Specific Concession documents to be in writing:

| (a) General Notice of Investment Opportunity |
| (b) Request for Expression of Interest    |
| (c) Instructions to Bidders               |
| (d) The Request For Proposals             |
| (e) The Evaluation Report together with attachments |
| (f) All documents related to the award of contracts |
| (g) Concession Information Memoranda      |