FEDERAL PUBLIC PROCUREMENT DIRECTIVE

MINISTRY OF FINANCE & ECONOMIC DEVELOPMENT

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TABLE OF CONTANTS

ARTICLE	TITLE	PAGE
Part I	General……	1
1.	Short title……....	1
2.	Definitions……..	1
3.	Scope of Application……..	2
4.	Principles……	2
Part II	Duties & Responsibilities……	3
5.	Duties and Responsibilities of heads of public bodies	3
6.	.. .. a procurement unit…….	7
7.	.. .. Endorsing Committee…….	11
Part III	Procurement Plan……	13
8.	Preparation of Procurement Plan……	13
9.	Identification and Packaging of Procurements……..	13
10.	Selection of Procurement Method……..	15
11.	Setting time table for Procurement ……...	15
12.	Content of a procurement Plan ……..	16
13.	Approval and amendment of Procurement plan ……	17
14.	Publication of annual Procurement plan……	18
Part IV	Procurement methods and their application ……..	18
15.	Approved methods of Procurement……	18
16.	Procedure of National Competitive Bidding……	19
Part V	Procedure of International Procurement…….	63
17.	International Competitive Bidding…….	63
18.	Other International Procurement Procedures…….	65
19.	Procurement by means of two stage bidding pre-qualification bid……	66
20.	Pre-qualification bid…….……....	67
21.	Procurement made by means of request for proposal…….	69
22.	Invitation for Expression of Interest ……..……	76
23.	Procurement by Restricted Bidding……..……..	77
24.	Procurement by request for quotation…….	80
25.	Single Source Procurement ……...…….	82
Part VI	Special Procurements……..	87
26.	Special Large Procurement ……	87
27.	Special Procurements of Common user items…….....	87
Part VII	Contract Administration…….....	95
28.	Implementing Procurement Contracts……	95
29.	Follow –up of Performance of contracts……	97
30.	Completion of a contract……	99

Part VIII	Miscellaneous Provisions…….....	100
31.	Review of Non-Standard Procurement Proposals……...	100
32.	Records of Procurement……....	100
33.	Registration of suppliers and conditions for registration in the suppliers list	100
Part IX	Ethics in Public procurement……..	102
34.	Professional Ethics expected of persons engaged in public procurement …	102
35.	Ethics Expected from candidates……	105
Part X	The Board for review and resolution of complaints in public procurement	106
36.	Appointment and terms of office of members of the board……...	106
37.	Meeting of the board…….....	107
38.	Resignation of member ship…….	107
39.	Termination of .. .. …….	107
40.	Disclosing Conflict of interest……	107
41.	Powers of the board……	108
42.	Duties of the board……....	109
Part XI	Procedure of Review of complaints Presented to the head of a public body or the secretariat of the board…….....	110
43.	The right of complaint of a candidate or a bidder …….....	110
44.	Matters in respect of which complaint may not be lodged……	110
45.	Procedures for review of complaints presented to the head of a public body…….....	111
46.	The obligation of a procurement unit to suspend a procurement proceeding……...	113
47.	Procedure for presentation to and review of complaints by the board……...	113
Part XII	Review of reports submitted by public bodies to the Agency on mis-conduct of bidders and suppliers……	115
48.	Procedures of submission and review of reports on mis-conduct of bidders and supplier's……..	115
49.	Force Majeure…….	119
50.	Review of complaint by Court……	120
Part XIII	Repealed Directives and Effective Date	120
51.	Repealed Directive……..	120
52.	Effective Date……	120

Annexes Public

- Annual Public Procurement Plan Submission Form
- The primary responsibilities of a chair person and a secretary of a procurement endorsing committee.
- Floating Period of Bids
- List of Machinery to be procured for use in the Construction of Roads and buildings with Advance Payment allowed for contractors pursuant to Article 16.26.7 of this directive
- Bid security form to be filled by bidders pursuant to article 23.2.5 of this directive.

Public Procurement Directive

This Directive is issued by the Ministry of Finance and Economic Development Pursuant to Article 78/2 of the Ethiopian Federal Government Procurement and Property Administration Proclamation no 649/2009 and Article 19 of the definition of powers and duties of the Executive Organs of the Federal Government of Ethiopia Proclamation No 471/2005/6 (as amended).

PART I

GENERAL

1. Short Title

This directive may be cited as "The federal Government Public Procurement Directive."

2. Definitions

1. Unless the context otherwise requires, in this directive:-

a) **"Technical Specification''** means document describing the quality, type and standard with which the required goods, services, works or consultancy services should comply.

b) **"Proclamation"** means the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009.

c) **"Bid"** means a stage in the procurement process extending from advertisement of or invitation to bid up to signing of contract.

d) **"Standard Bidding Document"** means the document prepared by the Agency to serve as a point of reference in the preparation of bidding documents by Public Bodies.

e) **"Procurement Unit"** means a body responsible for procurement with in public bodies with out prejudice to the particular organizational structure appropriate to the nature of their duties

f) **"Total Price"** means payment made by public bodies in respect of a particular procurement which includes taxes and all other incidental costs.

2. Other words and terms in this Directive shall have the respective meaning given to them in the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009

3. Scope of Application

This Directive shall apply to all Federal Public Procurements to which the Proclamation is applicable.

4. Principles

Any Authority and execution of Procurement must comply with the following Principles:-

a) Achieve maximum value for money in procurement. i.e. insure economy, efficiency and effectiveness.

b) No Candidate Shall be discriminated or excluded from participating in public procurement on the ground of nationality or other reasons which are not related to the evaluation criteria except in accordance with the rule of preference provided in the proclamation.

c) Support the country's economic development by ensuring economy, efficiency and effectiveness in the execution of public procurement.

d) Any criteria applied in making procurement decisions and decisions taken on each procurement must be made transparent to all concerned parties.

e) Ensure accountability for decisions made and measures taken in the execution of public procurement.

f) Encourage local producers, companies and small and micro-enterprises which support the national economy through the application of preferential treatment granted by the Proclamation and this Directive.

PART II

Duties & Responsibilities

5. Duties and Responsibilities of heads of Public bodies,

Without prejudice to those provided in the Proclamation, a head of a Public Body shall have the following additional duties and responsibilities:-

1. Ensure that the procurement staff and head of the procurement unit of the Public Body have the required educational qualification and experience in the fields relevant to public procurement.

2. Ensure that the procurement staff and head of the procurement unit meet high ethical standards.

3. Ensure that the unit responsible for procurement in the Public Body has the necessary authority and internal system in place to enable it discharges its duties as a team.

4. Establish a Procurement Endorsing Committee to approve procurements of high value in the Public Body, consisting of members no less than 3 persons which serves for a maximum period of 3 years in accordance with the following criteria:-

    a) Officials, who are in high position of responsibility in the Public Body.

    b) Need to have a better knowledge and experience and as far as possible should comprise from various professions.

5. Where appropriate, extend the service of members of the Procurement Endorsing Committee for one additional term.

6. Ensure that members of the Procurement Endorsing Committee have adequate time and office facility necessary to carry out their duty.

7. Ensure that the service, employees of the Public Body perform as members of the Procurement Endorsing Committee, is part of their regular duty and is as such, incorporated into their work program and their performance in the committee accounts for their overall result.

8. Make sure that the procurement staff, head of the procurement unit and members of the Procurement Endorsing Committee have in their possession, copies of the procurement and property administration Proclamation, this Directive, the Standard Bidding Document and other necessary documents, and make training available to them in ordered to enable them acquire adequate knowledge of the public procurement system.

9. Follow up the activities of the procurement unit and the Procurement Endorsing Committee to make sure that the procurement staff and members of the Procurement Endorsing Committee give due attention in carrying out their duty properly, and where necessary, take corrective measures.

10. Establish ad hoc evaluation committee for procurements which are complex and require detailed technical evaluation.

11. Examine and approve the procurement plan of the Public Body by ascertaining that the following requirements are satisfied:-

    a) That, the procurement plan is in harmony with the work program of the Public Body.

    b) That, items of procurement which can be consolidated in to a single procurement package are consolidated as such.

    c) That, procurements of the Public Body which can be executed together with procurements of other Public Bodies under a frame work contract in accordance with the decision of the Agency are identified.

    d) That the procurement plan is inclusive of all procurement needs of the Public Body and has secured the consent of the Procurement Endorsing Committee.

12. Cause to be communicated in due time to the body responsible for framework procurements, complete information on procurements of the Public Body which can be executed in consolidation with procurements of other Public Bodies under a framework contract.

13. Pursuant to article 24/2 of this Directive concerning procurements of small value which do not need the approval of the Procurement Endorsing Committee:-

    a) Delegate authority of approval of such procurements to the procurement unit or

b) Delegate authority of approval to the head that has direct relation to the procurement.

c) The delegation of procurement authority by the head of the Public Body may be given to persons with various levels of responsibility with specified limits of procurement value.

14. Ascertain that price adjustments made in the process of procurement is in keeping with the procedure and the requirements of price adjustment set forth in article 16/14 of this Directive,

15. Consider and give decisions on complaints lodged pursuant to article 43 of this Directive and against rejection by the procurement unit of request for information concerning the conduct of a particular procurement in the Public Body.

16. Sign a contract or delegate authority to sign a contract where necessary, and monitor the execution of any procurement as per the contract.

17. pursuant to article 8/F of the Proclamation, Authorize the outsourcing of a procurement by reason of its complexity or for lack of capacity of the Public Body to handle that procurement, inconformity with the following procedures:-

a) Ensure that the outsourced procurement service is rendered in compliance with the provisions of the Proclamation and this Directive.

b) Ensure that there is clear demarcation of responsibility between the Public Body and the entity to which the procurement is outsourced in the execution of the procurement.

c) Ensure that all decisions taken in respect of out sourced procurements in accordance with this sub article have secured the approval of the Public Body.

18. Cause reports of completed procurements of the Public Body to be sent to the Agency in line with the Formats prepared and time stipulated by the Agency.

19. Make arrangements necessary for procurement audit or inspection to be conducted by the Agency in respect of the execution of procurements by the Public Body, including the following:-

    a) Make available in due time, documents necessary for procurement audit,

    b) Cause the provision of office space and facilities for employees assigned to conduct the procurement audit.

    c) Assign a staff to give explanation on the conduct of procurements made by the Public Body.

20. Take appropriate corrective measures in accordance with the instruction given by the Agency based on the findings of the procurement audit and notify the Agency of such measures,

21. Cause information to be conveyed to the concerned tax authority regarding payments made to suppliers in connection with procurements executed by the Public Body.

6. Duties and Responsibilities of a Procurement Unit

Apart from duties and responsibilities given by the Proclamation, a procurement unit shall have the following additional specific duties and responsibilities:-

1. Identify the procurement need and prepare the procurement plan of the Public Body in accordance with article 8/1 of this Directive; Identify items which are classified by the Agency as common user items which can be purchased through consolidated procurement with needs of other Public Bodies,

2. Make sure that except as provided in article 51 sub articles 1 g and h of the Proclamation and article 25 sub article 7 of this Directive, any public procurement is made from suppliers who are registered by the Agency and have Bank- Account.

3. Prepare and submit to the Procurement Endorsing Committee, bidding documents in collaboration with the procurement initiator.

4. Make corrections to the bidding documents in conformity with the recommendation of the Procurement Endorsing Committee,

5. Subject to the provision of article 35 of the Proclamation, disclose to the public by posting it on the Agency's website at the same time of publication of its bid advertisement in a news paper, any procurement the value of which corresponds to or is greater than that stated in this sub-article, including procurements to be made by means of International Competitive Bidding.

a) For works	**Ethiopian birr**	**10,000,000.00**
b) For Goods	**.. ..**	**3,000,000.00**
c) For consultancy	**.. ..**	**2,000,000.00**
d) For non-consultancy	**... ..**	**1,000,000.00**

6. In respect of procurements the value of which corresponds to or is greater than that specified in sub article 5 of this article, disclose the information to

the public by filling it in the form provided for this purpose and posting it on the Agency's website within 5 days of signing the contract after award.

7. Avail bidding document for sale and gives or causes to be given clarification on issues raised regarding the bidding document,

8. Prepare bid box and manage same,

9. Open bids, invite the procurement initiator and internal audit to attend the bid opening ceremony, if possible,

10. Make sure that the main pages of bid documents submitted by bidders are signed and stamped and cause to be maintained minutes of the Bid opening.

11. Receive, cause to be kept and or release or forfeit bid securities depending on the conditions stated in the bidding documents.

12. Make sure that copies of bid documents are delivered to members of bid evaluation committee and that the original bid documents are kept securely for reference.

13. Evaluate or cause to be evaluated bid documents in group and submit the result to the Procurement Endorsing Committee if by reason of the value of the procurement being beyond the threshold specified in article 24/2 of this directive, it is necessary to submit the evaluation result to the committee,

14. Ensure that every information provided in the bid documents is copied and calculations are made accurately and no act is committed in favor of or against a bidder during or in the Bid evaluation.

15. Give or cause to be given clarification on issues raised by the Procurement Endorsing Committee in regard to a procurement subject to the approval of the committee.

16. Follow up and coordinate the execution of outsourced procurements.

17. Approve procurements the value of which is below the threshold specified in article 24/2 of this Directive in accordance with the authority delegated to it by the head of the Public Body.

18. Disclose the result of a Bid evaluation to the successful and unsuccessful bidders.

19. Negotiate procurement contracts with successful bidders, sign contracts in accordance with the authority delegated to it by the head of the Public Body or cause same to be signed by the concerned official of the Public Body.

20. Ascertain that the Public Body has discharged its obligation and its rights have been satisfied under a procurement contract.

21. Select candidates for procurements to be executed by request for quotation and collect quotations from such candidates.

22. Ascertains that the price offered by successful bidders is commensurate as compared to the market price; particularly for procurements to be conducted by Request for quotation method of procurement.

23. Keep procurement documents and give clarifications on procurements of the Public Body when requested by the appropriate bodies.

24. Except as provided in Article 23/2 of the Proclamation, gives information regarding the execution of the procurement for any interested person as promptly as possible; however if the procurement unit has to incur costs to provide the information, the person seeking the information shall bear the cost.

7. **Duties and responsibilities of a procurement Endorsing committee**

Apart from duties and responsibilities stated in the Proclamation, a Procurement Endorsing Committee shall have the following specific duties and responsibilities:-

1. Ensure that the annual procurement plan prepared by the procurement unit of a Public Body takes into account the following points:-
    a) That the identified procurement needs of the Public Body are in harmony with its work program.
    b) that there is no other better alternative to procurement to satisfy each need,
    c) that the procurement plan is prepared in such away as to enable bulk purchase
    d) That other special requirements arising from the nature of the Public Body are addressed.
2. Ascertain that the bidding document prepared by the procurement unit satisfies the following requirements:-
    a) That it is inconformity with the standard bidding document prepared by the Agency for each type of procurement.
    b) That the technical specification complies with the conditions stipulated in the Proclamation & this Directive.
    c) That the evaluation criteria are non-discriminatory, transparent and achievable.
    d) That it contains all the necessary forms and conditions which the proclamation and this directive require to be stated depending on the type of the procurement, and other matters of fundamental importance.

3. consider and approve Bid evaluation reports of procurements the value of which exceeds the threshold specified in article 24/2 of this Directive for each type of procurement, by ascertaining that the following conditions are satisfied:-

    a) That the evaluation was conducted in accordance with the bidding document,

    b) That the evaluation was carried out in compliance with the provisions of the proclamation and this directive,

    c) That the detailed evaluation leading to the recommendation given in the evaluation report and the overall process of procurement would result in ensuring value for money for the Public Body.

4. Implement the provision of article 16/23 of this Directive.

5. Any decision given by the committee on evaluation report submitted to it should be reasonable.

6. Advise the head of the Public Body on ways of ensuring compliance with the Proclamation, the Directive and other legal documents regulating the conduct of public procurement.

7. Submit to the head of the Public Body reports on procurements made, problems encountered and solutions suggested.

8. Give clarification concerning its decisions made on any procurement proceedings with in its Jurisdiction when required to do so by the Public Body, the Agency and other appropriate body.

9. Roles and responsibilities of a chairperson & a secretary of a Procurement Endorsing Committee and the meeting procedure of such committee are provided in annex 2 of this directive.

PART III

Procurement Plan

8. Preparation of procurement plan

1. Any Public Body and other entities accountable to such Public Body shall be required to prepare a procurement plan supported by action plan enabling them to execute in due time, the procurement necessary to implement their work program.

2. The procurement plan shall be prepared in such a way as to enable the attainment of the following objectives:-

    a) To ensure compliance with principles of public procurement stated in article 5 of the Proclamation.

    b) To achieve the work program of the Public Body.

    c) To ensure economy and efficiency in the operation of the Public Body by discouraging piecemeal purchase.

    d) Exercise prudence and make the necessary preparation to forestall problems that might be encountered in the execution of procurement.

9. Identification and packaging of procurements.

1. In identifying its procurement needs, any Public Body have to take the following point into consideration:-

a) That the need can not be met by using unused resource or property available in the Public Body.

b) That the need can be met by a product or service available in the market.

c) That the need does not involve items which shall be of no use to the Public Body and cause the Public Body to incur unnecessary cost.

d) That the identification of procurement needs makes provisions for additional need that might arise in the future, especially in regard to the procurement of goods of long term contract.

e) That the procurement need is in line with standard items which are widely available in the market unless the need requires otherwise.

f) That the procurement need is environmentally friendly.

2. In determining its annual procurement needs arising from its various departments, a Public Body has to adhere to the following procedures:-

a) require end users in the Public Body to submit their annual procurement needs,

b) Indentify the need submitted by end users by type of procurement, quantity, quality and source.

c) Identify goods, works and or services to which the Public Body gives priority and special attention.

d) ascertain that there are adequate suppliers for the needs

e) Determine the cost estimate for each type of procurement by reference to survey conducted by the Public Body or price information obtained from other sources.

f) Ascertain that technical specification is prepared or will be prepared by end users.

3. Public bodies have to organize their procurement needs in packages based on procurement needs data collected from end users and market price survey, and taking into consideration the following points:-

a) Without prejudice to the provision of article 53 of the Proclamation, where a situation arises in which a procurement comprises goods, services and works, the Public Body shall classify such procurement on the basis of the value of the component representing more than 50 % of the value of the procurement.

b) Assort, as far as possible, similar and related needs.

c) In respect of bulk purchase, ensure that there are adequate suppliers in the market or classifying the procurement into lots based on category of supplies, which can attracts competition.

d) Ensure that the procurement is convenient for execution and there are no hurdles obstructing the procurement.

e) Organize the procurement in such a way as to open up opportunity for as many local producers as possible to participate in the procurement.

10. Selection of procurement Method

1. In the preparation of their procurement plan, Public bodies have to select and indicate the appropriate procurement methods to be used in respect of each type of procurement, from among the methods prescribed in the Proclamation and this Directive.
2. In preparing its procurement plan, a Public Body has to insure that the plan is inclusive of all of its identified procurement needs and the appropriate procurement method is selected for each procurement.

11. Setting time table for procurement

1. A Public Body has to fix the time table for the main activities to be performed in the procurement process, using the formats developed by the agency to facilitate the preparation of procurement plan by public bodies. In doing so, public bodies have to take into consideration the following and other matters which are relevant to the type of procurement.

    a) That the time fixed for the execution of that procurement is in harmony with the work program of the Public Body,

    b) That the schedule takes into consideration when the supply is widely available in the market.

    c) That the schedule is in keeping with the minimum floating period of bids prescribed in Annex 3 of this Directive and allows as far as possible, additional time for bidders to prepare bid documents in order to create conducive environment for wide competition.

    d) In particular, public bodies have to ensure that adequate time is given for preparation, evaluation and approval of bid documents in respect of complex and large procurements.

2. Without prejudice to sub article 1 of this article, care should be taken in the fixing of procurement schedule not to allow longer time in respect of each type of procurement than what is necessary for carrying out the main activities of procurement.

12. Content of a procurement plan

1. Public bodies have to prepare their procurement plan in accordance with the provision of part 3 of this Directive and using the procurement plan preparation format developed by the Agency and attached as annex 1 to this Directive. The

procurement plan to be prepared by public bodies accordingly shall contain the following:-

a) The Procurement number,
b) Description of The procurement
c) Quantity of the procurement
d) Procedures to be followed in the execution of the procurement
e) The schedule of main activities to be carried out to complete the procurement
f) The budget and source of finance of the procurement
g) The Type of contract appropriate to the procurement,
h) The roles of main parties involved in the procurement
i) Other matters which are important depending on the nature of the Public Body.

2. The Public Body has to attach as annex to the procurement plan, citations of sources of information that it has used as input to the plan and other information which it deems useful to clarify the plan to users.

13. Approval and amendment of procurement plan

1. Procurement units of public bodies have to submit the annual procurement plan they have prepared to the head of the Public Body for approval after consultation with the Procurement Endorsing Committee of the Public Body.

2. The head of a Public Body has to monitor the execution of procurement by establishing a system enabling him to ascertain that the conduct of procurement conforms to the approved procurement plan.

3. The head of a Public Body shall send a copy of the approved annual procurement plan to the appropriate departments and the Agency for implementation and follow up in accordance with the provision of article 22/2 of the proclamation.

4. A Public Body shall not split procurements nor deviate from the annual procurement plan once it is approved by the head of the Public Body and a copy of it is sent to the Agency.

5. Notwithstanding the provision of sub article 4 of this article, a Public Body may at any time modify its procurement plan where necessary.

6. A procurement plan modified in accordance with sub article 5 of this article shall be sent to those departments and the Agency for which the initial procurement plan was sent.

14. Publication of annual procurement plan

The Agency may compile the annual procurement plans submitted to it by public bodies in accordance with article 13/3 of this Directive, and as necessary, publish procurement plans the value of which exceed the threshold specified in article 6/5 of this Directive by assorting such plans by type of procurement, or facilitate the use by public bodies of its website to post such procurement plans.

PART IV

Procurement methods and their application

15. Approved methods of procurement

15.1 The following procurement methods are approved as per article 33 of the Proclamation.

a) Open bidding
b) Restricted bidding
c) Request for quotations
d) Single source/ direct procurement

e) Request for proposal, and

f) Two stage bidding

15.2 Except as otherwise provided in the Proclamation and this Directive, public bodies shall use open bidding as the preferred procedure of procurement.

15.3 Public bodies may use a method other than open bidding only where conditions for use of such other method stipulated in the Proclamation and this Directive are satisfied.

15.4 A Public Body using a method of procurement other than open bidding, pursuant to article 33/3 of the Proclamation. Shall record a statement of the grounds and circumstances on which it relied to justify the use of that method.

16. Procedure of National Competitive Bidding

When applying national competitive bidding, public bodies shall use the standard bidding documents prepared by the Agency and follow the steps listed hereunder:-

16.1 pre- conditions

Public bodies have to ascertain that the following conditions are satisfied when using national competitive bidding:-

16.1.1 Ascertain that the required objects of procurement can only be procured from local suppliers and the value of the procurement is below the threshold established for international competitive bidding in article 17/2 of this Directive, or

16.1.1 The required object of procurement is available only locally not with standing that the cost of the procurement exceeds the threshold established in article 17/2 of this Directive.

16.2. Invitation to bid

16.2.1 The invitation to bid has to be published at least once in a news paper that has nationwide circulation to ensure participation of as many bidders as possible.

16.2.2 Without prejudice to article 16.2/1 above, a Public Body may advertise bids at any time, as many times and by any means of its choice other than those stated in article 35/2 of the Proclamation.

16.2.3 The publication of an invitation to bid shall contain at least the following information:-

16.2.3.1 The name and address of the Public Body publicizing the invitation to bid

16.2.3.2 The type and to the extent possible the quantity and place of delivery of the goods or services, or the nature and the site of the construction to be effected, or the type of the consultancy service to be rendered and the place where such service is rendered.

16.2.3.3 The criteria to be satisfied by the candidates, who can participate in the bid,

16.2.3.4 The place where the bidding documents can be obtained,

16.2.3.5 The amount of the bidding security

16.2.3.6 The price of the bid document and the means of payment

16.2.3.7 The place and deadline of submission of bids, and the place, date and hour of the bid opening

16.2.3.8 A statement that the Public Body reserves the right to reject any or all bids

16.2.3.9 Other matters that the Public Body deems necessary for bidders to know.

16.2.4 The invitation to bid shall be prepared in the language in which the bid proceeding is to be conducted as provided in article 16/13 of this Directive.

16.3 Bidding Document

Public bodies:-

16.3.1 With out prejudice to the requirement that in drawing up bidding documents as provided in article 37 of the Proclamation, public bodies have to use the standard bidding document prepared by the Agency, they have to make sure that the bidding document prepared by them incorporates the contents listed in this Directive.

16.3.2 They have to reproduce the part of the standard bidding documents dealing with the instruction to bidders and the general conditions of contracts in the bidding documents they prepare with out making any change there to, while making any adjustment to the other parts of the standard bidding documents that they consider appropriate to the type and nature of the procurement,

16.3.3 While the task of drawing up bidding documents is principally that of the procurement unit or team, a bidding document prepared in respect of procurement subject to the approval of the Procurement Endorsing Committee has to be approved by the committee before being put to use.

16.4 Instruction to bidders

16.4.1 Every Public Body has to make sure that bidders get the instruction to bidders which is an integral part of the standard bidding document, and the bid data sheet which is an extension of the instruction to bidders, as parts of the standard bidding document.

16.4.2 A Public Body has to ascertain that the instruction to bidders it prepares contains the following:-

a) A general description of the goods, works, consultancy services or other services to be procured, the full name and address of the procuring Public Body and the source of finance of the procurement.

b) The criteria that bidders are expected to fulfill including a statement of requirement that domestic bidders submitting bids for a contract value of Birr 100,000.00 and above must present value added tax registration certificate and foreign bidders must as appropriate submit business organization registration certificate or trade license issued by the country of establishment.

c) An indication of the address and time for submitting requests of clarification on the bidding document and a statement that such request has to be made in writing,

d) The content of bid documents to be submitted by candidates, the language in which bid documents have to be submitted, the type and number of necessary documents and complementary forms described in the bidding documents.

e) An indication that the bidder has to sign on Anti bribery pledge form; a statement of undertaking to observe Ethiopian Law against Fraud

and Corruption and other forms that ought to be completed and signed by him/her,

f) A statement indicating that bidders attempting to influence the bid shall be disqualified from the bid, prohibited from participating in any future public procurement and the bid security deposited by them shall be forfeited,

g) If bidders are required to submit samples, the place where the samples are to be delivered and if appropriate, the time when and the place where the samples will be openly shown, as well as an indication that samples are to be returned to the unsuccessful bidders or not,

h) The place where the bid box is available and a statement indicating that bids submitted after the bid is closed shall not be accepted,

i) A statement indicating the methodology of evaluating bids, the criteria for the evaluation and the weight each criterion shall have as well as the conditions for submitting further proposals to select the successful bidder and the criteria for evaluating such proposals where two or more bidders get equal evaluation results.

j) Whether it is possible to make price adjustment in the course of the performance of the contract and the condition in which such price adjustment is made, if it is allowed,

k) An indication of the mode and amount of bid and performance securities required and the validity period of same.

l) The deadline for submission of bids and the place date and hour of the bid opening.

m) The validity period of the bid as well as the place and time of delivery.

n) A statement indicating the manner of application of preference to local products and companies granted by the Proclamation.

o) An indication whether the bids are to be submitted in a single or double envelopes, the manner in which the envelopes are sealed, the requirements that the original and copies of the bid documents shall be uniform, the number of copies, that all documents have to be signed by authorized persons and the seal of the organization shall be affixed there to, the manner in which supporting documents (current tax clearance certificate, renewed business license and other documents) that the Public Body requires should be submitted.

p) If advance payment is to be made in accordance with article 16/26 of this Directive, the amount of such payment and the mode of the corresponding guarantee required as a prerequisite for such advance payment

q) An indication that if bidders are aggrieved by the decision rendered during the procurement process, they have the right of complaint in accordance with chapter fourteen of the Proclamation and article 45 and 47 of this directive, and the place where such complaint may be filed

r) An indication that the Public Body has the right to decrease or increase the quantity of the goods or services by up to 20% (twenty percent) when awarding the contract without changing the unit price offered by the bidder.

16.4.3 No change shall be allowed to the content of the instruction to bidders of the standard bidding document. Any modification to be made to the instruction to bidders shall be indicated only in the bid data sheet.

16.5 Technical Specification.

a) Public bodies shall be required to draw up detailed technical specification specially for complex and high cost procurements in accordance with article 29 of the Proclamation

b) A technical specification shall be prepared in accordance with the need of end users and in such a manner that it allows wider competition on the basis of performance, function, technical or design characteristics depending on the type of the procurement.

c) Being an integral part of the contract, the technical specification shall be used to verify the conformity of the supply with the stated technical requirement.

d) The technical specification of goods, consultancy service, works or services shall be drawn up by the department which has identified the need or by the staff of the Public Body who have adequate knowledge of the procurement in question. For the procurement of high cost and/or complex goods or services, public bodies may seek the advice and assistance of experts outside the Public Body or higher consultants.

e) A specification shall not prescribe a particular product, brand or service provider. However, where it is difficult to draw up a specification giving an accurate description of the requirement, where the procurement is for spare parts for a particular item of proprietary plant or equipment, or where there is known to be only one manufacturer or provider of the goods or services in question, the name of the manufacturer or service

provider and the term “Or Similar” may be incorporated in the specification.

f) The technical specification should be prepared in such a manner that it incorporates use values needed to satisfy the current and future demand of the Public Body in question and should avoid the inclusion of non value adding features.

g) When preparing technical specification, public bodies may incorporate standards set by Ethiopian Quality and Standard Authority or by other similar institutes depending on the type of procurement and as appropriate

h) Technical specification shall form part of the bidding document and shall be sufficiently detailed and comprehensive to provide a complete and exact basis for the formulation of bids by those suppliers wishing to participate in the bid.

16.6 Bid form and Price Schedule

a) Public bodies shall incorporate in the bidding document they prepare the bid form issued by the Agency, or depending on the type of the procurement, the bid form and the price schedule prepared by them to be filled by bidders, and other forms the incorporation of which in the standard bidding document is deemed to be necessary.

b) The price schedule to be prepared by public bodies in accordance with **(a)** of this article, shall be such that prompts bidders to clearly indicate price, tax and other issues related to price and facilitates transparent and efficient bid evaluation.

c) The bid form prepared by the Public Body shall be such that enables the candidates to present clear proposal, understand the bid procedure, warns

against acts of disruption of the bid process and informs candidates that they take full responsibility for the bid proposal they put up.

16.7 General and Special Conditions of Contract

16.7.1 A Public Body has to make sure that bidders get copies of the general and special conditions of contract as parts of the standard bidding document.

16.7.2 No change shall be made to the content of the general conditions of contract of the standard bidding document. The special conditions of contract may however be modified depending on the type and nature of the procurement with reference to the provisions of the general conditions of contract.

16.7.3 Without prejudice to article 16.7.1 and 16.7.2 above, the special conditions of contract drawn up by public bodies shall contain the following, not withstanding that it may vary from one type of procurement to another.

a) A clear indication of the duties and responsibilities of the Public Body and the bidder as a prospective supplier, and legally sustainable and attainable obligations of the Public Body.

b) provisions for the important terms of the contract such as time of delivery, packing, responsibility for transportation, price adjustment, payment, delivery and inspection, security and others as the case may be.

16.8 Setting of criteria for bid evaluation

16.8.1 The Public Body has to indicate clearly the bid evaluation criteria in the evaluation and qualification criteria section of the standard bidding document.

16.8.2 Selection of a successful bidder shall be carried out in either of the following two methods, not withstanding that the bid evaluation criteria varies from one type of procurement to another:-

a) setting the minimum technical requirement and selecting the bidder with the lowest evaluated bid from among the bidders meeting such minimum technical requirements, or

b) Indicating clearly in the bidding document the criteria to be applied to determine the functional or economic value of the procurement and the relative weight to be ascribed to each criterion and selecting the bidder with the highest cumulative result by conducting evaluation based on these criteria.

16.8.3 The criteria selected for conducting evaluation as described in article 16.8.2 (b) above shall be objective and that can, as far as possible, be expressed in monetary terms in respect of achieving maximum value for money and shall take the following conditions into consideration:-

a) Where the object to be procured is standard supply, whether a value can be sought in respect of that object which is useful to the Public Body and which can make a difference among the bidders and facilitates the selection of the successful bidder.

b) Whether a value offered by a bidder in addition to the minimum requirement would bring extra benefit to the Public Body, and whether the extra benefit, if any, is significant,

c) That there is no standard for the goods to be procured and whether similar goods are available which can respond to the specification in different levels in terms of creating extra benefit to the Public Body.

d) In respect of goods of long term service, whether the Public Body has to incur different costs of operation, maintenance and disposal on account of variation in the source of the supply.

16.8.4 After identifying the successful bidder by evaluating the bid documents against the criteria set forth in this article 16.8 of this Directive, It shall indicate in advance in the bidding document the criteria the Public Body applies to conduct post qualification evaluation to establish the current qualification of the successful bidder where it feels that it has to be ascertained.

16.8.5 The relevance of the evaluation criteria to be selected in accordance with sub article 13.8.3 of this Directive to the determination of the benefit of the goods or services to be procured must be ascertained and the criteria have to be given relative weight in terms of the level of their contribution to the determination of the benefit of the procurement.

16.8.6 For the purpose of procurement of services, the method of evaluation stated in sub article 16.8.2 (b) of this Directive shall be applied with the relative weight to be ascribed to price being not less than 50% (fifty percent) of the total merit point.

16.9 Setting of bid floating periods

16.9.1 In the preparation of a bidding document, a Public Body has to set the deadline for bid submission taking into consideration the following points:-

a) The time it takes for bidders to obtain the bidding document, to prepare responsive bids, to gather information, to analyze the information, to establish joint venture as necessary, to obtain certificate of manufacturer’s authorization including the power of attorney to sign and to fulfill other pre-conditions to participate in the bid.

b) Incase of international competitive bidding, the time necessary for the submission of bid document to the designated place.

c) In case of procurement of works in particular, the time necessary to visit the construction site and for pre-bid meeting.

16.9.2 Without prejudice to article 19.6.1 above of this directive, the floating period Shouldn't be less than the minimum date stated in Annex 3 of this directive.

16.10 Sale of bidding documents

16.10.1 Public bodies shall fix the selling price of bidding documents for all kinds of bids taking into consideration the following points further to article 38 of the Proclamation:-.

a) The price of the bidding document prepared by the Public Body shall not be such that impedes wide competition.

b) In fixing the price of any bidding document, public bodies shall not seek profit or gain but aim only at recovery of cost incurred in the preparation of the bidding document.

16.10.2 Public bodies may allow candidates to obtain bidding documents free of charge, or at a price less than the cost incurred in the preparation of such document under the following circumstances:-

a) Where it is thought that there will be no adequate number of bidders forthcoming for a bid, or

b) Where the cost incurred to prepare the bidding document is so minimal that the Public Body considers recovering the cost from bidders to be unnecessary.

c) Where the Public Body considers that the cost estimate of the bidding document is so high that recovering the full cost from bidders discourages competition by restraining candidates from participating in the bid.

d) In case of re-advertised bid, where the Public Body considers it to be unfair to require candidates who bought the bidding document to participate in the former bid to pay again for the bidding document.

16.10.3 The bidding document shall be available to candidates desiring to participate in the bid on working days during the floating period of the bid in the manner stated in the advertisement.

16.11 presentations of Samples

16.11.1 Where it is not possible to draw up technical specification, or where the better execution of the procurement requires the presentation of samples representing the required objects of procurement in addition to technical specification, the Public Body may produce or require candidates to produce samples.

16.11.2 Where the Public Body produces samples of the desired objects of the procurement for candidates to take a look at:-

a) The samples produced by the Public Body shall not be restricted to goods produced by a specific producer or under a specific trade name. The samples presented must, as far as possible, involve acceptable specimen, and bidders should be informed that goods of comparable quality may also be supplied.

b) It is necessary to make sure that samples are displayed at a convenient place clearly visible to the candidates, and to the extent appropriate, a professional has to be assigned to give description of the samples presented.

c) Where the Public Body has to provide technical specification a part from presentation of samples to demonstrate to candidates the required object of procurement, the technical specification so provided shall, as far as

possible, be adequately descriptive of the specimen presented and in conformity with the technical characteristics of such specimen.

16.11.3 Where candidates are required to produce samples in accordance with the technical specification drawn up by the Public Body:-

a) Candidates shall be given adequate information about the samples they are required to produce as well as the time and manner of presenting such samples.

b) While samples have to be submitted prior to opening of bids, a Public Body may allow additional time in respect of sample sent by a candidate at the right time but the receipt of which was delayed in the process of transportation for reasons beyond the control of the candidate, as long as in the opinion of the Public Body, allowing extra time doesn't harm the procurement process.

16.11.4 Candidates may supply evidence of their sample where they cannot supply the sample item itself and the Public Body accepts the reason for a candidate's inability to do so. This evidence may include photographs or a piece of sample item. This option may however be exercised if it is ascertained that it doesn't make a difference in selecting the best evaluating bidder and doesn't have discriminatory effect.

16.11.5 The Public Body has the duty to handle and examine carefully, samples supplied by candidates; however Bidders shall not be paid compensation for samples lost or destroyed in the examination process because of their nature. Samples that are not lost or destroyed shall be returned to unsuccessful bidders. If samples are not claimed by unsuccessful bidders with in 6 months, they shall be forfeited to the government.

16.11.6 Unless the Public Body decides otherwise, a sample supplied by the successful bidder shall stay with the Public Body until the completion of the procurement process to be used for checking conformity during delivery.

16.12. Classification or Modification of bidding documents.

16.12.1. As provided in article 39 of the Proclamation, a Public Body has to entertain requests from candidates on clarification or modification to a bidding document prepared by it.

16.12.2. Notwithstanding the provision of article 16.12.1 above, the Public Body shall not be obliged to respond to a request for clarification or modification submitted:

a) Later than 10 days prior to the deadline for submission of bids, in respect of national competitive bidding for complex procurements the minimum floating period of which is 30 days as stated in this Directive.

b) Later than 21 days prior to the deadline for submission of bids in respect of international competitive bidding.

c) Later than 5 days prior to the deadline for non complex procurements the minimum floating period of which is 15 days.

16.12.3. A reply given by the Public Body to a request for clarification by a candidate shall be in writing and sent to all candidates at the same time without reference to the identity of the candidate initiating the request.

16.12.4. Where a Public Body finds it necessary to introduce modification to a bidding document initially issued by it on the basis of request for clarification by a candidate, the Public Body may modify such bidding

document. Any alteration to the content of the bidding document shall at the same time be communicated in the form of an amendment to all candidates who purchased the bidding document.

16.12.5. A Public Body has to extend the closing date for submission of bids where it modifies a bidding document as per article 16.12.4 above, if it is assumed that the time remaining before the closing date is not sufficient for bidders to prepare adjusted bid documents on the basis of such modification.

16.12.6. Where a Public Body deems it to be appropriate, it may convene a meeting of bidders who purchased a bidding document for clarification and discussion on the bidding document or modification thereto, and such discussion shall be minuted.

16.12.7. Copies of the minute shall be delivered to the candidates who purchased the bidding document to enable them prepare their bid documents by incorporating the content of the modification.

16.13. Language of Bids

16.13.1. The language in which bid advertisement and a bidding document are prepared, and the language in which bids are conducted as provided in article 27 of the Proclamation shall be:-

a) Amharic for national open bidding in which only local bidders participate. However, if the Public Body considers that using English language is more convenient to the procurement process in terms of facilitating competition, it may authorize the use of English language in the preparation of bid advertisements, bidding documents and in bid proceedings.

b) For procurements to be conducted by means of international competitive bidding, all documents shall be prepared in English language.

16.13.2 Bids and supporting documents of candidates prepared in a language other than that stipulated in the bidding document shall have to be translated by a legally competent interpreter into the language stated in the bidding document and a copy of the translation has to be submitted together with the original documents, specially where such documents pertain to the fundamental elements of the bid.

16.13.3. If a Public Body detects discrepancy between language of the original document and the translated version, it shall reject the documents unless such discrepancy constitutes major deviation from the requirement stated in the bidding documents.

16.14. Bid price and price Adjustment

16.14.1. A Public Body has to ensure that prices quoted by a bidder are not based on prices of the other bidders and such prices remain firm and do not vary during the validity period of the bid and through out the performance of the contract.

16.14.2. Notwithstanding the provision of article 16.14.1 above, the Public Body may, under the following circumstances, indicate in the bidding document that price adjustments are allowed in respect of works contracts, after 12 months from the effective date of such contracts and in respect of procurement made under a framework contract, after 3 months from effective date of such contract.

a) Where it is verified that, in respect of works contracts, the performance of the contract requires more than 18 months, and in respect of a

framework contract, where the performance of the contract requires more than 6 months.

b) For frame work contracts where the Agency or the Central Statistics Agency issues periodic price index to use as reference for fixing the initial price and make price adjustment.

c) Where it is ascertained that the Agency or the Central Statistics Agency can issue price index or price indicators for selected categories of items.

d) Notwithstanding the provision of article 16.14.2 (c) above, in respect of selected categories of items which the Public Body considers appropriate to allow price adjustment and for which the Agency or Central Statistics Agency is not in a position to issue current price index, where price information is available from a renowned local producer or competent foreign institution.

16.14.3 Price adjustment for works contract

Without prejudice to article 16.14.2 above, any price adjustment made in connection with works contract shall be calculated using the formula provided in the standard bidding document in accordance with the following procedure.

a) Identifying the major inputs necessary for the works in question and the set of items to be classified under each major input.

b) Calculating the share of each major input from the total input of the works in question under which set of items is classified and select the ones for which price adjustment may be allowed.

c) The price index or price indicator operating before the bid closing date should be used as basis for price adjustment.

d) Where a request for price adjustment is filed in accordance with article 16.14.2 above, the price adjustment is calculated, especially for works contracts, on the basis of the formula by applying the price index or indicator applicable at the time of filing of such request.

16.14.4 Price adjustment for procurement under a framework contract.

Public Bodies may allow price adjustment in respect of procurement made under a framework contract in accordance with the following procedure:-

a) The Public Body may allow price adjustment in respect only of supplies for which current price information is available from the Agency or the Central Statistical Agency.

b) Request for price adjustment for procurements under a framework contract may be filed after 3 months from the effective date of the contract in question.

c) The price information of the Agency or Central Statistics Agency applicable to the goods or services on the day of the bid opening in respect of which price adjustment may be allowed and the time in which such adjustment is made with in the period in which the framework contract is enforce shall be stated in the contract agreement.

d) The Public Body shall calculate the difference between the price stated in the contract corresponding to the price applicable on the day of bid opening, and the price applicable to the time in which adjustment is made as indicated in the price index issued by the Agency or Central Statistics Agency and subtract or add such difference, as the case may be, from or to the price quoted by the supplier and apply the price adjusted in this manner until the next price adjustment.

e) For supplies in respect of which the supplier did not conform to the agreed time of delivery, price adjustment may be made on the basis of the price applicable to the time in which such supplies should have been delivered as per the contractual agreement.

16.14.5 Price Adjustment for procurement of consultancy service

a) Where the time for completion of a consultancy service under a contract is extended for a reason not attributable to the fault of the consultant, the Public Body may make price adjustment, if it considers that such adjustment is appropriate.

b) Notwithstanding the provision of article 16.14.5 (a) above, price adjustment allowed for consultants shall not exceed 15% (fifteen percent) of the total contract price.

16.14.6 The Public Body shall state clearly in its bidding document the following and such other information as it deems necessary for procurement of goods or supplies in respect of which price adjustment may be allowed:-

a) The type of evidence candidates are required to supply together with the bid document for the purpose of price adjustment.

b) The conditions for price adjustment, the means by which requests for price adjustment are communicated and types of evidence and number of copies of supporting documents to be submitted together with price adjustment requests.

c) Other relevant documents and procedures to be followed by bidders in regard to the implementation of price adjustment.

16.14.7 In evaluating bids, the Public Body has to ascertain that bidders agree to the pre conditions for price adjustment stated in the bidding document and the evidence submitted by them are admissible.

16.14.8 The following and other information which are deemed to be relevant shall be incorporated in a contract to be signed between the procuring Public Body and the successful bidder.

a) Goods to be produced or supplied using inputs in respect of which price adjustment may be allowed and the price adjustment procedure.

b) The source and type of documents agreed upon by the Public Body and the supplier for the purpose of price adjustment.

c) That the evidence to be produced shall conform to the requirement stated in the contract and that any evidence originating from other sources shall not be admitted.

d) That no adjustment may be allowed for price rise resulting from failure on the part of the supplier to perform its/his obligation at the time stipulated in the contract.

16.14.9 Where the price difference resulting from price adjustment exceeds 25% (twenty five percent) of the total contract price, the head of the Public Body shall be notified in order to be able to make decision on whether to proceed with the procurement considering the economic benefit of such procurement.

16.14.10 For any procurement in respect of which price adjustment is allowed, the Public Body shall upon receipt of payment request from the supplier, inquire whether there is price decrease in respect of inputs for which price adjustment is allowed as per the contract agreement, and deduct from the sum due to the supplier the amount of the price decrease and effect payment accordingly.

16.15 Validity period of bid documents

16.15.1 The Public Body shall carefully decide the validity period of the bid and indicate same in the bidding document. While the validity period of bid document or bid price varies depending on the type of the procurement, the Public Body shall take the following matters into consideration in fixing the period.

a) The complexity of the procurement in question and the estimated time required for the bid proceeding.

b) The estimated number of candidates participating in the bid.

c) The experience of the Public Body in evaluating bids of similar nature

d) The price volatility of the procurement

16.15.2 The validity period of bid price, to be fixed in accordance with article 16.15.1 above, shall take into account the time necessary for the Public Body to evaluate the bid, to obtain the approval of the Procurement Endorsing Committee, to consider complaints and to sign contract with the successful bidder.

16.15.3 the validity period of bid shall not extend beyond 60 days from the day of bid opening, unless the Public Body believes that a bid document requires longer preparation period in light of the point of considerations stated in article 16.15.2 above,

16.15.4 Public bodies have to complete bid proceedings within the validity period of bid documents and sign contracts with successful bidders however, where the Public Body realizes that for reasons beyond its control the price validity period expires before the completion of the bid proceeding, it shall request bidders to extend the validity period of their bid price.

16.15.5 The extension of bid validity a Public Body has to require of bidders in accordance with article 16.15.4 above shall only be for such time as is necessary to complete the remaining part of the bid proceeding. However, bidders who are not willing to extend their price validity period for what ever reason shall be disqualified from the bid without having forfeited their bid security.

16.15.6 Bidders agreeing to the Public Body's request for extension of their price validity period have to express in writing their agreement to such request and for how long they are willing to extend the period. Similarly, they have to amend the validity period of their bid security on the basis of the extension of the price validity period they have agreed to, or alternatively, furnish new bid security to cover the extended period.

16.15.7 A bidder not agreeing to extend the validity period of his/its bid security shall be treated as a bidder refusing the Public Body's request for extension of price validity period, and as such, shall be disqualified from the bid.

16.16 Bid Security

16.16.1 Except for procurement of consultancy services, Public bodies have to fix and clearly indicate in the bidding document, the amount and mode of bid security to be required of bidders in respect of each procurement when executing procurement by means of open, restricted or two stage bidding. However, the Public Body may require bidders to furnish bid security for consultancy service if, for any reason, such Public Body finds it necessary to do so.

16.16.2 The amount of bid security a Public Body may require shall be in the range of 0.5% to 2% of the total estimated contract price, which the Public Body

has to fix and indicate in the invitation to bid and the bidding document. However, the bid security to be fixed by the Public Body shall not exceed 500,000.00 (five hundred thousand) birr.

16.16.3 when fixing the amount of bid security as provided in article 16.16.2 above, Public Bodies shall take the following points into account:-

a) The volatility of the price of the required object of procurement.

b) the availability of adequate number of candidates to participate in the bid,

c) That the bid security required of candidates doesn't discourage them from participating in the bid.

d) that the bid security urges the successful bidder to sign the contract

e) That the bid security is sufficient to compensate the damage the Public Body may sustain as a result of the successful bidder refusing to sign the contract.

16.16.4 The bid security may at the bidder's option be in the form of cash, cheque certified by a reputable bank, bank guarantee or letter of credit.

16.16.5 Notwithstanding the provision of article 16.16.4 above, local contractors engaged in construction service may provide bid security in the form of conditional insurance bond.

16.16.6 The validity period of bid security provided by bidders should extend for at least 28 days after the expiration of bid price validity.

16.16.7 The bid security furnished by foreign bidders from a bank outside of Ethiopia has to be unconditional and certified or counter guaranteed by local banks.

16.16.8 The commission or omission of the following acts by any bidder may result in the forfeiture of bid security to the Public Body:-

a) Withdrawing from a bid after the dead line for submission of bids stated in the bidding document or before the expiration of the price validity period indicated in the bid document.

b) Refusing to sign the contract or to furnish the performance security after award.

16.17 Receipt of bid document

16.17.1 Public bodies have to make available a bid box for collection of bid document from bidders. The bid box shall be placed at the location stated in the bidding document and remain open through out the bid floating period.

16.17.2 The bid box shall be kept securely and the key of the box shall be in the possession of the head of the procurement unit until the day of the bid opening.

16.17.3 As far as possible, all bid documents shall be placed inside the bid box; however, where the bid box can not accommodate bid documents, the Public Body shall assign an employee to collect bid documents from bidders as of the day of publication of the invitation to bid.

16.17.4 The Public Body shall issue receipt for bid documents it receives from bidders as per article 16.17.3 above in acknowledgement of receipt, the employer in charge of the procurement in question shall be responsible for the security of the bid documents received accordingly.

16.17.5 Bid documents received after the dead line for submission of bids shall be returned to the bidders concerned without the envelopes containing the bid documents being opened.

16.18 Bid Opening:-

16.18.1 Bids shall be opened in public at the time and place stated in the **invitation** to bid or in the document amending such invitation to bid.

The bid:-

a) Shall be opened in the presence of the bidders or their authorized representatives. However, the opening of the bid shall not be affected by the absence of the bidders on their own will.

b) To the extent that it doesn't interfere with the bid opening process and there is enough space, any representative of mass-media or any other interested observer may attend the bid opening ceremony

c) As far as possible, a representative of internal audit of the Public Body shall be present during the bid opening.

d) At least 3 employees from the procurement unit shall participate in the bid opening process and to the extent possible, representatives from departments of the Public Body benefiting from the procurement may attend the bid opening process

16.18.2 For bid documents required to be submitted in one envelope, the Public Body shall open each bid and read out the name of the bidder, the bid price for the contract and rebate offered by that bidder and the bidder's conditions for such rebate, the amount and kind of bid security, and any other information enabling bidders to know their relative position in the bid concerned.

16.18.3 Where bid documents are required to be submitted in two envelopes:-

a) The envelope containing the technical proposal shall first be opened in the bid opening process and the name and other salient points of the bid shall be read out.

b) The envelopes containing the financial proposals of all bidders shall be put into one large envelope unopened. The large envelope containing the financial proposals shall be properly sealed and labeled with the bid identification number and a statement indicating that the envelopes therein contain financial proposals written on it and employees of the Public Body executing the bid opening proceeding putting their respective signatures on it. The large envelope containing the financial proposals shall remain sealed and kept carefully under the custody of the procurement unit or any other unit entrusted with the custody of the envelope until the second bid opening preceding.

c) The result of the technical evaluation shall be communicated in writing to all bidders at the same time who participated in the bid after approval by the competent body.

d) The letter of notification to be written to the unsuccessful bidders on the technical evaluation shall state the reason for not being chosen as the successful bidder. The unsuccessful bidders have the right of complaint against the result of the evaluation. The procedure in accordance of which such complaints may be lodged and reviewed shall be as provided in chapter 11 of this directive.

e) The letter of notification to be written to bidders whose technical proposals have been accepted by the Public Body shall state the time and place of opening of the financial proposals. The notification shall be sent to all such bidders at the same time and adequate time should be given to all bidders wishing to attend the financial envelopes

opening proceeding. However, if a complaint is lodged against the result of the technical evaluation, the financial proposals shall not be opened pending decision on such complaint.

f) The financial proposals shall be opened in the presence of the bidders whose technical proposals have been accepted and to whom letter of notification is written to attend the proceeding in accordance with article 16.18.3 (e) above.

g) The envelopes containing the financial proposals of bidder successful in the technical evaluation shall be opened and the name of the bidder, the price offered and any discount given by such bidder and the conditions for such discount, and any other information related to price shall be read out to inform the bidders in accordance with article 16.18.3 (f) above.

h) Upon disclosure of the result of the technical evaluation, the bid security and the envelopes containing the financial proposals shall be returned unopened to the unsuccessful bidders. If, however, a complaint is lodged against the result of the technical evaluation under article 16.18.3 (d), the bid security and the financial envelopes shall not be returned to the unsuccessful bidders pending final decision on such complaints.

16.18.4 The procurement unit of the Public Body shall record the minutes of the bid opening. Such minutes shall contain the names of the bidders, their bid price and any other salient points raised in the bid opening proceeding. The minutes and the original bid documents shall be signed by employees conducting the bid proceeding. Bidders present during the bid opening shall sign the attendance sheet.

16.18.5 Any bid document not opened and read out during the bid opening proceeding shall not be considered for further evaluation.

16.18.6 No bidder shall be disqualified from a bid at the time of bid opening proceeding.

16.19. Evaluating and comparing bids.

16.19.1 Preliminary evaluation.

16.19.1.1 A Public Body may find a bid complete and qualify that bid for detailed evaluation only if the bid document submitted by the bidder is opened during the bid opening proceeding and complies with the prerequisites and essential requirements stated in the bidding document.

16.19.1.2 No Public Body may put a bid for detailed evaluation under the following conditions:

a) Where the bid does not meet the minimum quality and other essential requirements set forth by the Public Body and, therefore, is found to be non responsive at first sight;

b) Where the bidder is not willing to accept corrections of Arithmetical errors made pursuant to Article 16.19.1.3

c) Where the bidder does not furnish the bid security or is not willing to furnish the performance bond required by the Public Body;

d) Where the bidder does not produce evidence of facts that need to be proven in connection with the procurement.

16.19.1.3 Notwithstanding the provision of article 16.19.1.1 above, a Public Body may correct Arithmetical errors detected during preliminary evaluation of bid documents. The Public Body shall promptly notify the

bidder in writing of such corrections. If the bidder does not agree to such corrections, the bidder shall be dropped out of the bid proceeding.

16.9.1.4 A Public Body may accept a bid as complete notwithstanding that such bid contains elements representing certain variance with the bidding document, in so far as such elements do not alter the conditions of contract and other essential requirements forming the fundamental aspect of the bidding document, or bears minor errors or deviations which can be corrected without affecting the essence of the bid. However, such deviations shall, as far as possible, be expressed in monetary terms to be taken account of in the Evaluation of bids.

16.9.2 Evaluating bids and selecting the successful bidder.

16.19.2.1. In order to identify the successful bidder, the Public Body shall conduct detailed evaluation of bids it receives at the initial stage of the bid proceeding, on the basis of the requirements set forth in the bidding document. The Public Body may not evaluate bids against other criteria than those stated in the bidding document. The Public Body shall conduct the evaluation by applying either of the following methods; as indicated in the bidding document:

a) In respect of bids submitted in one envelope, by selecting the bidder offering the lowest evaluated bid from among bidders submitting responsive technical proposals.

b) In respect of bids submitted in two envelopes, by selecting the bidder scoring the highest point in the total sum of results of the technical and financial evaluation conducted on the basis of criteria applied to determine the functional value of the procurement.

16.19.2.2. In conducting detailed evaluation of bids, the unconditional discount offered by bidders shall be considered.

16.19.2.3. If necessary, verification may be done in post qualification to ascertain whether a bidder has the legal competence to transact with the Public Body, or possesses the necessary financial and technical qualification stated in the bidding document.

16.19.2.4. Unless otherwise stated, price offered by bidders in respect of procurement executed by means of international competitive bidding and the evaluation thereof shall include taxes.

16.19.2.5. Where two bidders get equal merit points in the evaluation, preference shall be given to local products or services in accordance with article 25/3 of the proclamation.

16.19.2.6. Without prejudice to Article 16.19.2.6 above, the Public Body may require bidders scoring equal merit points in the evaluation to submit further proposals on certain aspects of the bid with a view to identifying the successful bidder. For the purpose of singling out the successful bidder from among bidders getting equal points in the evaluation,

a) the number of evaluation criteria shall not be more than three and shall be such that can be expressed in figures;

b) The criteria shall be stated in the bid data sheet of the bidding document.

c) Bidders scoring equal merit points shall be notified of that fact and such bidders are invited to submit final proposals in accordance with the requirements stated in the bidding document.

d) The final proposals submitted by the bidders scoring equal points shall, as far as possible, be opened and read out in their presence.

e) The proposals shall be evaluated and the bidder submitting the better proposal shall be declared the successful bidder.

f) Where by reason of the bidders scoring equal merit points not submitting final proposals they are invited to submit, or by reason of the evaluation result of the final proposals submitted by the bidders being still equal, the successful bidder can not be singled out, the successful bidder shall be determined by casting lot in the presence, as far as possible, of the bidders concerned.

16.19.2.7. To the extent that the criteria the Public Body applies to select the successful bidder is known, it shall be stated in the bidding document that the quantity of goods to be supplied could increase or decrease by 20% without the unit price offered for such goods or the terms and conditions stated in the bidding document being changed.

16.19.2.8. Public Bodies shall complete and disclose bid evaluation results to bidders concerned before the expiration of price validity period offered by such bidders. However, if the Public Body can not complete the evaluation within such period, it shall require the bidders to extend their bid price validity period pursuant to article 16.15.4.

16.19.2.9. Where an invitation to bid attracts only one bidder, the Public Body may sign contract with that bidder if the proposal submitted by such bidder is satisfactory to the Public Body and the price offered by the bidder is comparable to or less than the market price of the required object of procurement; it being necessary to make sure that the failure of the bid to attract bidders is not due to the fact that the content of the bidding document is restrictive of open competition.

16.19.3 Re-advertising bids.

A Public Body shall issue invitation to bid for a second time under the following circumstances:

a) Where the Public Body finds it advisable to readvertise the bid owing to the best price offered by a bidder is significantly higher than the market price estimate of the object of procurement made by the Public Body prior to the issuance of the invitation to bid;

b) Where it is concluded that non compliance with the rules and procedures governing bids prescribed by the proclamation and this directive led to the failure of the invitation to bid to attract more than one bidder, or where it is believed that modifying the bidding document could attract adequate number of bidders.

16. 20. Preference.

16.20.1. Pursuant to Article 25 of the proclamation, with the exception of request for quotation and single source procurements, preference shall be granted in any procurement to locally produced goods, to small and micro enterprises established under the relevant proclamation and to local construction and consultancy companies.

16.20.2. The margin of preference to be so granted and applied when comparing prices during evaluation of bids shall be as follows:

a) For procurement of drugs or pharmaceutical products or medical equipments 25%,

b) for procurement of other products 15%,

c) For construction and consultancy services 7.5. %

16.20.3 The preference to be granted to drugs, medical equipments or other products as per article 16/20/2(a) and (b) shall be effective where it is

certified by a competent auditor that no less than 35% of the total value of such products is added in Ethiopia.

For the purpose of this sub-sub article, value added in Ethiopia shall be calculated by deducting from the total value of the product in question, the cost , exclusive of indirect taxes, of imported raw materials and other supplies used in the production of such product as well as services rendered abroad in connection with the production of that product.

16.20.4. The following conditions must be satisfied for local companies engaged in Construction or Consultancy Services to qualify for preference:

a) The company has to be incorporated in Ethiopia;

b) more than fifty per cent of the company's capital stock has to be held by Ethiopian natural or juridical persons;

c) more than fifty per cent of members of the board of the company have to be Ethiopian nationals;

d) At least fifty per cent of the key staff of the company has to be Ethiopian Nationals.

16.20.5. For small and micro enterprises established under the relevant law,

a) Preference shall be given by a margin of 3% when such enterprises compete with local suppliers in national competitive bidding.

b) When small and micro enterprises participate in international competitive bidding, only the preference granted to local companies as per article 16.20.2 (a), (b) and (c) shall apply.

c) In lieu of bid security, performance security or advance payment guarantee, a letter of guarantee written by a competent body organizing and overseeing small and micro enterprises shall be accepted.

d) They shall be entitled to obtain bidding documents free of charge by producing their certificate of registration.

16.21. Disqualification of bidders.

A Public Body may disqualify a bidder for any of the following reasons:

a) Where a bidder offers to supply the required objects of procurement originating in a country in respect of which the government of the Federal Democratic Republic of Ethiopia has imposed trade ban;

b) Where the bidder offers to supply the required objects of procurement originating in a country under trade embargo of the Security Counsel of the United Nations in which transacting with any business organization or individual who is the national of that country is prohibited;

c) Where the bidder commits an act of violating the provisions of the proclamation and this directive;

d) Where the bidder is debarred by a decision of the Agency from participating in public procurements for breach of its obligation under previous contract;

e) Where it is proved that the bidder has given or has offered to give inducement or bribe to an official or procurement staff of the Public Body to influence the result of the bid in his favor;

f)Where it is proved that the bidder has committed an act of embezzlement, fraud or connivance with other bidders.

16.22. Discussion with bidders.

16.22.1 A Public Body may hold discussion with bidders in a procurement proceeding only where it encounters extraordinary situations. Such discussions are held for two purposes:

a) To exchange views with bidders on minute details of a procurement;

b) To arrive at a decision through negotiation with bidders on the technical requirements of a bid in procurement to be executed by means of two stage bidding.

16.22.2 Except as provided in article 16/22/1 above, a Public Body may not require nor allow bidders to change their offer in regard to price and other essential elements of the bid, apart from seeking bidders to give it clarification on certain points of their proposal for the purpose of evaluation after bid opening.

16.23. Approving bids.

16.23.1 The procurement unit or the adhoc committee formed to conduct evaluation of bids in regard to a certain procurement shall complete the evaluation and submit the result together with its recommendation, to the Procurement Endorsing Committee or other body having the authority to approve bid evaluation results, within the bid validity period offered by the bidders.

16.23.2 The Procurement Endorsing Committee established in accordance with the proclamation and this directive shall examine the evaluation report in light of the procurement rules and procedures as well as against the

requirements of the bidding document and give either of the following decisions:

a) Approve the evaluation report as a whole and authorize the procurement to Proceed accordingly;

b) Reject the report and order re-evaluation.

16.23.3 Where the Procurement Endorsing Committee finds it necessary, it may require the persons conducting the evaluation to account for the evaluation report.

16.23.4 Where the Procurement Endorsing Committee rejects the report pursuant to article 16.23.2 (b), it shall state the reason for its decision and refer the case back to the evaluation team with instruction for the team to follow in re-evaluating the bids in question. The evaluation team shall conduct re-evaluation in accordance with the instruction of the Procurement Endorsing Committee and report the result back to the committee.

16.23.5 Notwithstanding the provision of article 16/23/4 above, the evaluation team or a member thereof objecting to the decision of the committee and the corrective instruction given by the committee has the right to record its/his dissenting opinion. However, the procurement shall be executed in accordance with the decision of the committee.

16.24. Announcing the successful bidder.

16.24.1 Public Bodies shall announce the result of a bid evaluation to all bidders alike at the same time. The information to be disclosed to the unsuccessful bidders shall be the reason why they did not succeed in their bid and the identity of the successful bidder.

16.24.2 A letter of award to be sent by the Public Body to a successful bidder shall not constitute a contract between him and the Public Body. A contract shall be deemed to have been concluded between the Public Body and the successful bidder only where a contract containing detailed provisions governing the execution of the procurement in issue is signed.

16.24.3 A letter of contract award to be sent to a successful bidder shall contain the following information:

a) That the Public Body has accepted his bid;

b) The total contract price;

c) The amount of the performance security the successful bidder is required to furnish and the deadline for providing such security.

16.24.4 Where the successful bidder can not or is unwilling to sign a contract, the Public Body may either declare the bidder submitting the second most preferred bid the successful bidder or invite such bidder to sign a contract or advertise the bid afresh by assessing the benefit of the two options.

16.24.5 The Public Body shall return to the bidders their bid security on the following conditions:

a) If the successful bidder has signed contract and furnished the required contract security;

b) If the bid validity period initially offered by a bidder not willing to extend such period has expired or if a bidder is unsuccessful.

16.25. Performance Security.

16.25.1 Except for procurements executed by means of request for quotation or procurement of rental services, a Public Body has to require a supplier under contract with it to furnish performance security in any procurement.

16.25.2 The Successful bidder has to provide performance security within fifteen days from signing a contract in the amount of at least ten per cent of the total contract price, in the mode and manner prescribed in article 16.16.4 of this directive.

16.25.3 Where a supplier fails to discharge its/his obligation in accordance with the terms and conditions of the contract, the Public Body shall exercise its right over the security and demand or confiscate in whole such security, as the case may be.

16.25.4 Notwithstanding the provision of article 16.25.3 above, the performance security may be returned to the supplier where the Procurement Endorsing Committee ascertains that the noncompliance of the supplier does not affect the interest of, or entail additional cost on the Public Body and is not due to the fault of the supplier.

16.25.5 The Public Body shall be required to submit any document in its possession in relation to a procurement in which it authorizes the return of the performance security to a supplier and account for its action under the preceding sub article 16.25.4 of this directive to the Agency or other competent body if and when required to do so.

16.25.6 Notwithstanding the provision of article 16.25.2 above,

a) A conditional insurance bond shall be accepted as performance security in respect of construction contracts or in respect of contracts for supply of drugs with local contractors or manufacturers of pharmaceutical products.

b) A Public Body may require a consultant to furnish professional indemnity insurance in respect of consultancy service such consultant renders to that Public Body under a contract, where the Public Body finds it appropriate to make provision for any damage it may sustain as a result of possible default on the part of the consultant.

c) Small and micro enterprises shall be required to submit a letter of guarantee from the body organizing and overseeing them in lieu of performance security.

d) Enterprises engaged in insurance business and contracting with a Public Body may use their reserve with the National Bank of Ethiopia as performance security, it being necessary for such enterprises to produce a certificate from the bank that the reserve they have with the bank is sufficient to cover the required performance security.

16.25.7 Unless the parties agree otherwise, the performance security furnished by a supplier shall be returned to him upon complete performance of the contract.

16.26 Advance payment

16.26.1 In any public procurement, advance may be paid in an amount not exceeding 30% of the total contract price. The amount to be paid in advance shall be stated in the instruction to bidders.

16.26.2 Suppliers shall submit advance payment security in an amount equal to the advance payment they receive in the form of a certified cheque or

unconditional bank guarantee at their option from a reputable bank, together with their request for advance payment as per the contract.

16.26.3 Notwithstanding the provision of Article 16.26.2 above, domestic contractors and manufacturers of pharmaceutical products and medical equipments may submit conditional advance payment security from reputable insurance company.

16.26.4 Without prejudice to the provision of article 16.20.5(c) hereof, in respect of small and micro-enterprises, a Public Body may, where appropriate, require the opening of special bank account into which the advance payment may be deposited, which shall be withdrawn by join signature of the representative of the Public Body and the supplier for payment of expenditure arising from the performance of the contract.

16.26.5 Where in accordance with article 16.26.3, the advance payment security provided by a contractor in the performance of a construction contract is conditional, or in respect of advance payment made in favor of a small and micro-enterprise in accordance with article 16.26.4, the Public Body shall enter into special agreement with the contractor or the small and micro-enterprise as the case may be, for the use of the advance payment. Such agreement inter alia includes the following:-

a) That the advance to be paid to the contractor or the small or micro-enterprise in accordance with the contract shall be deposited in a special bank account to be opened for this purpose in the name of the contractor or the small or micro-enterprise.

b) That the advance to be deposited in the account to be opened as per (a) above can only be with drawn by joint signature of the Public Body and the supplier

c) That payment shall be effected to the contractor or small or micro-enterprise from the amount deposited in the special account where it is ascertained that the contractor or small or micro-enterprise has performed part of its obligation under the contract corresponding to the payment disbursed to it/ him.

d) That in respect of road construction contract performed by a local contractor, up to 50% (fifty percent) of the advance payment and in respect of building construction contract performed by a local contractor, up to 30% (thirty percent) of the advance payment may be used for acquisition of equipment

16.26.6 The provision of article 16.26.5(d) shall apply where the following conditions are satisfied.

a) Where the contractor takes under not to pledge or transfer to a third party, the equipments procured with the proceeds of the advance payment before the completion of the project.

b) Where the contractor presents, before signing an agreement with the Public Body on the use of the advance payment, a list of equipments to be procured with the proceeds of the advance payment and the engineer assigned by the Public Body to supervise the works certifies that such equipments are necessary for the works to be executed under the contract.

c) Where the contractor undertakes not to move the equipments from the project site without the permission of the Public Body.

16.26.7 The equipments to be procured with advance payment made for contractors engaged in construction of roads and buildings shall be only those specified in annex 4 of this directive.

16.26.8 A subsequent installment due to a contractor under a contract shall not be disbursed to it/him unless such contractor moves the equipments acquired with the proceeds of the advance payment to the project site with in the time frame agreed in the contract.

16.26.9 Any advance payment made to a contractor or a small or micro-enterprise shall be deducted from each payment effected to the contractor or the small or micro-enterprise against payment certificate for work executed by the contractor or the small or micro enterprise at various stages of the contract, or for supplies delivered to the Public Body as per the contract, until the Public Body recovers the full amount of such advance payment.

16.27 Signing of Contract

16.27.1 Any Public Body has to sign with a supplier, a contract containing the general conditions of contract forming an integral part of the bidding document and the special conditions of contract to be agreed upon by and between it and the supplier.

16.27.2 Unless a contract is signed between the Public Body and the supplier, mere notification of award doesn't constitute a contract between the Public Body and the supplier.

16.27.3 The contract to be signed between the Public Body and the supplier shall clearly state the obligations of the two parties and incorporate provisions, inter alia, for the following matters:-

a) The type, quality and quantity of the goods to be supplied, the works to be executed, or the consultancy or other services to be rendered as per the contract, the manner and schedule of delivery of such goods, works or services, the unit and the total price to be paid for such goods, works or services and the terms and schedule of payment.

b) Identifying the party responsible for securing the provision of incidental services (Transport, Insurance, transit etc) from third parties, it being necessary to obtain such services from reliable sources,

c) Discount and other offers proposed by the supplier in its bid document and the application of such offers,

d) Procedure for resolution of disputes that may arise in the performance of the contract,

e) The portions from the total payment to be effected in foreign and local currency for a foreign supplier,

f) Procurement document forming an integral part of the contract and the scope of application of such documents.

g) The conditions giving rise to forfeiture of performance security,

h) The liability of the supplier for delay in supplying the goods, performing the works or rendering the services as per the contract.

16.27.4 The liability of the supplier for delay in performing his/its obligation under the contract shall be as follows:-

a) He/it shall pay a penalty of 0.1% or 1/1000 of the value of undelivered item for each day of delay,

b) The cumulative penalty to be paid by the supplier shall not exceed 10% of the contract price.

c) If the delay in performing the contract affects its activities, the Public Body may terminate the contract by giving advance notice to the supplier, without any obligation to wait until the penalty reaches 10% of the value of the contract.

16.27.5 The Public Body has to carefully consider the obligations and liabilities it may have to assume under a contract; it may not sign a contract involving obligations that it cannot fulfill.

16.27.6 Subject to article 16.27.7 of this directive, unless an exceptional situation arises, the successful bidder has to sign a contract with the Public Body within 15 days of notification of award.

16.27.7 the Public Body shall not sign a contract before seven working days from the date bidders are notified of the result of their bid or of any complaint against the bid proceeding.

PART V

Procedure of International procurement

17. International Competitive Bidding

17.1 Procurements by means of International competitive Bidding shall be made in accordance with article 59 of the Proclamation and this article.

17.2 Subject to the provision of article 59(1) of the Proclamation, procurement may be made by means of international competitive bidding if the value of the contract exceeds the threshold indicated below in respect of each type of procurement:-

a) **For works above birr……..……. 50,000,000.00**
b) **For goods above birr ……....10,000,000.00**
c) **For consultancy services above birr...……...2,500,000.00**
d) **For services above birr…… 7,000,000.00**

17.3 Bidders participating in procurement of goods made by means of international competitive bidding have to produce manufacturers

authorization if a Public Body requires them to do so, unless they themselves are manufacturers of such goods,

17.4. In addition to the procedure of national competitive bidding set forth in article 16 of this Directive, procurements made by means of International Competitive bidding shall comply with the following procedure:-

a) The bid advertisement and the bidding documents shall be prepared in English,

b) The bid advertisement shall be published in a news paper that has wide circulation and accessible to foreign bidders, the bid advertisement shall be posted on the Agency's website if the value of the procurement is above the threshold stated in article 6(5) of this Directive. In order to attract a large number of bidders, the bid advertisement may also be posted on the website of the procuring Public Body and embassies of various countries may be notified of the bid.

c) Bidders must be given adequate time to prepare bid documents in response to the invitation to bid in accordance with article 16/9 of this Directive.

d) The schedule of requirements to be prepared shall comply with national standard and be internationally acceptable.

e) Bid prices offered by foreign bidders shall be quoted and bid securities required of such bidders shall be furnished in a freely convertible currency used for payment in international commercial transactions.

f) Where a foreign bidder uses local inputs to satisfy the required object of procurement under the contract, the portion of the total contract

price representing such local expenditure shall be expressed in birr in the price schedule of the bidder.

g) Contracts concluded for procurements to be made by means of international competitive bidding may incorporate standard terms and conditions applicable in international commercial transactions to the extent that such terms and conditions are not in conflict with the Proclamation, this Directive and other documents governing public procurement

h) Unless the contract provides otherwise, disputes arising from the performance of the contract shall be adjudicated in accordance with Ethiopian Law.

18. Other International Procurement procedures

18.1 Where the participation of foreign companies is believed to be necessary to carry out adequately competitive and effective procurement, public bodies may, without prejudice to certain aspects of National & International Competitive bidding procedures set forth in the Proclamation and this Directive which are appropriate to the particular method of procurement in question, may execute International Procurement by means of two stage bidding, request for proposals, restricted bidding, request for quotation or direct procurement pursuant to article 59(4) of the Proclamation.

18.2 In carrying out International Procurement by means other than International competitive bidding pursuant to article 18(1) above, the conditions and financial thresholds prescribed for each method of procurement shall be complied with.

19. Procurement by means of two stage Bidding

19.1 Subject to the provisions of article 57 and 58 of the Proclamation, procurement made by means of two stage tendering shall be carried out in accordance with the procedures set forth for national or international competitive bidding, as the case may be, in article 16 or 17 of this Directive respectively.

19.2 Notwithstanding the provision of article 19.1 above, the following bid procedures shall apply in respect of two stage bidding:-

19.2.1 It shall be stated in the invitation to bid that the procurement shall be carried out by means of two stage bidding,

19.2.2 Candidates shall not be required to furnish bid security during the first of the two stages bidding,

19.2.3 Since the purpose of the first stage is to draw up detailed schedule of requirements based on proposals from candidates, the bidding document prepared by the Public Body for the first stage shall state the requirements of the Public Body in general terms and incorporate the necessary description and questionnaires.

19.2.4 The technical proposal submitted by candidates during the first stage shall be opened in the absence of the candidates in the manner stated in the invitation to bid.

19.2.5. The first stage evaluation shall focus on examining the proposals submitted by candidates at the first stage to identify the schedule of requirements necessary and the bidders qualifying for the second stage bidding. During the first stage evaluation, the Public Body may also hold discussion with all, some or one of the candidates as necessary. The discussion to be conducted accordingly shall aim at creating better

understanding of and develop the proposal/proposals submitted by the candidates.

19.2.6 The bidding document to be proposed for the second stage bidding shall as far as possible comply with the procedure of competitive bidding set forth in article 16& 17 of this directive.

19.2.7 Invitation shall be sent to the candidates whose proposals have been accepted in the first stage bidding to participate in the second stage bidding. Such bidders shall be required to furnish bid security.

19.2.8 The Public Body shall send to such bidders or require them to collect in person the bidding document prepared for the second stage bidding.

19.2.9 The invitation to bid sent to the candidates pursuant to article 19.2.7 above shall state clearly the requirements they have to fulfill to obtain the bidding documents.

20. Pre-qualification bid

20.1 Where, in view of the particular nature of the procurement, the Public Body finds it necessary to prequalify bidders, it may invite national or International prequalification bids as the case may be.

20.2 procurements requiring prequalification bids should satisfy at least one of the following criteria:-

a) Where the procurement pertains to a work of design, manufacturing or installation of a very high value or complex nature, or

b) Where the procurement pertains to a turnkey contract of works, or the acquisition of machinery or Information technology, or

c) Where the procurement pertains to supply of goods or equipments of considerable importance and includes installation, or

d) Where the cost of drawing up bidding documents is so high that only pre-qualified bidders should participate in the bid.

20.3 It shall be stated in the invitation to bid that the bid is for prequalification.

20.4. Bidding documents for pre-qualification shall be prepared in conformity With the standard bidding document concerning pre-qualification issued by the agency. Without prejudice to the fact that the criteria applied in selecting pre-qualified bidders vary from one type of procurement to the other, bidders under prequalification screening shall be required to produce evidence in proof of the following facts to demonstrate their qualification:

a) the experience of the bidder enterprise in producing the good, rendering the service or executing the work required;

b) the capability of the enterprise to deliver the required object of procurement, (goods, works or services,) in terms of having adequate human power, machinery, equipment and complete infrastructure,

c) the amount or quantity of works the enterprise is presently executing or goods it is manufacturing,

d) that the enterprise has good reputation and financial standing that enables it to perform its obligations under the contract

20.5 Evaluation of bids shall be conducted in accordance with the criteria formulated by the Public Body to evaluate pre-qualification bids.

20.6 No restriction shall be imposed in the number of bidders passing to the second stage bidding as long as such bidders have pre-qualified.

20.7 Public bodies may allow bidders participating in a prequalification bid to compete in Joint venture or partnership. However, bidders who have

prequalified individually shall not be allowed to compete in Joint venture or partnership unless it is established that the joint venture or the partnership does not narrow the scope of the competition.

20.8 Notwithstanding the provision of article 20/6 above, bidders participating in pre-qualification bid as joint venture or in partnership and pre-qualifying as such shall not be allowed to compete individually in the next stage bidding.

20.9 The result of the pre-qualification evaluation approved by the appropriate authority of the Public Body shall be disclosed at the same time to all bidders participating in the bid regardless of whether such bidders have pre-qualified.

20.10 A Public Body may not sign a contract with a bidder declared to successful, if the information given by such bidder in regard to its qualification, in its pre-qualification bid is found to be wrong, or if it is established, with reasonable degree of certainty, that it no longer possesses the capability on the basis of which it pre-qualified, and hence, can not perform the contract on the expected level.

20.11. The preparation of the bidding document to be sent to the respective addresses of the pre-qualified bidders or to be collected by such bidders in person and the rest of the procurement process shall be carried out in accordance with the national or international competitive bidding procedure established by the proclamation and this directive.

21. Procurement made by means of request for proposal.

21.1 Where a Public Body opts to procure consultancy service by means of request for proposal and the estimated value of such procurement is above birr three hundred thousand, it shall issue invitation for expression of interest in accordance with article 22 of this directive.

21.2 The selection of consultants to be invited to submit proposals shall be made in the following manner:

a) By selecting those with better qualification from among consultants responding to an invitation for expression of interest issued by the Public Body pursuant to article 22 below;

b) In case of the number of consultants having the competence to deliver the required service being limited, by inviting all of such consultants;

c) If the estimated value of the procurement is below three hundred thousand birr, by random selection from among consultants in the suppliers' list.

21.3 The number of consultants to be invited to submit proposal shall, as far as Possible, be not less than three and not more than seven.

21.4 The Public Body shall send simultaneously to the addresses of the selected consultants, a letter of Notification to submit their proposal. If the Public Body finds it appropriate, it may send to the selected consultants the bidding document prepared for this purpose free of charge together with the letter

21.5 The bidding document shall be prepared in conformity with the standard bidding document issued by the Agency and in accordance with the procedure applicable to national competitive bidding prescribed in this directive.

21.6. The negotiation to be held with the selected consultant shall focus on the content of the consultancy work, the method applied to accomplish the work, the quality of the human power to be engaged by the consultant, the material to be used by the consultant in the performance of the service, the content of the report to be submitted by the consultant as

well as the manner of Submitting such report and such other issues arising from the performance of the service, it being Understood that the essential requirements of the bidding document and the quality of the work to be delivered by the consultant is not negotiable.

21.7. The agreement to be reached with the consultant pursuant to article 21.6 above, shall not be detrimental to the interest of the Public Body, nor favor the selected consultant to the prejudice of the other bidders.

21.8. Apart from the selection methods described in article 21.9 below, the competitive bidding procedure laid down in article 16 of this directive shall apply to the procurement of consultancy service.

21.9. Bid documents for procurements to be made by applying the selection methods described in article 21(10, 11, 12, 13 and 14) below shall be submitted in two envelopes containing the technical and financial proposals separately, and the evaluation and selection of consultants shall be carried Out in accordance with the following methods

21.10. Selection based on Quality and Cost

21.10.1 In evaluating and comparing technical proposals submitted by consultants in a bid for Procurement of consultancy service, public bodies shall use the following criteria:

a) The experience of the consultant relevant to the service required;

b) The methodology the consultant proposes to apply in conducting the study or research;

c) The knowledge the consultancy service to be rendered by the consultant transfers to the Public Body;

d) The level of participation of Ethiopian consultants in the important components of the consultancy service to be rendered by foreign consultants

.

21.10.2 The following percentage points shall be given for each criterion listed in article 21.10.1 above depending on the type of the required consultancy service:

a) **For experience of the consultant……..5-10%;**
b) **For method applied in doing the study or research.……..20-50%;**
c) **For ability to transfer knowledge…….……...…...5-10%;**
d) **For competence of key professionals engaged in the Consultancy service …….... 30-60%;**
e) **For participation of Ethiopians …….……..5-10%;**

21.10.3 Bidders getting less than 70% in the evaluation shall be rejected and the envelopes containing the financial proposals of those consultants scoring 70% and above shall be opened.

21.10.4 The envelopes containing the financial proposals of those consultants who failed to achieve the points required to qualify for financial evaluation shall be returned to them unopened.

21.10.5 Prices offered by local consultants shall, for the purpose of evaluation, include local taxes. Prices offered by foreign and local consultants may also include translation, travel, stationery and other incidental expenses.

21.10.6 In the financial evaluation, the highest point shall be given to the lowest priced bid, and conversely, the lowest point shall be given to the highest priced bid; among technically qualified bids. The points given to other bidders shall be determined depending on their price offers.

21.10.7 From the total merit points to be given for proposals submitted by consultants in a bid for Procurement of consultancy service, the share

of technical proposal shall be 80% and the remaining 20% shall be the share of financial proposal.

21.10.8 The consultant scoring the highest point in the total sum of the technical and financial Evaluation shall be selected as the successful bidder.

21.10.9 In addition to the method of selection described above, the procedure prescribed in article16 of this directive shall apply for a procurement of consultancy service made by means of International competitive bidding.

21.11 Quality Based Selection

21.11.1 Quality based selection shall be used under the following conditions:-

a) Where the complexity of the consultancy service calls for special qualification and for this reason it is difficult to define precise terms of reference or the required input from the consultants, for which the client expects the consultants to demonstrate innovation in their proposals.

b) Assignments that have a high downstream impact and in which the objective is to have the best experts.

c) Assignments that can be carried out in substantially different ways, when comparison of such proposal is expected to be difficult.

21.11.2 The Envelopes containing the technical proposals shall be opened in the presence of the bidders,

21.11.3 The bidder scoring the highest point in the evaluation of the technical proposals shall be selected as the successful bidder.

21.11.4 Notwithstanding the provision of Article 21.11.3 above, If the price offered by the selected bidder is beyond the public bodies ability to pay,

the Public Body may enter into a contract with the bidder scoring the second highest point in the technical proposal to procure the required service, provided that the price offered by such bidder is affordable to the Public Body.

21.11.5 Upon signature of the contract with the selected bidder, the envelopes containing the financial proposals of the unsuccessful bidders shall be returned to such bidders unopened.

21.12 Selection Based on Fixed Budget

a) This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed.

b) The envelopes of the technical proposals shall be opened in the presence of the bidders in accordance with article 16.18.3 (a) of this directive,

c) The technical evaluation shall be carried out in accordance with the provisions of article 21.10.1, 21.10.2, 21.10.3 and 21.10.4 of this directive,

d) The financial envelopes of the bidders, who have technically qualified, shall be opened in their presence and the price offered by each bidder shall be read out

e) Bidders offering price in excess of the budget available for the procurement shall be disqualified.

f) The bidder offering the price with in the budget limit allocated to the procurement and scoring the highest point in the total sum of the technical & financial evaluations shall be selected as the successful bidder. If necessary, negotiation may be held with the selected bidder on certain issues excluding price.

21.13 **Selection Based on Least Cost**

21.13.1 This method is appropriate for procurement of a consultancy service which is standard, simple and doesn't call for special qualification of a consultant.

21.13.2 In evaluating bidders by applying this method, public bodies shall set the minimum point of technical evaluation which they shall indicate in the request for proposal to be issued for consultants who are selected from the suppliers list.

21.13.3 The envelopes of technical proposals shall be opened in the presence of the bidders and the evaluation shall be carried out there after.

21.13.4 Bidders failing to score the minimum point set for technical qualification shall be disqualified.

21.13.5 The envelopes containing the financial evaluation of bidders not satisfying the minimum point set for technical qualification shall be returned to them unopened.

21.13.6 The financial envelopes of the bidders who have technically qualified shall be opened in their presence and the price offered by each bidder shall be read out.

21.13.7 The bidder offering the lowest evaluated price shall be selected as the successful bidder from among the bidders who have technically qualified by satisfying the minimum point.

21.14 Selection Based on the Consultants' Qualification

a) This method may be used for small assignments of which the cost and time required for preparing and evaluating competitive proposals is not justified.

b) This method may only be used where the value of the consultancy services does not exceed Birr 50,000.

c) The terms of reference to be prepared for such consultancy service shall require candidate consultants to state their experience and level of qualification.

d) The consultancy assignment shall be based on the agreement reached through negotiation on the technical and financial proposal of the consultant selected through evaluation of information submitted by candidates chosen from the suppliers' list or contained in the data base of the Public Body.

21.15 Single Source Selection

Public bodies may procure consultancy service by means of single source selection, provided that the conditions stated in article 51& 52 of the proclamation and article 25 of this directive are satisfied.

22. Invitation for Expression of Interest

22.1 A Public Body shall invite expression of interest for procurement of consultancy service the estimated value of which exceeds 300,000 birr.

a) The invitation for Expression of Interest shall be carried out in accordance with the provisions of article 16.2 or 16.4 (a&b) of this directive, and shall state that the invitation is only for expression of interest.

b) The invitation for expression of interest shall state the type of the required consultancy service, the expected output, the time for completion of the assignment, the qualification required of the consultant, work experience and any other relevant information as well

as the list of documents to be submitted and the manner, time and place of submitting such documents.

c) From among the consultants responding to the invitation of the Public Body for expression of interest, not less than three but not more than seven consultants, as far as possible, demonstrating better suitability for the required consultancy service shall be chosen on the basis of evaluation of their profiles, and such consultants shall be invited to submit their proposals in accordance with the provision of article 21 of this directive.

23 Procurement By Restricted Bidding

Subject to the provisions of article 49 and 50 of the proclamation:-

23.1 Procurement made by means of restricted tendering pursuant to article 49.1 of the proclamation shall be executed in accordance with national or International competitive bidding procedures set forth in articles 16 and 17 of this directive.

23.2 Procurement made by means of restricted tendering shall be carried out in compliance with the following rules.

23.2.1 The invitation to bid shall be sent directly to the address of the candidate and:

a) If the required object of procurement is available only with limited suppliers, the invitation to bid shall be sent directly to the respective addresses of those suppliers

b) At least five candidates shall be selected in a fairly manner from the suppliers list if the value of the procurement falls with in the threshold set forth in article 23.3 of this directive for procurement by restricted

bidding, notwithstanding that the number of prospective bidders is large.

23.2.2 The Public Body shall not disclose the identity of candidates invited to participate in a procurement by restricted bidding

23.2.3 If all the candidates invited to participate in a procurement by restricted bidding have submitted their bid documents before the date set for expiration of the floating period, the Public Body shall fix a new date for bid opening and communicate this to all candidates to be present on that date without having to wait until the initial closing date.

23.2.4 The Public Body in its discretion may waive collecting from candidates charges for bidding documents and send to such candidates the bidding document together with the invitation to bid.

23.2.5 Pursuant to the provision of article 5(4) of the proclamation, if the Public Body is of the opinion that in view of their limited number, requiring the candidates to furnish bid security discourages them from participating in the bid. It may, in lieu of bid security, require them to sign bid declaration form attached as annex 5 to this directive and submit such form with their bid documents.

23.3 Without prejudice to the provision of article 23.2 above, the total contract value of a procurement made by restricted bidding in accordance with article 49.2 of the proclamation shall not exceed the following

a) For Procurement of works Birr……..... 2,000,000.00

b) .. .. .. Goods Birr ... …….. 500,000.00

c) .. .. .. Consultancy Srevice Birr……..… 300,000.00

d) .. .. .. Services Birr…….……... 400,000.00

23.4 To carry out procurement by means of restricted bidding pursuant to article 49.3 of the proclamation, the following conditions must be satisfied in the order in which they are listed.

a) Invitation to open bid for the procurement must have been published at least twice, and the invitation must have attracted no bidder, or the bidder or bidders responding to the second invitation to bid must have failed to meet the technical requirements set forth by the Public Body for that procurement

b) There must have been no factor associated with the invitation to bid, mode or amount of bid security, bidding document or any other element of the procurement process, restraining candidates from participating in the bid.

c) The Public Body must have believed that inviting suppliers engaged in the field pertaining to the object of procurement to participate in the procurement by restricted bidding attracts such suppliers to participate in the procurement.

d) The Public Body must, as far as possible, have established through inquiry that the suppliers engaged in the field have no ulterior reason for not wanting to participate in open bid for the procurement, which is illegitimate or prejudicial to the interest of the Public Body.

23.5. Without prejudice to the provisions of sub articles 23.1 through 23.4 of this article, the procedure of national competitive bidding set forth in article 16 of this directive shall apply to procurements made by means of restricted bidding.

23.6. The supplementary procedure set forth in article 21 of this directive shall apply for procurement of consultancy services by means of restricted bidding through request for proposal.

24. Procurement by Request for Quotation.

24.1 Without prejudice to articles 55 and 56 of the proclamation, public bodies have to be inclusive in planning their procurement and apply open bidding to meet anticipated procurement needs to the extent possible. However, they may apply request for quotation to procure goods, works or services the need of which can not be foreseen, or which can not be included in the Public Body's bulk purchase of needed items, or which are needed for immediate use and the estimated value of which is within the threshold established in article 24.2 below.

24.2. A Public Body may carryout procurement by means of request for quotation with the authorization of the head of the Public Body or his representative without having to obtain the approval of the procurement endorsing committee if the value of such procurement falls within the threshold set forth below for each type of procurement:

a) For works, …….. birr 250,000.00
b) For goods, ……. birr 100,000.00
c) For consultancy, ……..…..birr 60,000.00
d) For services, ……..…birr 75,000.00

24.3. In any procurement made by means of request for quotation, not less than three candidates, as far as possible, shall be selected from the suppliers' list in compliance with the following rules to ensure fairness in the selection:

a) Unless the interest of the Public Body requires otherwise, the same supplier or suppliers shall not be selected repeatedly, so that other suppliers in the suppliers list may have the opportunity of competition to sale to the Public Body.

b) The Public Body has to establish a system to prevent possible acts of connivance in offering and accepting price in the process of procurement by request for quotation and carry out price verification regularly in accordance with article 24.8 below.

24.4. Each candidate shall be allowed to quote a firm price which may not be changed. No negotiation shall be allowed between the Public Body and the candidate on the price quoted by the candidate.

24.5. Notwithstanding the provisions of sub articles 24 (1,2,3 and 4) of this article, diplomatic missions of the Ethiopian Government may, by authorization of the Ministry of Foreign Affairs, procure requirements the value of which does not exceed USD $ 10,000 Per purchase order, by collecting Proforma invoices in the country to which they are assigned.

24.6. The successful supplier shall be selected on best price basis, by comparing supplies meeting the quality characteristics of the Public Body's requirements as described in the specification.

24.7. For the purpose of evaluation, prices offered by suppliers in response to a request for quotation shall include taxes.

24.8. For the purpose of price verification in regard to procurements made by means of request for quotation, public bodies shall refer to the current price list posted on the Agency's website and to the price survey carried out by the procurement unit and accept the lowest price in respect of an item as the prevailing market price of that item.

24.9. As far as possible, public bodies shall use the bidding document prepared by the Agency in procuring their requirements by means of request for quotation.

24.10 Public bodies may, by permission of the Agency, employ electronic method to send requests for quotation and receive quotations provided that the following conditions are satisfied:

a) If the method employed by the Public Body has a safety mechanism of ensuring that information sent and or received through that electronic communication method can not be accessed by any person other than the person to whom/which the information is sent , before the time that such information becomes public,

b) If it is ascertained that all suppliers having the potential to transact with the Public Body through request for quotation have the knowledge and facility necessary to use the electronic method of communication:

c) Notwithstanding the provision of article 24.10 (b) above, If the alternative to send quotations by post is available to those who can not use the electronic means for various reasons.

24.11 In procurement made by request for quotation, the Proforma, a supplier presents to the Public Body and the letter of purchase order sent by the Public Body to that supplier constitute a contract between the Public Body and the supplier. Hence, it is not necessary for the Public Body and the supplier to sign a contract.

24.12 Public bodies may not split procurements merely to take advantage of provisions governing procurements by request for quotation.

25. Single source procurement.

The use of single source as a method of procurement shall be subject to the following rules:

25.1 Public bodies may carry out single source procurement provided that the conditions set forth in articles 51 and 52 of the proclamation are satisfied.

25.2 Pursuant to article 51 (d) and (e) of the proclamation, public bodies may procure from the same supplier, additional requirements of goods, works, consultancy or other services of the same kind as those they have procured from that supplier under a previous contract in accordance with the following stipulations, if there is any advantage to be gained from procuring such additional requirements from that same supplier.

a) The volume of the additional requirements of goods, works or consultancy assignment may not exceed 25% of the volume of such goods, works or consultancy assignment under the initial contract;

b) job order for the additional requirements must be issued before the expiration of the initial contract or within six months after the expiration of the initial contract;

c) No adjustment shall be allowed to the unit price of items included in the additional procurement.

d) Notwithstanding the provision of article 25.2 (c) above, If the additional requirements include inputs for which the initial contract allows price adjustment, adjustment may be made in respect of such inputs by applying the method used in calculating such adjustments in the performance of the initial contract.

25.3 Pursuant to the provision of article 51.1.c of the proclamation, public bodies may, subject to the following conditions, enter into a new contract or vary the initial contract for the execution of works which have not been foreseen or not included in the initial contract.

a) The Public Body has to ascertain that the additional works should have been included in the initial contract, and the separation of the additional

works from the initial contract would be difficult for technical or economic reasons.

b) The value of the additional work shall not exceed 30% of the total value of t he initial contract.

c) If the unit price of the additional works can be determined by reference to the initial contract, the unit price of the initial contract shall apply to the additional works. If the unit price of the additional works can not be determined by reference to the initial contract, the price to be agreed through negotiation between the Public Body and the contractor shall conform to the prevailing market price.

25.4 When it is ascertained that the spare parts required for the equipments used by the Public Body are supplied only by the original supplier. However, for the purpose of this sub-article, the following conditions must be satisfied.

a) The Public Body has to establish through market survey that there is no better alternative in the market.

b) The Public Body has to decide whether it is necessary to look for other options in view of the quantity, frequency or cost of the spare part requirements for the equipments used by the Public Body.

25.5 Where it is technically justified that goods or services procured from a different supplier will not be compatible with the existing equipments or services of the Public Body.

25.6 Pursuant to the provision of article 51(1) g of the proclamation, procurement through collection from open market (Special Shopping) shall be resorted to if the requirement relates to an item needed for study or research and which is not available from regular suppliers or procuring the requirement through

collection from open market is economical to the Public Body in accordance with the following procedure:-

a) an authorization from the head of the Public Body or his representative to use procurement by collection from open market has to be obtained by presenting a memo justifying the use of such procurement

b) The Public Body shall form an ad hoc committee; consists of three members, to procure the requirement through collection from open market. As far as possible, a person having knowledge of the required object of procurement shall be in the committee.

c) The ad hoc committee shall identify and communicate to the head of the Public Body, the place and day of open market in which the required supply is available in sufficient quantity. The ad hoc committee shall carry out the procurement jointly from the open market.

d) The ad hoc committee shall select the seller from the open market offering the best quality and price for the item needed and buy the item from that seller through negotiation of the price to be paid for that item,

e) A document shall be prepared stating the object and quantity of the procurement, the place of the open market, the price paid, the name and address of the sellers and cause the sellers to sign on the document.

f) Items bought through collection from open market shall be handled carefully to protect them from being perished in the process of transportation and delivered safely to the appropriate unit of the Public Body.

g) The ad hoc committee shall prepare a minute on the execution of the procurement and report same to the head of the Public Body.

25.7 Pursuant to the provision of article 51 (2) of the proclamation

a) Public bodies may carry out directly from any supplier, procurement of goods or services not included in their procurement plan, or goods or services necessary to solve problems encountered during travel the value of which doesn't exceed birr 1500.(one thousand five hundred birr) however, the total value of such small procurements within a fiscal year shall not exceed birr 30,000.00 (thirty thousand Birr)

b) Notwithstanding the provision of article 25.7 (a) above, diplomatic missions of the Ethiopian Government may carry out procurements of emergency requirements not included in their procurement plan and the value of which does not exceed USD $300 (three hundred USD) in a single purchase order. However, the total value of such small procurements within a fiscal year shall not exceed USD $6000.00 (six thousand USD)

25.8 Except in case of procurement by collection from open market and small procurements provided for in articles 51.1 (g) and 51.2 of the proclamation respectively, a Public Body shall send requisition to a supplier describing the type and quantity of objects it is intending to acquire and obtain proforma for such goods or objects from that supplier. The requisition to be sent in this manner shall include detailed schedule of requirements as appropriate and such other information that enables the supplier to submit complete proposal to the intended procurement.

25.9 the Public Body shall identify price and other issues for negotiation with the supplier and conduct negotiation with such supplier upon ascertaining that the proposal of the supplier does not violate the provisions of the proclamation and this directive by examining the proposal.

25.10. The Public Body shall appoint persons to represent it in the negotiation to be held with the Supplier pursuant to article 25.9 above. In negotiating with

the supplier, the person representing the Public Body shall follow the general direction given to them by the head of the Public Body in regard to the conduct of the negotiation and the salient issues to focus on pursuant to article 52.2 of the proclamation.

25.11 With the exception of procurements made pursuant to articles51. 1. (G) and 51.2 of the proclamation, public bodies have to sign contracts with suppliers transacting with them in a single source procurement.

PART VI Special procurements

26. Special large procurements.

a) The Minister may authorize the execution of special procurement by a central body where it is dictated by the need for efficiency on the part of the government in carrying out its duty, or in respect of the acquisition of objects of national strategic significance.

b) The central body to be established by the government to handle special procurements shall comply with the provisions of the proclamation and this directive in carrying out procurements of objects of national strategic importance unless it is instructed by the government to apply special procedure in acquiring such objects.

27. Special procurement of common user items.

27.1 The procurement of items which are of common use to public bodies shall be carried out in accordance with the provisions of the proclamation and this directive and the bidding document to be prepared for this purpose.

27.2. The procurement of objects of common use to all or most of the public bodies shall be carried out under a framework agreement in the following manner:

a) The central body to be established to administer framework procurements shall create transparent and appropriate organizational structure within which shall be organized teams to be in charge of carrying out the tasks of preparing bidding documents, evaluating bids, endorsing bids and administering procurement contracts respectively pursuant to the provisions of chapter two of this directive and operating separately from one another.

b) Where necessary, it may avail itself for Professional assistance of any other appropriate Public Body in relation to a preparation of bidding documents and evaluation of bids.

27.3 Items of common use to more than one or to all public bodies shall be procured collectively in compliance with the following procedure, using documents to be drawn up for this purpose pursuant to this directive:

a) The Agency shall identify common user items and issue a list of such items which shall be updated regularly and communicate the list to public bodies and the central body to be established to manage special procurements.

b) Each Public Body shall, on the basis of the list issued by the Agency and communicated to it, submit its annual procurement requirements to the body administering framework procurements within the timeframe set for this purpose.

c) The central body for special procurements shall prepare a procurement plan on the basis of the requirements it receives from various public bodies and communicate such plan to the Agency and the various public bodies pursuant to article 13.3 of this directive.

7.4. The body administering framework procurements shall develop draft contract for each procurement type based on the contract model most appropriate to that procurement and determines the value of each procurement based on a survey of the prevailing market price.

27.4.1 The body administering framework procurements shall issue invitation to bid which includes the following details in addition to those provided for in article 16.2 of this directive:

a) A statement indicating that the invitation to bid is issued to conclude framework agreement for supply of common user items;

b) The type and quantity of items to be supplied under the framework agreement as well as the term of delivery;

c) The duration of the framework agreement;

d) The number of public bodies benefiting from the procurement under the framework agreement.

27.4.2 The bidding document to be used by the body administering framework procurements to procure common user items by framework agreement shall be the standard bidding document, but includes the following details:-

a) The type and estimated quantity of items, and if possible, to be supplied as well as the term of delivery;

b) The place, and as far as possible, the estimated time of delivery,

c) The list of the public bodies benefiting from the procurement under the framework agreement.

d) The terms and conditions of price adjustment as well as the manner of its application if price adjustment is allowed under the framework agreement;

e) The duration of the framework agreement.

27.5 A framework agreement shall be signed with the successful bidder for a supply of common user items which may be valid for up to three years Pursuant to article 61.4 of the proclamation, provided that the body administering framework procurements may enter in to similar agreement with more than one supplier in order of their rank in the bid evaluation result, depending on the type of the procurement and under the following conditions:-

a) If the quantity of goods to be supplied under the framework agreement is out of proportion with the capacity of the selected supplier;

b) Where it is felt to be appropriate to extend to more than one supplier the opportunity to sale to the government, considering the number of suppliers in the market having the potential to supply the requirements in a contract of similar magnitude; or

c) Where the level of volatility of the price of the required items is so high that it is necessary to carry out the procurement urgently with the price offered by the selected supplier.

27.6. The body administering framework procurements shall decide the number of suppliers to be invited to participate in the procurement under a framework agreement along with the selected supplier pursuant to Article 27.5 above.

a) Contract shall be signed with the invited suppliers willing to supply with the price offered by the selected supplier.

b) The selected supplier shall be given priority of choice on matters pertaining to the contract.

c) The share of the selected supplier in the supply of goods under a framework contract in which more than one supplier participate shall not

be less than 60% of the total value of the procurement pursuant to article 27.5 of this directive.

27.7 The body administering framework procurements shall enter in to framework contract with suppliers participating in procurements under such framework contract, on behalf of public bodies benefiting from such procurements. The content of such framework contract shall include, inter alia, the following details:

a) The list of the public bodies benefiting from the procurement under the framework agreement, The name of the entity signing the framework contract with the suppliers on behalf of the public bodies and administering the framework contract and the obligations and liabilities of the suppliers and the public bodies benefiting from the framework contract;

b) Terms and conditions pertaining to issuance of purchase order, delivery, payment as well as monitoring and evaluation of the performance of the contract;

c) Procedure for resolution of disputes that might arise from the performance of the framework contract.

27.8 Apart from the duties and responsibilities entrusted to it by the regulations establishing it and stated in article 27.7 above, the body responsible for special and framework procurements shall have the following duties and responsibilities to discharge in connection with the administration of framework contracts:

a) Monitor the performance of framework contracts by suppliers;

b) Hold performance securities furnished by suppliers, and where warranted by default of suppliers in connection with the performance of

their obligation under the framework contract, Confiscate and deposit in to the account of the treasury such securities, report such default to the agency pursuant to articles 76 and 48.1 of the proclamation and this directive respectively;

c) facilitate amicable settlement of disputes between a supplier and a Public Body in connection with the performance of the contract;

d) Based on mutual agreement between it and the suppliers, make modifications to the framework contract;

e) give the necessary support to public bodies in connection with the performance of the Contract;

f) Evaluate suppliers' performance and release performance securities to suppliers performing their obligation as per the terms of the contract at the end of the validity period of the framework contract.

27.9 The body administering framework contracts may terminate a framework contract for any of the following reasons: -

a) Where a supplier fails to discharge his obligation under the contract;

b) Where the procurement requirement of public bodies changes for any apparent or obvious reason;

c) Where it emerges that the gap between the value of the framework contract and the prevailing market price is so wide that allowing the implementation of the contract to proceed places the public bodies concerned at a disadvantage;

d) The body administering framework contracts shall give to suppliers concerned a one month advance notice where termination of a framework contract is intended for reasons stated in (b) and (c) above, stating the

reason for termination of the contract and the date on which such termination becomes effective.

e) Public bodies benefiting from a framework contract to be terminated may not procure their requirements from another supplier during the one month period after notice pending termination.

27.10 Public bodies benefiting from a framework contract shall, on the basis of the copy of the contract sent to them by the body administering framework contracts, issue purchase order to suppliers for requirements to be supplied as per the contract. Where appropriate, a Public Body may, in consultation with the body administering framework contracts, enter in to a supplementary contract with a supplier.

27.10.1 The purchase order and the supplementary contract shall not change price and other fundamental elements of the framework contract; but, the following points may be agreed upon between the Public Body and the supplier in a separate contract: -

a) shorter period of delivery and payment;
b) quantity of goods to be supplied under a purchase order;
c) Notification or change of place of delivery.

27.10.2 A Public Body entering in to a separate contract with a supplier pursuant to article 27.10.1 above, shall submit a copy of such contract to the body responsible for the administration of framework contracts.

27.11 Public bodies shall discharge the following duties in the course of implementation of framework contracts: -

a) Make sure that purchase order is issued only for items listed in the framework contract based on the list of their requirements previously communicated to the body administering framework procurements;

b) Make sure that a supplier has performed his obligation under a framework contract in accordance with the terms and conditions of the framework contract;

c) make every effort necessary to resolve amicably in consultation with the body administering framework procurements, issues arising from the performance of the contract which may develop in to a dispute;

d) Report in due time in writing to the body administering framework procurements, any act or omission by a supplier constituting major default such as non compliance with quality requirements, shortage in the quantity of goods, failure to deliver on schedule and improper packaging.

e) Set schedule for issuance of purchase order for their requirements embodied in a framework contract and specify the quantity of goods to be supplied under a purchase order.

27.12 The body responsible for administration of framework procurements shall sign framework contracts in due time so that the activities of public bodies may not be retarded or disrupted on account of such delay. However, if there is any problem impeding the timely conclusion of framework contract and when this is communicated to them by the body administering framework procurements, public bodies may initiate a procurement process to procure their requirements by themselves under a framework contract in accordance with the methods of procurement prescribed in the proclamation and this directive.

27.13 Pursuant to article 61.5 of the proclamation, public bodies may carry out procurement of recurrent requirements of similar items under the following conditions:

a) Where it is ascertained that owing to their special character, such items can not be procured under a framework contract for acquisition of common user items administered by the body responsible for framework procurements,

b) Where the item or items have to be supplied frequently and continuously,

c) Where the items can not be bought and delivered in one episode and used continuously or where it is not economical to procure the items in a series of bids to be issued frequently;

d) Where the Public Body has to use the budget allocated to procurement at various times.

27.14 In carrying out procurements of recurrent requirements of similar items pursuant to article 27.13 above, public bodies shall,

a) comply with the provisions of article 16 of this directive concerning open bids;

b) not enter in to a procurement contract which shall be valid for more than two years;

c) May allow and implement price adjustments in accordance with the provision of article 16.14 of this directive.

PART VII

Contract Administration

28 Implementing procurement contracts

28.1 Unless faced with a situation preventing or postponing the execution of a contract, public bodies have to implement any procurement contract they have signed with suppliers promptly.

28.2 A Public Body has to fulfill conditions established in a contract to expedite the implementation of the contract as provided in article 28.1 above. These conditions may include the following:-

a) If the contract provides for advance to be paid to the supplier, effect such advance payment to the supplier against advance payment guarantee in accordance with the provision of this article.

b) Open letter of credit (L/C) promptly in respect of a procurement requiring the issuance of letter of credit in favor of a supplier.

c) Fulfill such other conditions as are stipulated in the contract.

28.3 Public bodies have to identify the duties of a supplier under a contract and insure that the supplier performs such duties in due time.

28.4 Public bodies have to record the date on which the actual implementation of the contract has began upon fulfillment of precondition set forth in the contract for the actual implementation of the contract and, if necessary, notify this to the supplier.

28.5 Payment for contractors in the performance of works contract shall be effected in accordance with the following procedure, based on the progress of the work to be performed under the contract.

a) Payment for construction works shall be made on the basis of the progress of work against payment certificate to be verified by the consulting engineer supervising the work.

b) For all construction works, in addition to what is stipulated under article 16.26 (9) of this directive, 5% shall be retained from payment indicated in each payment certificate.

c) 50% of the amount retained pursuant to (b) above, shall be released up on completion of the works and issuance of provisional acceptance certificate. The remaining 50% shall continue to be retained for one year period of warranty. However, such sum may be released on condition that the suppliers submits unconditional guarantee valid for 12 month.

d) The consulting engineer shall complete verification of the payment certificate prepared and submitted by the contractor within seven days of its receipt

e) The Public Body shall effect the payment within 14 working days of receipt of the payment certificate verified by the consulting engineer.

f) The consulting engineer shall be responsible for any request made by the contractor to receive additional payment from the procuring entity due to the consulting engineer's failure to verify the payment certificate within prescribed period stated in sub-article "d" above. However, the responsibility of the consulting engineer shall not exceed the service fee payable for its services.

g) The Public Body shall be responsible for any additional payment request made by the contractor in accordance with the contract, due to its failure to effect payment within the period specified under sub article "e" above without any good reason.

29. Follow Up of Performance of Contracts

29.1 Public bodies have to identify the party responsible for following up the performance of a contract or make sure that the parties involved in following up the performance of a contract are aware of their duties. (Where the task is carried out through coordination of more than one parties)

29.2 The department within a Public Body responsible for monitoring performance of procurement contracts has to make sure that the supplier delivers the principle tasks under the contract in accordance with the agreed work schedule.

29.3 The Public Body has to carry out the following activities of contract administration as per the contract agreement.

a) Effect payment or payments due in installment to the supplier on time.
b) Give certificates of performance to the supplier
c) Provide legitimate support to the supplier to enable him performs his obligation under the contract.

29.4 Where it is called for, the contract may be amended in the course of its performance; it being understood that such amendment shall not be detrimental to the interest of the Public Body and not favor one supplier or certain suppliers to the prejudice of the other suppliers.

29.5 In particular, public bodies shall carry out the following activities in connection with the following up of performance of contracts:-

a) Open letter of credit (L/C) in accordance with the terms and conditions of the contract.
b) Handle acceptable requests of amendment of letter of credit (L/C) promptly
c) Exercise caution and follow-up so that the validity period of a performance bond, L/C or guarantee does not expire before the supplier fulfills his/its obligation to the Public Body under the contract.
d) Follow up that works are completed on schedule agreed in the contract, or Goods are supplied or services are rendered within the time stipulated in the contract.

e) Take the necessary precaution to prevent in the performance of a contract that give rise to claims by suppliers

29.6 A Public Body has to identify services to be rendered by a third party in connection with the performance of a contract and ensure that such services are rendered in a manner that facilitates the performance of the contract.

30. Completion of a Contract

30.1 Public bodies have to ensure that the performance of a procurement contract is completed with the terms and conditions of such contract being complied with and other transactions incidental to such contract being finalized.

This involves ensuring that:-

a) The supplier has delivered the works, goods, consultancy or other services to be supplied under the contract.

b) Proper follow up is maintained and appropriate decision is taken in regard to securities and warranties.

c) For all payments made to the suppliers, the corresponding obligations owed by such suppliers to the Public Body are satisfied and all payments due to the suppliers under the contract are effected.

d) All rights of the Public Body arising from the contract and involving third parties such as Insurance companies, transporters, custom Authority, transitors, Banks are satisfied and the Public Body has performed its obligation towards such third parties,

30.2 The Public Body shall settle pending accounts with the suppliers and third parties involved in the performance of the contract.

PART VIII

Miscellaneous provisions

31. Review of Non-Standard Procurement Proposals

31.1 Public bodies may engage in procurement, which does not fully comply with the procedures laid down in this directive, only upon securing the approval of the Agency pursuant to Article 16/5 of the proclamation.

31.2 Public bodies shall provide justification with other appropriate documents to the Agency in support of their non-standard procurement proposals explaining the benefits to be derived in terms of cost, quality, time or other considerations from implementing that option of procurement pursuant to article 31/1 above

32. Records of Procurement

32.1 Public bodies shall maintain records of procurements listed in article 23 of the proclamation and other pertinent documents.

32.2 The time for which such records shall be kept corresponds to the time to be stipulated in the financial Administration Regulations to be issued pursuant to article 73 of the financial administration proclamation of the federal government, proclamation no 648/2001.

33. Registration of Suppliers and conditions for registration in the suppliers list

33.1 Registration of suppliers

To participate in any public procurement, being registered in the suppliers list is a prerequisite.

a) Suppliers desiring to participate in public procurement shall have to register themselves using the form made available for this purpose in the website of the Agency.

b) Notwithstanding the provision of (a) above, persons renting houses apart from those engaged in real state business may participate in a bid for procurement of house rental service without being registered in the suppliers list.

c) Branches of Federal Government public bodies located outside of Addis Ababa may procure on competitive basis from suppliers not registered in the suppliers list, if registered suppliers engaged in supplying the goods or services to be procured are not available in their locality.

33.2 Conditions to be fulfilled by Suppliers for registration in the suppliers list.

a) Valid trade license indicating the stream of business in which the supplier is engaged,

b) A certificate of professional qualification from the appropriate body, if a supplier is a consultant,

c) A contractors' certificate issued by the Ministry of Works and urban Development indicating the level of such contractor.

d) A certificate issued by the Federal Transport Authority indicating the level of the garage, if a supplier is engaged in the maintenance or repair of motor vehicles.

e) A certificate issued by the Drug Administration and control Authority, if the supplier is engaged in the provision of drugs and medical equipments

PART IX

Ethics in public procurement

34. Professional ethics expected of persons engaged in public procurement.

Without prejudice to the provision of article 32/1 of the proclamation, any employee or person in a position of responsibility involved in public procurement shall observe the following and other rules of ethics:-

34.1 Where an employee or a person in a position of responsibility involved directly in public procurement realizes that the decision he makes in respect of any procurement proceedings conflicts with the interest of himself or his family, he shall notify this in writing to the appropriate authority of the Public Body and withdraw from that particular procurement process.

34.2 Where a Public Body receives information from any source that an employee or a person in a position of responsibility engaged in public procurement is involved in a conflict of interest in the exercise of his duty,

34.2.1 It shall require the person concerned to respond to the allegation in writing

34.2.2 The Public Body shall determine whether the allegation of conflict of interest is true on the basis of the response given by the person whom the allegation concerns pursuant to article 34/1 above and other evidence gathered by any means it considers appropriate.

34.2.3 Where the Public Body ascertains as per article 34.2.2 above, that the person whom the allegation concerns is in fact involved in a conflict of interest in connection with his duty:-

a) It shall remove the person from that procurement process

b) It shall cause decisions given in participation of that person in connection with that procurement process to be reviewed.

c) it shall take disciplinary measures on that person unless it is convinced that the failure on the part of that person to notify the Public Body of the fact of his involvement in a conflict of interest is due to lack of awareness.

34.3 Any employee or person in a position of responsibility involved directly or indirectly in public procurement shall refrain from committing an act which is prejudicial to equal opportunity of candidates or suppliers to compete in a bid or enter into a contract with a Public Body in any public procurement. For this purpose, public bodies have to ensure that:-

a) In inviting bids for procurement, all candidates have adequate information, that is, a bidding document contains clear and complete information enabling candidates to participate in the bid and come up with responsive bids.

b) That the evaluation criteria and schedule of requirements embodied in a bidding document is not prepared in such a manner as to favor a particular candidate.

c) That the result of a bid evaluation is made known to all bidders at the same time

d) The obligation of suppliers in a procurement contract is not deliberately made simple or onerous in favor or against a supplier and, as far as possible; the terms of contracts to be signed by various suppliers for similar procurements are more or less similar.

e) Payment, monitoring, exchange of information or other activities pertinent to contract administration are applied indiscriminately to all suppliers.

34.4 Employees or persons in a position of responsibility engaged directly or indirectly in public procurement shall not accept gifts of any kind which influences or has the potential to influence their action or decision in the exercise of their duty. For the purpose of this sub-article, such persons shall observe the following ethical precepts:-

Without prejudice to article 34.4(e) below:-

a) Not to accept gift which has monitory value especially from a supplier or a candidate to the Public Body or.

b) Not to accept offer of employment for himself or his family.

c) Not to accept special discount or service in his private transaction with the person who is a supplier to the Public Body or candidate.

d) Not to accept an invitation, which is likely to influence his action or decision in relation to his duty; however, he may accept invitation which does not involve travel or an invitation in which the inviter has no business relation with the Public Body.

e) Notwithstanding the provision of article 34.4 (a) above, such person may accept items which are freely distributed for the purpose of promotion or advertisement and not for sale.

34.5 Any employee or person in a position of responsibility has the obligation to notify to the appropriate body, any act of corruption intended or perpetrated. For the purpose of this article:-

a) It is necessary to make sure that the allegation is supported by evidence.
b) Isolate oneself from any act facilitating or assisting the intended act of corruption.

34.6 An employee or a person in a position of responsibility has to keep in secret any confidential information of the Public Body, candidates or suppliers which he came to know of on account of his duty. For this purpose,

a) no information shall be disclosed to any third party which is likely to restrict competition or helps bidders to derive unfair advantage or which is detrimental to the interest of the Public Body except by order of a competent court or by special permission of the head of the Public Body.

b) Keep in secret decisions and other information of the Public Body in dealing with suppliers in the execution of contracts,

c) Not to disclose information of bidders and bid evaluation results to any third party before such information is made public by the procuring Public Body.

35. Ethics Expected from Candidates

Without prejudice to the provision of article 32.4 of the proclamation, candidates or suppliers in public procurement shall observe the following principles of ethics.

a) As provided in article 32.4 of the proclamation, no candidate or supplier shall give gift either by himself or through a third party, to an employee or a person in a position of responsibility engaged directly or indirectly in public procurement.

b) Any candidate or supplier shall disclose to the Public Body information which he is aware of and which he considers helpful to the Public Body in making decisions in regard to a bid proceeding or contract administration.

c) He/it shall not connive with other bidders in an offer of price and shall not exchange information which is harmful to the interest of the Public Body nor use other bidders documents or information in a bid proceeding conducted by a Public Body.

d) Disclose to the appropriate body an intended or perpetrated act of corruption of which he is aware, and not to be complicit in such an act.

PART X

The Board for Review and Resolution of Complaints in public procurement

36. Appointment and term of office of members of the board.

a) The minister shall appoint five persons to serve as members of the board for review and resolution of complaints lodged by candidates or bidders in public procurement, which shall be drawn from:-

- **The Ministry of Finance and Economic Development…....Chairperson**
- **The chamber of commerce ……..…..member**
- **Public bodies ……..…… ..**
- **Public enterprises …….. ..**
- **Public Procurement and Property Administration Agency …..…. ..**

With one more member to be drawn from the Agency, who shall serve as secretary and expert advisor to the board with no voting power.

The board shall make decisions by consensus without prejudice to the possibility that decisions may also be made by vote if necessary. The chairman of the board shall have a casting vote where a vote is tied.

b) As far as possible, the term of office of members of the board shall be three years. However, considering their suitability for the job in terms of their performance and their integrity, their term of office may be extended for another three years.

c) Eligibility for membership of the board shall be based on knowledge and experience in public procurement, good manner and ethical standing.

37 Meeting of the Board

a) Members of the board shall meet once a week regularly. However, they may convene more than once a week if the need arises.

b) There shall be a quorum where the majority of members are present in a meeting.

c) The chairperson may represent a member to act on his behalf where he can not attend a meeting of the board for good reason.

38 Resignation of membership

Any member of the board, including the chair person, may resign from the board at any time by tendering a letter of resignation to the minister where the resignation is accepted by the minister.

39 Termination of membership

The minister may terminate membership of the board of any member for any of the following reasons,

a) Where he can not continue to discharge his duty by reason of mental or preventive physical disability.
b) Where he is convicted of crime by a competent court.
c) Where he is found to be involved in ethical or disciplinary misconduct.

40 Disclosing conflict of interest

A member of the board having direct or indirect interest with a procurement proceeding in respect of which complaint is lodged or related to the complainant

shall disclose this fact to the board and withdraw from the proceeding of the board in which the complaint is considered.

41 powers of the board

In the exercise of its functions, the board shall have the following powers except making decisions in regard to selection of the successful bidder or entering into a contract.

a) Order a Public Body or a candidate or a bidder to produce any document or record pertaining to a procurement in respect of which a complaint is lodged in which it is alleged that a Public Body or a candidate or a bidder has acted in contravention of the law or did not adhere to the prescribed procurement procedure or is involved in a conflict of interest or has committed an offence of corruption.

b) To suspend a procurement proceeding in writing until a decision is given on a complaint

c) To require technical investigation report to be submitted to it by the Agency or other expects in regard to a complaint.

d) Summon witnesses, examine witnesses and parties concerned on oath;

e) Order a Public Body to comply with any provision of the proclamation or this directive in regard to a procurement proceeding.

f) Invalidate wholly or partially an act or decision of a Public Body which violates the law.

g) Reject a complaint where in its judgment such complaint is not valid.

h) Dismiss a complaint submitted to it later than five working days from the date in which the Public Body has responded to the complaint or a complaint which was not first submitted to the head of the Public Body.

42. Duties of the Board

The board shall discharge the following duties in exercising its functions.

a) Receive complaints from candidates or bidders

b) Make sure that a complaint is submitted to it with in five working days from the date on which the head of the Public Body has responded to the complaint at first instance or in the event that the head of the Public Body has not responded to the complaint in due time, such complaint is submitted to it within five working days following the tenth working day from the date in which the complaint was submitted to the head of the Public Body.

c) If the complaint is submitted to the board in the appropriate manner and in due time, notify the Public Body in writing that a complaint is lodged against it and instruct that Public Body to submit documents pertaining to the procurement and its statement of response to the complaint and suspend the procurement proceeding until it decides on the complaint.

d) Follow up compliance of the Public Body to the instruction above.

e) Consider the issues of the complaint presented to it by the secretariat in the form of summary and the statement of response by the Public Body concerned, in light of the documentary evidence of the procurement proceeding presented to it and give decision on the complaint in accordance with the provisions of the proclamation, this directive and other relevant legal documents governing public procurement.

f) Transmit the decision to the parties concerned

g) Report to the Minister on the tasks accomplished.

PART XI

Procedure of Review of complaints presented to the head of a Public Body or the secretariat of the board

43. The right of complaint of a candidate or a bidder

Subject to the provision of article 42 of this directive, A candidate or a bidder aggrieved or is likely to be aggrieved on account of a Public Body inviting a bid not complying with the provisions of the proclamation or this directive in conducting a bid proceeding may present complaint to the head of the Public Body or to the secretariat to have the bid proceeding reviewed or investigated.

44. Matters in respect of which complaint may not be lodged.

Complaint may not be lodged in respect of the following matters:

a) The selection of procurement method carried out in accordance with the conditions established in the proclamation.

b) The selection of bidders for procurement to be made by means of restricted tendering or request for quotation or on the evaluation criteria set forth in the bidding document beforehand.

c) The preference given to Domestic Providers pursuant to Article 25 of the proclamation and article 16.20/1 of this directive

d) Decisions given to reject bids, bid documents or price quotation pursuant to article 30 of the proclamation.

e) no complaint presented to the head of a Public Body after 5 working days have elapsed from the date on which the Public Body disclosed the result of a bid evaluation, or no complaint presented to the board after 5 working days have

elapsed from the date on which the Public Body responded to the complaint shall be accepted.

f) no complaint shall be accepted after a contract was signed, provided that such contract was signed after seven working days from the result of the bid evaluation being disclosed as provided in sub article 46.3 of the proclamation and article 45.1 (a) of this directive.

45. Procedure for review of complaints presented to the head of a Public Body.

45.1. Before a procurement contract is signed:-

a) the Public Body conducting bid proceedings shall wait for seven working days after disclosing the result of the bid evaluation or after responding to a complaint, to give bidders time to present complaint, if any, against the conduct of the bid proceeding or against the decision of the Public Body on such complaint

b) a candidate or a bidder aggrieved in connection with a procurement proceeding shall within 5 working days of when he became aware of or should have been aware of the reason giving rise to the grievance, may submit his complaint to the head of the Public Body. A complaint submitted to the head of the Public Body thereafter may not be entertained.

c) Unless the complaint is resolved by mutual agreement of the candidate or bidder that submitted it and the Public Body conducting the procurement, the head of the Public Body shall give decision on the complaint in writhing within ten working days from the date of submission of the complaint Pursuant to article 74/3 of the proclamation.

d) The Public Body shall give to the complainant a copy of the decision within 5 working days from the date in which the decision was made.

45.2 Bid submitted by two envelopes

Without prejudice to the forgoing provisions concerning procedure of complaint, in a bid in which bidders are required to submit technical and financial proposals in two separate envelopes:-

a) The Public Body shall communicate the result of the technical evaluation in writing to all bidders at the same time.

b) The Public Body shall indicate in the letter in which it discloses the result of the technical evaluation to each bidder that any bidder claiming that the technical evaluation has not been conducted in conformity with the proclamation, this directive or the bidding document has the right to present his complaint to the head of the Public Body with in 5working days of being notified of the result.

c) A bidder who can prove that the decision given by the head of the Public Body on the complaint lodged by him concerning the conduct of the technical evaluation is not inconformity with the proclamation, this directive or the bidding document may present his complaint to the board with in five working days of being notified of the decision.

d) A Public Body may open the envelopes containing the financial proposals after 5 working days from the date of notification of the result of the technical evaluation to the bidders.

However, if a complaint is presented to the board in due time against the decision of the head of the Public Body on the complaint previously lodged by a bidder concerning the technical evaluation, The Public Body

shall keep the envelopes containing the financial proposals unopened until the board gives its final decision on the case.

45.3 A procurement proceeding in respect of which a complaint is lodged shall be reviewed only in accordance with the proclamation, this directive and the bidding document.

46. The obligation of a procurement unit to suspend a procurement proceeding

a) a procurement unit in a Public Body shall suspend a bid proceeding if it ascertains that a complaint is presented to the head of the Public Body in regard to a bid proceeding within the time stated in article 45 (b) above, until the head of the Public Body gives decision on the complaint.

b) Any decision made by a Public Body in regard to a procurement proceeding and the reasons on which the decision was based shall be kept as part of the record of that procurement proceeding.

47. Procedure for presentation to and review of complaints by the board

a) a bidder may submit a complaint to the board with in five (5) working days of notification in writing of the decision of the head of the Public Body on that complaint if the bidder is not satisfied by the decision of the head of the Public Body or where the head of the Public Body does not give decision on such complaint within ten working days as provided in article 74.3 of the proclamation, within five days following the last day on which decision should have been given by the Public Body. A complaint submitted to the secretariat of the board after such date may not be entertained.

b) a bidder presenting complaint to the secretariat of the board shall attach to the application of his complaint a copy of the letter of the complaint submitted to the head of the Public Body and a copy of the decision of the Public Body on the complaint if such decision was given by the Public Body and other relevant documents.

c) on receipt of the bidders complaint, the secretariat of the board shall send a notice to the Public Body informing the Public Body that a complaint is lodged against it, and instructing it to submit within five working days its statement of response together with the record of the procurement proceeding in respect of which complaint was lodged and to suspend the procurement proceeding until the board decides on the complaint.

d) The Public Body against which the complaint is lodged has to make sure that the documents it is required to send to the secretariat of the board in connection with the complaint are received with in five (5) working days from the date of notification.

e) the board shall review the complaint against the bidding document issued by the Public Body, the bid document submitted by the complainant to the Public Body in response to the invitation to bid, the bid evaluation report and other documents relevant to the procurement in respect of which the complaint was lodged and decide on the complaint in accordance with the proclamation and this directive.

f) The board shall give its decision in writing to the complainant and the Public Body within fifteen (15) working days of receipt of the Public Body's statement of response.

g) The secretariat of the board shall send forthwith copies of the decision of the board to the complainant and the Public Body.

PART XII

Review of reports submitted by public bodies to the Agency on misconduct of bidders and suppliers

48. Procedure of submission and review of reports on misconduct of bidders and suppliers.

The Agency shall review and pass decisions on reports of misconduct of bidders or suppliers in regard to the execution of public procurement, submitted to it by public bodies pursuant to article 76 of the proclamation in accordance with the following procedure:

48.1 Any Public Body which can prove that any bidder or supplier participating in a public procurement has violated the provisions of the law governing the procurement in which it is involved, has refused to sign a contract with the Public Body, has committed fraud or has provided falsified documents, has committed an act of connivance or corruption or it has sustained damage on account of failure by a supplier to perform his/its obligation under a contract may submit report of default to the Agency on that bidder or supplier

48.2 In submitting a report of misconduct on a bidder or supplier to the Agency, a Public Body has to state clearly the nature of the default in that report and attach to that report copies of the documents of the procurement proceeding to which the report relates, and other relevant documents to the case under consideration.

48.3 The Agency shall notify in writing the bidder or supplier against whom a report of misconduct is presented, to submit within 5 (five) working days, a statement of response to that report together with supporting documents,

stating briefly the content of the report and follow up the bidders or suppliers compliance with the notification.

48.4 The agency shall review the report presented to it by the Public Body against the statement of response of the bidder or supplier, in light of the evidence presented to it by both parties and give decision on the report in accordance with the proclamation, this directive, the bidding document and the procurement contract, and shall communicate the decision in writing to the Public Body and the bidder or the supplier as the case may be, and if necessary, to other entities concerned, within 15 (fifteen) working days of the receipt of the report.

48.5 The penalty to be imposed on a bidder or supplier by a decision of the agency pursuant to article 76.5 of the proclamation shall be one of the penalties prescribed in article 48.5 1, 2 & 3 below:-

48.5.1 If it is proved that a bidder or supplier has committed one of the acts listed below with an intention to distort or alter the bid evaluation result or during the contract administration, he/it may be suspended from the supplier's list for a period not less than two years or for an indefinite period, so that he/it may not participate in any public procurement for the period for which the suspension lasts.

a) Where it is proved that he/it has committed an act of corruption i.e. giving to an employee in what ever position engaged in public procurement, anything of monitory value in the form of bribe or inducement.

b) where it is discovered that he/it has committed an act of fraud i.e. Providing falsified or invalid documents or where he/it is found to have participated in a public procurement while a suspension against him is in force or where it is discovered that he/it has supplied goods, rendered

services or delivered works of an inferior quality to that required under a contract by employing deceitful practice to make it look like genuine or it conforms to stated requirements.

c) Where it is proved that he/it has connived at an act of price fixing with certain bidders to deprive the Public Body and the other bidders of the benefit of fair competition.

d) Where it is proved that a supplier has delivered goods, services, works or consultancy services of a kind or quality that are not in conformity with the schedule of requirements under a contract in connivance with employees or officials of the Public Body.

e) Where it is proved that he has inflicted or has threatened to inflict physical or bodily injury on/or used coercive action against a procurement staff or authority of a Public Body.

f) Where it is discovered that he/it has committed another act entailing suspension from the suppliers list within two years from the date on which the suspension previously imposed upon him by the agency for certain misconduct in connection with the execution of public procurement came to an end.

48.5.2 the following acts committed by a bidder or supplier shall entail suspension from the suppliers list for a period of 6 months up to two years depending on the gravity of the fault, so that the bidder or the supplier may not participate in any public procurement for that period.

a) Where a supplier under a contract with a Public Body fails to complete the delivery of goods, services, works or consultancy services under that contract, and on account of such failure of the supplier, the Public Body suffers direct or consequential loss or

damage or such failure retards or disrupts the operation of the Public Body.

b) Whereupon receipt of written notification of award as a successful bidder, a bidder fails or refuses to sign a contract with a Public Body and in exercising another option to acquire the required objects of procurement from another supplier, the Public Body sustains loss or such failure or refusal of the bidder retards or disrupts the operation of the Public Body.

c) Where he/it omits another act entailing warning pursuant to article 48.5.3 below, within 3 years from the time when he/it received warning for the first such omission.

48.4.3 Any bidder or supplier omitting any of the following acts shall be warned in writing.

a) Where a supplier fails to deliver goods, services, works or consultancy services under a contract on the agreed time and such delay retards or disrupts the operation of the Public Body.

b) Where he/it refuses to provide a Proforma invoice to any Public Body intending to procure a required object.

48.5.4 Any action taken by the Agency against a bidder or supplier pursuant to article 48.5(1) and 48.5. (2) Of this directive, shall be communicated to all public bodies of the federal government, to higher education and training institutions of the federal government situated in the regions. And to Finance and Economic Development bureaus of regions and city Administrations. Such actions shall also be posted on the Agency's website.

48.5.5 without prejudice to any action that may be taken by the Agency on a supplier or bidder, public bodies shall be entitled to seek compensation for any damage or loss they have sustained on account of an act or omission by a supplier or bidder in connection with any procurement in accordance with the contract or the law.

49. Force Majeure

49.1 force majeure results from an occurrence which the supplier could normally not foresee and which prevents him absolutely from performing his obligation.

49.2 The following occurrences may according to the circumstances, constitute cases of force majeure.

a) An official prohibition preventing the performance of a contract,
b) A natural catastrophe such as an earthquake, lightening or floods, or
c) International or civil war, or
d) The death or a serious accident or unexpected serious illness of the supplier
e) Other instances of force majeure identified as such by the civil code.

49.3 Unless otherwise expressly agreed in a contract, the following occurrences shall not be deemed to be cases of force majeure.

a) a strike or lock-out taking of a party or affecting the branch of business in which he carries out his activities, or

b) an increase or reduction in the price of raw materials necessary for the performance of the contract, or

c) The enactment of new legislation where by the obligations of the debtor becomes more onerous.

50. Review of complaint by court

A candidate, bidder or supplier aggrieved by a decision of a Public Body, the board or the Agency, pursuant to articles 45, 47and 48 of this directive, may take the matter to a competent court.

PART XIII

Repealed Directives and Effective Date

51. Repealed Directives

The Ministry of Finance and Economic Development procurement directive issued in July, 2005 and the amendments thereto are hereby repealed and replaced by this directive.

52. Effective Date

This directive shall enter into force on this 8th day of June 2010.

Addis Ababa May 20, 2010

Sufian Ahmed

Minister of Finance and Economic Development

Annex 1

Annual Public Procurement Plan Submission Form

S. No.	Goods, Services and Works to be Procured	Source of Budget for Procurement				Procurement Category*	Estimated Budget for Procurement **		Selected Procurement Method ***	Procurement Type ****	Estimated time to Procure		Remark
		Treasury	Internal Revenue	Loan	Aid		Recurrent	Capital			Estimated time of Tender Announcement/ Invitation to Bid	Estimated time of Receiving of Goods, Services or Works	
	1	2	3	4	5	6	7	8	9	10	11	12	13

NB. * Specify as Goods, Consultancy Service, Other Services or Works.

** Specify the types of currency as Eth. Birr or Other convertible currency..

*** Specify as Open Bidding, Two-stage Bidding, Request for Proposal, Restricted Bidding, Request for Quotations or Procurement.

**** Specify as National and International Competitive Bidding.

Annex 2.

1. The primary responsibilities of a chair person and a secretary of a procurement endorsing committee.

1.1. The responsibilities of a chairperson of a procurement endorsing committee.

The chairman of a procurement endorsing committee shall be appointed by the head of the Public Body and shall have the following responsibilities:

a) To set the date and hour for meetings of the procurement endorsing committee and chair such meetings;

b) To ensure that actions or decisions taken in connection with a bid proceedings are in line with the proclamation and this directive.

1.2 **The responsibilities of the secretary of the procurement endorsing committee.**

The secretary of a procurement endorsing committee shall be appointed by the head of the Public Body and shall have the following responsibilities:

a) To record minutes of meetings of the procurement endorsing committee, to ensure that the committee has complete records and keeps such records carefully;

b) To record discourses made with suppliers in the process of making decisions;

c) To prepare the agenda for meetings of the committee in accordance with the instruction of the chairperson;

d) to vote in meetings of the committee.

1.3. Procedure of meetings of the procurement endorsing committee

a) There shall be a quorum where more than half of the members of a procurement endorsing committee are present in any meeting. Decisions shall be made by simple majority.
b) In case of tie, the chairperson shall have a casting vote.
c) The dissenting opinion of a member in any decision of the committee shall be recorded in the minutes of the meeting in which such decision was made.

Annex 3.

Floating Period of Bids

1.1 Pursuant to article 16/4/2 of this directive, the minimum period for submission of bids shall be fixed in the following manner:

a) In preparing bidding documents, Public bodies shall identify the type of the procurement and the scope of participation of bidders in that procurement in terms of the complexity of that procurement and set the closing date in accordance with the following table:

S.No	Procurement Type	Complexity	Mode of Procurement			
			ICB	NCB	Restricted Bidding	
					LIB	LNB
1	Works	Complex	45 days	30 days	45 days	30 days
		Non-Complex	35 days	21 days	35 days	21 days
2	Goods	Complex	45 days	30 days	45 days	30 days
		non-Complex	35 days	15 days	35 days	15 days
3	Other Services	Complex	45 days	30 days	45 days	30 days
		Non -Complex	35 days	15 days	35 days	15 days
4	Consultancy service (EOI) Request for proposal	Complex	14 days	10 days	-	-
		Non- Complex	10 days	7 days	-	-
		Complex	45 days	30 days	35 days	30 days
		Non- Complex	35 days	15 days	21 days	15days

b) Non-complex procurement refers to the kind of procurement described in article 2 of annex 1 hereof.

c) In respect of single source procurements and /or procurements made by means of request for quotation, public bodies shall set the deadline for submission of bid documents taking in to account the type, urgency and complexity of the

procurement as well as the scope of participation of bidders in that procurement and other relevant considerations.

d) For procurements made by means of two stage bidding:

i. For the first stage bidding, the floating or bid submission period prescribed in Article 1.1 (a) above, for National or International Competitive Bids in respect of each type of procurement shall apply.

ii. For the second stage bidding in which selected local or foreign bidders participate, the period prescribed for Restricted Bidding in Article 1.1 (a) above shall apply.

(e) The time frame prescribed for bid submission in Article 1.1 (a) above is the minimum period. Thus, depending on the type of procurement and the conditions of the market, public bodies may allow bidders additional time to prepare and submit bids, if necessary.

List of non- Complex procurements pursuant To Annex 3(1.1) b above,

Goods	works	Consultancy Service	Other Services
▪ Standard stationery materials ▪ Standard Sanitary materials ▪ Standard Computers and related accessories ▪ Standard Printers ▪ Standard office equipments ▪ Tyres ▪ Standard spare parts (For vehicles or Office Equipments) ▪ Standard Electric, Electronics or Electro- mechanical goods ▪ Standard office machine i.e. (Fax, photocopier, binding machine) ▪ Construction materials i.e. (Cement, steel, quarry Products, water pipe, paint, wood, nail) ▪ Primary food products and processed foods ▪ Petroleum and various lubricants ▪ Ready made clothes, garments or shoes ▪ Standard drugs and medical equipments ▪ Chemicals and Re-Agents ▪ Books and Journals.	▪ Maintenance of buildings ▪ Paintings ▪ Temporary housing ▪ Fence works ▪ Partition of offices	▪ Assignment which do not require in depth study	▪ Printing ▪ Maintenance of vehicle ▪ Lease or Rental of equipments and goods ▪ Maintenance of office equipment and machine ▪ Transport service ▪ Hotel service ▪ Plumbing and electrical repair services ▪ training ▪ Audit service ▪ Security and sanitary service ▪ Procurement service ▪ Beautification of compound and ▪ Office decoration ▪ Lease of office

Note. The term standard refers to goods produced for ordinary consumption and Iems, which are widely available in the market. It does not include goods produced by special order to meet the specific needs of a Public Body.

Public bodies shall identify non-complex consultancy assignments by reference to the nature of the required research or study to be conducted under that consultancy service as could be inferred from the terms of reference of the assignment.

Annex 4

List of Machinery to be procured for use in the Construction of Roads and buildings with Advance Payment allowed for contractors pursuant to Article 16.26.7 of this directive

S. No	**Machinery for contractors engaged in Road Construction**	**Machinery for contactors engaged in Building Construction**
1	Bull Dozer	Excavator
2	Front-end Loader	Hydraulic Breaker
3	Motor Grader	Crane
4	Trench Excavator	Tower Crane
5	Backhoe	Dozer
6	Grid Roller	Truck Mixer
7	Vibratory Roller	Loader
8	Water Bowser	Dump Truck
9	Dump Truck	Scaffolding
10	Truck With Trailer	Formwork
11	Low bed Hauling Truck	Front-end Dumper
12	Bitumen Distributer	Compactor/Roller
13	Stationary Heater	Backhoe
14	Paver for Base course	Crusher
15	Asphalt Paver	Generator
16	Self-Propelled chip Spreader	Truck With Trailer
17	Mechanical Broom	
18	Tandem Roller	
19	Vibrating Roller	
20	Pad foot Roller	
21	Pneumatic Roller	
22	Asphalt Plant	

	Machinery for contractors engaged in road constriction	Machinery for contactors engaged in Building constrictio
23	Crushing & Screening Plant	
24	Wagon Drill	
25	Compressor	
26	Crane	
27	Concrete Mixer	
28	Generator	
29	Service Vehicle for Supervisory Consultant	

Annex 5.

Bid security form to be filled by bidders pursuant to article 23.2.5 of this directive.

Bid number _____ (**Insert the bid identification number**)
To_____ (**Insert the name of the procuring Public Body**)

(**Insert the full name of the bidder**) hereinafter referred to as the "bidder" have submitted a bid with identification number (**Insert identification number and descriptions of Goods and related service)** to supply the required objects under procurement number (Insert a short reference to the required objects of the procurement and the procurement identification number) hereinafter referred to as the bid. Accordingly, I , the undersigned, - , (**Insert the name of the bidder, individual or organization as the case may be, and the name of the person authorized by the organization to sign the bid security if the bidder is an entity)** declare that I have read, understood and agree to be bound by the following terms, **(Insert in letter and figure the amount of the bid security and the currency in which such amount is expressed)**.

The stamp of the bidder shall be affixed to the document **(Insert the validity period of the bid security days, weeks, months or years**) and sealed.

a) Not to withdraw from the bid proceeding after the expiration of the period of bid submission set forth in the bidding document or within the validity period of my bid stated in my bid document, or

b) To sign a contract before the expiration of the validity period of my bid, in compliance with a written notification of award which may be sent to me by the Public Body if I am the successful bidder, or

c) To provide performance security when I am advised by a notification of award to sign a contract and furnish performance security,

d) To comply with other requirements stated in the bidding document.

e) To pay the stated amount of the bid security with in five days from the date of receipt of a written request from the Public Body, should I fail to fulfill any of the obligations stipulated in a-d above,

This bid security shall remain valid for 28 days after the end of the validity period of the bid. Any claim made in connection with this security thereafter shall not be acceptable.

Name_____ **Insert the full name of the person signing the bid security form**)

Signature _____**(Insert the signature, name and title of the person signing this document),** or

If the person signing this document is an agent, (**Insert the full name of such person)**

Date_____ **(Insert date of signature)**