Inter-Ministerial Concessions Committee

Standard Operating Procedures

Adopted [Insert Date]

Table of Contents

GLOSSARY

Term	**Definition**
Affordability	Refers to an assessment of whether a Project has: (a) financial commitments in a concession contract that are sustainable and do not impose an unreasonable burden to the procuring entity and may be met by funds: i. designated within the existing budget of the procuring entity for its function for which the agreement relates; and ii. assigned to the procuring entity in accordance with its relevant future budgetary allocation, and (b) costs of delivering a facility or service under the concession contract does not impose an unreasonable financial burden on the end users;
Bid Evaluation Panel (BEP)	Refers to the panel as constituted by the IMCC for evaluating the bids and preparing the evaluation report to submit to the IMCC for approval based on the recommendation or suggestions of CTU
Concession Project (Project)	Article 3 of the PPCDA defines a concession project as one that grants an interest in a public asset by a contracting authority to a non-public entity for a specified period during which the asset may be operated, managed, utilized or improved by the non-public entity for a fee or royalties or other consideration under the conditions specified in the concession agreement. See Appendix 2**: Concession Projects** for a fuller discussion of Concession Projects.
Concession Technical Unit (CTU)	Refers to the technical unit to be established pursuant to Article 121 of the PPCDA to provide technical capacity on concessions. Until such time as the CTU is established, the Procurement Department in the Ministry of Finance shall perform the CTU's functions
Fiscal Commitments and Contingent Liabilities (FCCL)	FCCL includes direct liabilities, being payments that must be made by the public sector under the concession contract, and contingent liabilities, being financial liabilities whose occurrence, timing and value depend on the occurrence of a future event. FCCL may include but not be limited to: (a) financial commitments to be incurred by a procuring entity in consideration for services under the concession contract (ex. availability payments, tariff payments); (b) termination compensation payments that are required to be made by the on termination of the concession contracts; (c) compensation clauses where the government is required to compensate the private party for damage or loss due to certain, specified events;

	(d) government assets which will be leased / transferred / assigned to the private party throughout the term of the concession contract; and (e) government support measures that will be offered to the private party under the concession contract, such as any financial undertakings; tax exemptions; letter of support; letter of credit; guarantees, partial risk guarantees or political risk insurance.
Inter-Ministerial Concession Committee (IMCC)	Refers to the inter-ministerial concession committee established under the PPCDA to provide oversight of the development and implementation of concessions
Procurement Regulations	The Public Procurement, Concessions and Disposals Regulations, adopted on February [-], 2020, or any other subsequent regulation that may repeal or amend these regulations
Public Procurement, Concessions and Disposal Act (PPCDA)	Refers to the Public Procurement, Concessions and Disposal Act enacted on August 09, 2016 and subsequently amended on February 05, 2020, or any other subsequent act or regulation that may repeal or amend the PPCDA
Public Financial Management Act (PFMA)	Refers to Public Financial Management Act dated 25 December 2019
Standard and Operating Procedures (SOP)	Refers to this standard and operating procedures
Unsolicited Proposal (USP)	Refers to a written proposal from a private party to the procuring entity for the development of a new project as a Concession Project
Value for Money (VfM)	Refers to the undertaking of a public function of the procuring entity by a private party under a concession arrangement which results in a net benefit to government and society defined in terms of cost, price, quality, quantity, timeliness or risk transfer.

Scope and Objective of Standard Operating Procedures (SOP)

SCOPE

1. This SOP applies to all Concession Projects[1] implemented by any public entity of the Federal Government of Somalia (FGS) across all stages of the Project development process, including identification, planning and preparation, tendering and evaluation, and implementation and supervision. In the event of a conflict between the Public Procurement, Concessions and Disposal Act enacted on August 9, 2016 and subsequently amended on February 5, 2020 ("**PPCDA**") or its subsequent regulations with the SOP, the PPCDA and/or the Procurement Regulations shall prevail. For a summary of the legal framework related to concessions, please refer to Appendix 1 of this SOP.

2. Neither the PPCDA, nor this SOP, applies to investments by the private sector where there is no contractual obligation of government or any public entity, as defined in the PPCDA, in the creation of any asset or right. For avoidance of doubt, any public guarantee or other financial support from any public entity, whether actual or contingent, is considered a contractual obligation of the government.

3. The PPCDA states that procurement and award activities of Federal Member States are subject to their respective procurement laws, and therefore Federal Member State concession activity would not be governed by the PPCDA or this SOP.

OBJECTIVE

4. The objective of this SOP is to set out the procedures and requirements to be followed by the inter-ministerial concession committee ("**IMCC**") to perform its functions in a transparent, systematic, efficient, and accountable manner. It captures the roles and responsibilities of the IMCC and other key institutions involved in the Concession Project development process, with a particular focus on the oversight role of the IMCC. It is designed to support an informed decision-making process at each stage of the Project cycle, as envisioned by the PPCDA.

5. The implementation of the SOP is also designed to support the broader principles underpinning the PPCDA, namely promoting economy and efficiency, transparency and competition, integrity and accountability. Each review and approval of a Concession Project shall not derogate from these principles and shall more generally support the assessment of a Project's Affordability and its ability to achieve Value for Money (VfM).

[1] See Appendix 2 for a discussion of the nature of projects that may be considered Concessions.

Inter-ministerial Concession Committee (IMCC)

ROLES AND RESPONSIBILITIES OF IMCC

6. The IMCC is the Somali government entity charged with overseeing the procurement and management of concessions. This includes reviewing and providing approvals at key points in the Project development process.

7. The IMCC has the responsibility to review and approve Concession Projects at the following points in the development process:

- Prior to the launch of any concession procurement process: the IMCC must approve the concession bid documents, which include a draft concession contract, as well as any procurement method if not open competitive bidding;
- Prior to the evaluation of bids: the IMCC must appoint the Bid Evaluation Panel (**"BEP"**) and review and approve the evaluation report which identifies the preferred bidder;
- Prior to negotiations with the preferred bidder: the IMCC must appoint the negotiation team and approve negotiation benchmarks;
- Prior to concession contract signature, confirm that the negotiation benchmarks have been respected and that the concession contracts, as negotiated, have not been inappropriately altered.
- Prior to concession contract amendment, appoint the negotiation team and approve negotiation benchmarks, as well as a renegotiated concession contract before signature to confirm that the negotiation benchmarks have been respected and that the concession contracts, as negotiated, have not been inappropriately altered.

8. The IMCC also has the responsibility to provide guidance to the Concessions Technical Unit (**"CTU"**) for the development of policies for the proper development and implementation of Concession Projects, specifically to include guidelines and standard documentation.

CONSTITUTION OF IMCC

9. In accordance with Article 116 of the PPCDA, the IMCC shall consist of seven (7) members comprising of accounting officers[2] from:

- the Ministry responsible for Finance as Chair;
- the Ministry responsible for Justice;
- the Ministry responsible for Planning;
- the Ministry responsible for Federal affairs;

[2] At the current stage of Somali institutional development the IMCC is generally attended by Ministers and not accounting officers, as the latter is not seen to have sufficient authority to make the decisions required of the IMCC.

- the Attorney General; and
- two other accounting officers representing the collective interest of various sectors of the economy connected with the concession other than the procuring entity.

10. The Minister responsible for Finance shall request the Council of Ministers to appoint a standing list of three accounting officers who may serve as IMCC members. The Minister responsible for Finance shall invite two of the three appointed officers to attend each IMCC meeting, based on which two are most relevant for the consideration of the business before the IMCC and ensuring that neither invitee represents a procuring entity that is presenting a Project in the relevant IMCC meeting.

CONCESSION TECHNICAL UNIT (CTU)

11. A CTU is established under the PPCDA, within the Ministry of Finance, to serve the IMCC as its secretariat and to assist the IMCC in the performance of its functions.[3]

12. The CTU shall perform the following roles and responsibilities:

- Serve as the secretariat to the IMCC, including: reviewing the completeness of IMCC meeting requests, supporting the chair in arranging and facilitating the conduct of IMCC meetings, preparing minutes and records of IMCC decisions, and any other tasks requested by the chair.
- Provide technical support to IMCC, including: making recommendations on the approval or rejection of Projects prior to their submission to IMCC for approval, assisting IMCC in formulating guidelines and standard documents, and advising on other issues as requested by the chair.
- Serve as a technical resource on matters relating to concessions, including: providing technical support to procuring entities at all stages of the Project development process, including Project implementation, and in general promote awareness and understanding of concessions process among stakeholders.

13. The staffing of the CTU shall be determined by the Minister responsible for Finance, in consultation with the IMCC. CTU staff shall be competitively recruited.

[3] The CTU has not been established and the procurement department of the Ministry responsible for Finance currently performs the functions of the CTU. References to the CTU are therefore construed to mean the procurement department of the ministry responsible for finance, until such time as the CTU is fully established and has built capacity to adequately fulfill its role.

Internal Rules of IMCC

CALL FOR MEETING

14. IMCC meetings shall only be convened by the chair. Procuring entities or other entities wishing to request an IMCC meeting shall submit a meeting request and associated supporting documents to the CTU[4]. The CTU shall review the request and, if the request meets the necessary requirements for the proposed meeting purpose, shall submit the request to the IMCC chair to determine whether and when to call an IMCC meeting.

15. Once a meeting is agreed by the chair, the CTU shall arrange the meeting at the time and location indicated by the chair and shall circulate the meeting agenda and all relevant documentation, via each member's official email, no later than 14 days[5] in advance of the meeting. All documentation shared to IMCC members shall be held in confidence.

QUORUM AND ATTENDEES

16. IMCC shall not be properly constituted or convene its meeting without having the presence of the members representing the ministries responsible for Finance, Planning and Justice. In the absence of a valid quorum at a meeting, such meeting shall be adjourned and the CTU, subject to instruction by the chair, shall reschedule at the earliest possible date.

17. IMCC members may nominate in writing any other senior officer (preferrable their deputy) to act as proxy at meeting. The nominated proxy shall have the full power and authority to represent their institution in the IMCC meeting, including to vote on matters before the IMCC.

18. A representative of the procuring entity shall be invited to participate in an IMCC meeting, where relevant, for the purposes of presenting or defending its submission or Project. However, such representative shall not have any right to vote in the meeting. To the extent that an IMCC member is the sponsor of a Project before the IMCC, that member shall not have the right to vote on matters related to its Project.

19. The CTU officer who is responsible for the review of concession bid documents shall be invited to report to the IMCC with respect to the CTU's review of Project documents and its recommendation to the IMCC for approval or rejection.

20. At the discretion of the chair, other technical experts or advisors may be invited to join IMCC meetings to provide relevant analysis or technical support related to specific Projects or other matters before the IMCC.

---

[4] Appendix 3 contains an overview of the IMCC approvals throughout the Project development process and the documentation which is required to support their review process.

[5] All references to days in this SOP refer to calendar days.

21. Once non-voting attendees have presented relevant information, they may be asked to leave by the chair to enable IMCC members to discuss a Project, submission or issue in confidence.

22. A senior member of the CTU shall attend all IMCC meetings to serve as the IMCC's secretariat and shall remain in the IMCC meeting during confidential sessions.

CONFLICT OF INTEREST

23. A member of the IMCC or any other person invited to attend an IMCC meeting, who has any interest, direct or indirect, actual or potential, in any matter to be considered by or on behalf of the IMCC shall disclose the nature of his or her interest to the IMCC prior to the discussion of the relevant matter, or immediately upon becoming aware of such an interest, and such disclosure shall be recorded in the minutes.

24. Where a conflict of interest exists, the conflicted person or member shall not take part in any deliberation or decision of the IMCC related to the matter.

25. Any failure to disclose a conflict of interest shall constitute improper conduct in accordance with Article 119 of the PPCDA.

PLACE OF MEETING

26. IMCC meetings shall be held in-person at the Ministry responsible for Finance. In exceptional circumstances, and where absolutely necessary to enable the IMCC to fulfill its responsibilities, the chair may determine to hold IMCC meetings at any other place within Somalia, or virtually.

27. If held virtually, IMCC members may participate by video conference or any other means of contemporaneous communication, provided that each person taking part in the meeting is able to hear each other person taking part and provided further that each member must acknowledge his/her presence for the purpose of the meeting and, in the event of any member not doing so, such member shall not be entitled to speak or vote at the meeting. Participation by a member at the meeting via such means constitutes participation in person. Quorum and other requirements applicable to IMCC meetings shall apply mutatis mutandis to meetings conducted by video conferencing. Meeting access shall be restricted to IMCC members and other attendees as described above. To the extent that a meeting is held virtually, each participant is responsible for ensuring the confidentiality of the meeting. At a minimum, participants shall join video conferences from a private place or closed room without any exposure to non-relevant person involved.

VOTING

28. At any meeting, each member may exercise one vote. The adoption of any decision of IMCC shall require the affirmative vote of a simple majority of the members present at such meeting with sufficient or required quorum meaning the voting of at least 51% of the members presenting at the meeting with sufficient quorum. However, where an IMCC decision involves the assessment of affordability and the use of FCCL, the IMCC may not approve a project unless the Ministry of Finance has indicated that the Project

in question meets affordability and FCCL requirements. All decisions of the IMCC, either via written decision or meeting, shall be recorded in writing and kept in proper order by CTU as the secretariat of the IMCC.

MINUTES

29. The CTU shall prepare minutes of each IMCC meeting and circulate them to each member via their official email address within 7 days of the relevant IMCC meeting. Non-member participants shall receive relevant sections. Attendees will be given 7 days to review the minutes and raise any objections. If objections are raised, the CTU shall circulate revised minutes within 7 days. Once there are no further objections, the CTU shall submit the minutes to the chair, who shall sign it within 7 days. The minutes shall capture the IMCC's deliberations on any Project or issue, including relevant technical assessments, as well as its decisions.

30. Where any member issues a written notice requiring his/her dissent to be recorded in the minutes of any meeting and in respect of a matter discussed when such member was present, such dissent shall be duly recorded and the draft minutes re-circulated, with such dissent, before the draft minutes are approved by the IMCC.

31. Following the adoption of the minutes, the CTU shall prepare a synopsis for publication on the website of the Ministry of Finance. The synopsis shall include an overview of key discussion points and a list of all Project-related approvals.

WRITTEN DECISION

32. Where IMCC decisions are not expected to require detailed Project presentation or benefit from debate, they may, at the chair's discretion, be made through written decision without convening a meeting. For avoidance of doubt, written decisions shall not be permitted for the approval of concession bid documents, the approval of the evaluation report, the issuance of the negotiation benchmarks or the approval of concession contracts prior to signature or amendment.

33. When written procedure is to be used, the CTU shall circulate, via each member's official email, the relevant documentation, including a draft written decision on which members would be requested to vote. The email shall indicate a specific time, no shorter than 5 working days, by when comments or objections must be received. Following the receipt of comments or objections, a final written decision will then be circulated to all members to request a vote within a specific time period to be no shorter than 3 working days. Members shall be required to respond via e-mail to indicate their vote. The procedures above with respect to conflict of interest, quorum and voting shall apply.

The CTU shall prepare meeting minutes of the written decision reflecting any comments or objections as well as the result of the vote. The e-mail communication of all members who voted shall be attached to the summary. Following the adoption of the minutes, the CTU shall prepare a synopsis for publication on the website of the Ministry of Finance. The synopsis shall include an overview of key discussion points and a list of all Project-related approvals.

Concession Project Approvals

34. The PPCDA envisions IMCC oversight of concession Projects through a series of approvals required as a Concession Project progresses through the project development cycle. The project development cycle generally includes 4 stages: (i) project identification and selection; (ii) project preparation; (iii) project procurement and contracting; and (iv) project implementation. The approvals required at each stage are described below, alongside a brief overview of the roles of other institutions where relevant for the IMCC's performance of its role.

PROJECT IDENTIFICATION AND SELECTION

35. Under the PPCDA, Project identification is typically the responsibility of individual procuring entities who must determine whether there are projects which are necessary for the achievement of their development objectives and which may be best delivered through a concession approach. Although Projects may also be identified by the private sector, through the submission of an unsolicited proposal (**"USP"**) to a procuring entity, the procuring entity remains responsible for determining, in the first instance, whether to consider the USP. All Projects initiated through an USP must still receive IMCC approval as required at the relevant stages of the Project development process. [6]

36. The Ministry responsible for Finance, through the CTU, may also identify potential Projects on a periodic basis or as a part of the development of the annual concession plan to promote the use of concessions or support the allocation of funding to procuring entities for Project preparation. Such identification and prioritization may be based on analytical tools or any other approach as determined by the ministry responsible for finance.

37. Prior to undertaking activities to prepare any concession Project, whether identified by the procuring entity, the Ministry responsible for Finance or a private party, the relevant procuring entity must obtain a certificate of concession to be issued by the Ministry responsible for Finance. Any request for a certificate of concession shall be submitted to the CTU. It must be accompanied by a concept note[7] describing the Project in sufficient detail to enable its evaluation according to the requirements below.

38. The Minister responsible for Finance shall, on the advice of the Director General responsible for Finance and the CTU, and in consultation with other relevant entities, issue a certificate for concession where the following conditions are met:

- the concession falls within the area of the economy in which concession arrangements may be carried out in furtherance of national economic objectives;
- the proposed Project has not already been allocated with public funds; and

---

[6] In some instances, the IMCC may have additional responsibilities with respect to an USP, the most relevant of these are noted throughout the SOP. The Procurement Regulations provide additional information on USP procedures.

[7] The minimum required content of the concept note is listed in Appendix 4**: Concession Project Concept Note** of this SOP.

- any barriers or bottlenecks that need to be addressed prior or during Project preparation, procurement and contracting have been clearly identified.

39. Where the certificate of concession is requested in respect of an USP, the Minister responsible for Finance shall refer the Project to IMCC for approval prior to the issuance of a certificate of concession. The IMCC shall confirm the following prior to granting approval:

- there are no previous USPs for the same or a similar concession submitted to the procuring entity or to another agency or Somalia;
- the infrastructure asset or public service to be delivered pursuant to the USP reflects a unique or innovative concept which is not generally available from other known sources;
- the proposed outcome will be exceptionally beneficial to, or have exceptional cost advantages for, the government of Somalia without any direct or indirect cost to the public budget;
- there are no financial contributions or other support to be provided by the government; and
- the specific proposal has not already been earmarked under the annual concession plan and no concession procurement plan is in place for that particular proposal.

PROJECT PREPARATION

40. The procuring entity is responsible for preparing the Project, including preparing a feasibility study[8], undertaking stakeholder consultation, and developing concession bid documents, including a draft contract[9]. The CTU is available to provide technical support to the procuring entity throughout the Project preparation process.

41. Once completed, the procuring entity shall submit all relevant documentation to the CTU for evaluation. Once the CTU has completed a technical review of the documentation, it will submit the documentation to the IMCC for review, with a recommendation for approval or rejection.

CTU Evaluation and Recommendation

42. The CTU shall conduct an initial review of the Project documentation submitted by the procuring entity within 7 days. If any documentation is missing or is not sufficiently complete to enable the CTU to assess the criteria elaborated in paragraph 43. and complete its briefing note as required in paragraph 44. , the CTU shall communicate the same to the procuring entity and indicate where deficiencies exist. Where resources are available and when approved by the Minister responsible for Finance, the CTU may offer to provide support to the procuring entity in completing critical Project preparation tasks or may otherwise provide guidance to the procuring entity to support the preparation of Project documents.

[8] The content of the feasibility study report is listed in Appendix 5: **Feasibility Study** of this SOP.

[9] The set of the concession bid documents are listed in Appendix 6: **Concession Bid Documents** of this SOP

43. Once Project documentation, including the feasibility study and concession bid documents, is substantially complete, the CTU shall carry out a technical review of the Project. In its review the CTU may obtain specialist support or consult with other stakeholders as it deems necessary. Its review shall focus on whether the Project meets the following key criteria:

- The Project is technically feasible and technical requirements of the Project are well understood and clearly specified.
- The Project is financially feasible and either (i) does not rely on government budget or other support, or (ii) any government budget or other support that is proposed meets affordability requirements or other restrictions on FCCL as may be imposed by the Minister responsible for Finance. The CTU shall request the Director General responsible for Finance to undertake an assessment of these issues, in collaboration with the debt management and budget departments within the Ministry responsible for Finance, and will report this assessment in its briefing note.
- The legal basis for the delivery of the Project as a concession is appropriate, and the concession contract is consistent or in compliance with Somali law, regulations, and approved frameworks and appropriately covers the elements as specified in Appendix 5.
- The Project is suitable for delivery as a concession, as evidenced through a clear and appropriate allocation of risks between the procuring entity and the private partner and an assessment of its value for money, in accordance with IMCC requirements.
- Tender documents are in compliance with Article 143, 151 and 152, of the PPCDA and otherwise support a competitive and transparent selection process. Any use of a procurement method other than open competition must be justified in accordance with Article 138 or 139 of the PPCDA.

44. The CTU shall prepare a briefing note for the IMCC which will include the findings and recommendation from its review of the concession bid documents and the feasibility study report within 45 days from the date of submission of sufficiently complete documentation. In the event of exceptionally complex Projects, the CTU may seek the approval of the chair for a longer review period. The briefing note will capture key relevant information about the proposed concession to support the IMCC in its deliberations. A Project which has not submitted sufficient information to enable the CTU to assess the issues included in the briefing note template, included in Appendix 7**: CTU Briefing Note on Concession Bid Documents** of this SOP shall not be submitted to the IMCC for review.

45. Following the completion of the briefing note, and approval of the chair, the CTU shall circulate the Project documents and briefing note to the IMCC.

IMCC Review

46. Upon receiving the Project documents and briefing note, the IMCC shall have 30 days to approve or reject the concession bid documents, including the proposed procurement method.

47. As directed by the chair, the CTU shall convene an IMCC meeting to determine whether the concession bid documents shall be approved or rejected. During the IMCC meeting, the procuring entity and the CTU shall be invited to present to IMCC members on the Project and respond to questions.

48. In its decision, the IMCC shall consider the following:

- the recommendations of the CTU;
- the overall national development framework and other relevant policy objectives including efficient public service; and,
- whether the Project meets the key criteria specified in paragraph 43. . The IMCC may only approve Projects which are assessed by the Director General responsible for Finance to meet requirements with respect to affordability and the use of FCCL.

49. Where the IMCC has approved or rejected the concession bid documents, the IMCC, through the CTU, shall issue a notice in writing to the procuring entity. If the decision differs from the recommendation of the CTU, the IMCC shall specify the reasons for the difference. If the notice indicates that the Project is rejected, it shall also include the reasons for the rejection which must be addressed if the Project is to be approved. The procuring entity may re-submit the feasibility study and concession bid documents to the CTU within six months upon receiving a rejection notice.

50. If revised concession bid documents and feasibility study, are not resubmitted within six months upon receiving the IMCC's rejection notice, or if, in the CTU's opinion, the Project in question has been redesigned significantly or the Project circumstances have changed, the procuring entity shall re-submit the Project concept note in order to obtain a new certificate of concession.

PROJECT PROCUREMENT AND CONTRACTING

51. Upon receiving IMCC approval of the concession bid documents, the procuring entity may proceed with the Project procurement process as specified in the concession bid documents. The CTU will remain available to the procuring entity to support the process as necessary. The procuring entity shall notify the CTU of the first due date for any submission by bidders, whether for expressions of interest, qualifications or proposals, at least 30 days in advance of the relevant deadline.

BID EVALUATION

52. Prior to the first date of any bidder submission, the IMCC shall constitute a Bid Evaluation Panel ("**BEP**") that will open and review bidder submissions as required by the concession bid documents and the PPCDA. The BEP shall be chaired by a representative of the procuring entity and must be comprised of a minimum of 3 members, one of which shall include a representative of the CTU. Other panel members may include additional representatives from the procuring entity, as well as representatives of other government stakeholders. The IMCC may issue guidance to support BEPs in the performance of their task.

53. The BEP shall prepare the evaluation report within sixty days of the opening of proposals. In the event of exceptionally complex Projects, the BEP may seek the approval of the chair for a longer review

period. The evaluation report[10] shall cover the assessment of all stages of the selection process, including pre-qualification, where relevant. It shall recommend a selected bidder and runners up with quantitative scores and qualitative analysis based on the criteria as set forth in the bid documents. It shall also clearly capture any conditions specified in the proposals of the top three scoring bidders which would require negotiation and outline the required scope and timeline for negotiations with the selected bidder.

54. Once the evaluation report is completed, the BEP shall submit such report to the CTU for review prior to its submission to IMCC. In parallel, the procuring entity shall conduct due diligence on the responsive bidders in accordance with Article 154 of the PPCDA. Such due diligence should be completed within 10 days of the submission of the evaluation report to the CTU. The procuring entity shall report its findings regarding the legal capacity and authenticity of the bidders to the CTU immediately after its due diligence is completed, any failure to do so within the time allocated may delay the submission of the evaluation report to the IMCC.

55. Within 21 14 days upon receiving the evaluation report, the CTU shall review such evaluation report and make a written recommendation to the IMCC on whether to approve or reject the selection of the winner in the evaluation report. The CTU shall base its recommendation on whether:

- the highest scoring bidder is named as the winner ;
- the BEP has appropriately and accurately applied the evaluation methodology and criteria as set out in the concession bid documents; and
- the evaluation as well as the overall conduct of the procurement process was in accordance with the PPCDA.

56. The CTU shall also review the proposed scope for negotiations as indicated in the bid evaluation report and inform the IMCC, whether the proposed scope is consistent with the requirements of the concession bid documents and the PPCDA and would not otherwise undermine the integrity of the tender process. In determining whether the negotiation scope may undermine the integrity of the tender process, the CTU shall consider whether that the scope for negotiations allows for:

- material alterations to the risk allocation of the parties set out in the concession contract;
- alteration of the financial proposal submitted by the bidder;
- alterations of the criteria on which tender was awarded;
- alteration of the financial/commercial structure of the Project; or
- adjustments to terms and conditions that have been specified to be non-negotiable in the bid documents.

57. The CTU shall forward its recommendation along with the evaluation report to the IMCC for consideration.

---

[10] The evaluation report shall have the content as listed in Appendix 8**: Bid Evaluation Report** of this SOP.

58. Following the circulation of the required documents to the IMCC, and on the advice of the chair, the CTU shall convene an IMCC meeting to enable an IMCC determination within 14 days. The IMCC may:

- approve the evaluation report, issue negotiation benchmarks, including the issues which may be considered in a negotiation process and the negotiating timeline, and nominate the negotiation team;
- reject the evaluation report and either request the BEP reevaluate or recommend retendering or cancellation of the Project;
- request for clarification on how the BEP arrived at specific decisions, if necessary; or
- request for minor amendments where there are obvious errors such as typographical or arithmetical if context requires.

59. The IMCC shall, through the CTU, issue a notice in writing to the procuring entity conveying its decision. If the notice indicates that the evaluation report is rejected, it shall include the reasons for the rejection. If it is possible for the BEP to remedy the evaluation report, it shall do so and re-submit the evaluation report to IMCC via the CTU for approval or rejection. If the notice indicates the evaluation report is approved, it shall also: (i) specify the relevant negotiation benchmarks, including the issues which may be considered in a negotiation process and the negotiating timeline; and, (ii) specify the negotiation team, which, similarly to the BEP, shall be chaired by the procuring entity and must have a minimum of 3 members, one of which must be a representative of the CTU.

NEGOTIATIONS AND RECOMMENDATION OF CONTRACT AWARD

60. The negotiation team shall commence negotiations as soon as practicable following notification from the IMCC. The negotiating team may be supported by external advisors as necessary. Unless otherwise specified in the negotiation benchmarks, the negotiation team shall submit a progress report each month noting the agreed points and the outstanding issues yet to be resolved.

61. The negotiation will first start with the highest ranked bidder indicated in the evaluation report as approved by the IMCC. In the event that the negotiation team is not able to successfully negotiate with the preferred bidder within the scope of the negotiation benchmarks, it shall request IMCC approval, through a written notice to the CTU, to:

- commence negotiations with the next highest bidder in the order of ranked bidders until negotiations are concluded; and/or
- adjust negotiation benchmarks.

62. The CTU shall review any proposed revisions to the negotiation benchmarks and, within 7 days, forward the negotiation team's request to the IMCC alongside its recommendation to the IMCC as to whether the revised scope of negotiations is consistent with the requirements elaborated in SOP paragraph 56. . The IMCC will reach a decision within 14 days and, if approved, will issue the updated negotiation benchmarks to the negotiation team. Steps 61 and 62 are to be repeated until an agreement is reached or the negotiation team has concluded it cannot reach an agreement with any of the responsive bidders.

63. Upon the completion of the negotiation, the negotiation team shall prepare a negotiation report to capture the outcome of the negotiations and, where an agreement has been reached, the final terms of the concession contract. The final negotiation report shall include:

- a copy of the final concession contract;
- a track change comparison of the final concession contract against the concession contract that was previously approved by the IMCC and summary of the key amendments; and
- a summary of the fiscal commitments and contingent liabilities that are incurred by the government under the final concession contract.

64. The negotiation team shall submit the negotiation report to the CTU for recommendation to the IMCC for approval or rejection. Within 14 days, the CTU shall review the negotiation report and forward it to the IMCC alongside a note highlighting whether there are any amendments which are either inconsistent with the negotiation benchmarks approved by the IMCC or which materially alter the Project in a way which (i) exposes the government to increased risks, (ii) increases fiscal commitments or contingent liabilities, or (iii) results in the Project not meeting affordability or value for money principles. The CTU submit a request for extension to the chair if there are significant changes in the final concession contract that require deeper review. Where necessary, the CTU shall coordinate with the Director General responsible for Finance.

65. The IMCC shall convene a meeting to review and approve the final negotiation report and concession contract. The IMCC shall reject the negotiation report if the final concession contract:

- Includes material amendments which are inconsistent with the approved negotiation benchmarks;
- no longer results in the Project meeting value for money principles; or,
- if, in the opinion of the member representing the ministry responsible for finance, any government budget or other support that is proposed no longer meets affordability requirements or otherwise violates other restrictions on FCCL as may be imposed by the ministry responsible for finance.

66. The IMCC shall, through the CTU, issue its decision no later than 30 days after receiving the negotiation report from the CTU. Where the IMCC has rejected the negotiation report, the IMCC shall provide reasons as to why the final negotiation report was rejected. The negotiation team may re-open negotiations with the preferred bidder and repeat the process set out above until the negotiation report has been approved by the IMCC or the procuring entity or IMCC determines that no further negotiations shall take place.

SIGNING OF CONTRACT

67. If the IMCC approves the final negotiation report, the IMCC, through the CTU, shall notify the procuring entity in writing of the approval of the final negotiation report and concession contract. Afterward, the procuring entity shall publish a notice of award publicly and issue notice to the successful bidder and unsuccessful bidders as required by the PPCDA. Fourteen days following the issuance of the notice of award, the minister of the procuring entity may execute the concession contract with the successful bidder. The concession contract must be signed by a representative of the Procuring Entity and witnessed by the

Minister responsible for Finance, to evidence IMCC's approval of the negotiation report and the final concession contract.

68. After the signing of the concession contract, the procuring entity shall forward copies of the concession contract to relevant ministries, departments and agencies as well as the CTU and the IMCC. In addition, a copy shall be sent to the auditor general for registration, which is a condition for the effectiveness of the contract under the PPCDA. The auditor general shall not register concession contracts which have not been witnessed by the Minister responsible for Finance.

PROJECT IMPLEMENTATION

MONITORING OF CONCESSION IMPLEMENTATION

69. Following the execution of the concession contract, the procuring entity is responsible for the implementation of the Project. During implementation, the procuring entity shall share key financial and operational reports submitted by the concessionaire to the CTU. In addition, the procuring entity shall prepare an annual implementation report to the IMCC which detail the Project's progress and any changes in Project circumstances or risks. The IMCC may also require ad hoc Project updates at any time. This reporting is in addition to any which may be required by the ministry responsible for finance with respect to the monitoring of FCCL in the concession contract.

70. Should the IMCC determine that the management of the contract may benefit from closer oversight, it may constitute a higher-level contract management committee chaired by the procuring entity, but including representation from the CTU and any other institution it deems relevant, in order to oversee the performance of the Projects and support decision-making on all contractual matters.

CONTRACT AMENDMENT

71. Amendment to the concession contract may be required during the operation and maintenance of the Project, as a result of change in circumstances that was not reasonably anticipated at the time of signing. In the event that a concession contract becomes likely to require amendment, the procuring entity shall submit a request to the IMCC, through the CTU, for the establishment of appropriate negotiation benchmarks and the formulation of a negotiation team. The request shall clearly specify the issues that are proposed to be renegotiated and the expected time required to complete the renegotiation.

72. The CTU shall review the procuring entity's request and shall forward it to the IMCC, alongside a written review of the proposed scope for negotiations, within 2114 days. The review shall indicate whether, in the CTU's opinion, the proposed negotiation scope is consistent with the needs of the Project and the PPCDA, and highlight any potential risks with respect to the Project's continued ability to respect affordability or VfM principles.

73. Following IMCC's receipt of relevant documentation, and on the advice of the chair, the CTU shall convene an IMCC meeting to enable an IMCC determination within 14 days.

74. The IMCC shall, through the CTU, issue a notice in writing to the procuring entity conveying its decision. If the notice indicates that the request for renegotiation is rejected, it shall include the reasons for the rejection. The procuring entity may adjust its request for renegotiation accordingly and re-submit it to IMCC via the CTU for approval or rejection. If the IMCC's notice indicates the request for renegotiation is approved, it shall also: (i) specify the relevant negotiation benchmarks, including the issues which may be considered in a negotiation process and the negotiating timeline; and, (ii) nominate the negotiation team, which, shall be chaired by the procuring entity and must have a minimum of 3 members, one of which must be a representative of the CTU.

75. Once approved, the negotiation and contracting process shall follow the procedure specified in paragraphs 63. - 68. .

Concession Policy and Guidance

76. The CTU, under the direction of the IMCC, is responsible for the development of concession policy and guidance and shall more generally support the continual development of the concessions legal framework. Where instructed by the IMCC, the Ministry responsible for Finance, or where the need for policy and guidance is otherwise evident, the CTU shall develop necessary policy and guidance documentation for IMCC's consideration. The CTU may retain advisors to support in the preparation of policy and guidance documentation. The CTU shall conduct stakeholder consultation associated with policy and guidance documentation as may be appropriate or as required by IMCC.

77. Once draft policy and guidance documentation are shared with IMCC for review, IMCC shall take a decision to approve or reject such documentation within 30 days. If the IMCC rejects the documentation, it shall provide clear reasons for rejection to enable the CTU to revise the documentation and re-submit it for review. If the IMCC approves the documentation, it shall be published on the website of the ministry responsible for finance.

78. Concession policy and guidance documentation which may be relevant for development by the IMCC includes, but is not limited to:

- Project identification and selection of concession Projects;
- concession procurement processes, including the use of pre-bid negotiation, and/or the development of standard bidding documents or clauses
- the development of concession contracts, including the development of template documents or clauses
- the assessment of VfM
- contract management

79. Pursuant to the PFMA, the ministry responsible for finance may also develop policy and guidance related to the assessment of affordability the use of FCCLs and the management of FCCLs.

Appendix 1: Concessions Legal Framework

PUBLIC PROCUREMENT, CONCESSIONS AND DISPOSAL ACT AND REGULATIONS

The PPCDA, enacted in 2016 and amended in 2020, provides procedures for the procurement of goods, works, services; the procurement and administration of Concession Projects; and disposal of unserviceable, obsolete, or surplus stores, and equipment by public entities. It also establishes various bodies and committees that are required to oversee, regulate or otherwise support its implementation. The overall objectives of the act are to:

- maximize economy and efficiency in public procurement and obtain best value for money;
- promote transparency and competition by providing equal access to bidding opportunities and information;
- promote integrity, fairness, proficiency, and accountability in order to increase public confidence in procurement system; and
- facilitate promotion of local industry and economic development.

Part VI of the PPCDA focuses on concessions and establishes key institutions, such as the IMCC and the CTU and defines the nature of the Concession Projects to which it applies. It lays out the key features of the process for preparing, procuring, awarding and implementing Concession Projects. It also specifies the responsibilities of procuring entities and key institutions in that process.

Notable features of the concessions section of the PPCDA include the following:

- individual procuring entities are responsible for the development, procurement and implementation of Concession Projects;
- the IMCC, supported by the CTU, is the oversight body which confirm at key points during the process that the development, procurement and implementation of concession agreements is carried out in accordance with the PPCDA; and,
- open competition is the default procurement approach.

The Public Procurement, Concessions and Disposal Regulations were adopted in 2020, and serve to provide greater detail on the institutional roles and certain aspects of the Concession Project development, procurement and implementation process. Notably they:

- provide greater detail on the operation of the IMCC and the CTU, in particular with respect to the review of concession bid documents, and the confirmation of compliance with negotiation benchmarks;
- elaborate a process for the consideration of unsolicited proposals which is consistent with the requirements of the PPCDA;
- provide additional information on the requirements of the concessions procurement process.

PUBLIC FINANCIAL MANAGEMENT ACT

The PFMA was enacted in 2019 and governs all matters related to the management of the public finances of Somalia. It lays out the fundamental principles and procedures for the preparation, adoption and execution of the National Budget, internal controls, accounting, reporting and auditing of the revenue, expenditure, assets and liabilities, as well as the management of public debt and government guarantees.

Specifically, the PFMA provides authority to the Minister of Finance for management of public finances. This includes the responsibility for (i) all policy and technical matters related to the proper functioning of the public finance management system; (ii) the management of public money; (iii) advising the FGS on resources to be allocated to programs by sector; and (iv) ensuring the regularity and propriety in the management of public money.[11] It also establishes that the Minister of Finance has sole power to borrow internally and externally on behalf of the FGS, and explicitly states that no Public Body apart from the Ministry of Finance may borrow externally.[12] Federal Member States cannot borrow externally, but the Federal Minister of Finance may enter into guarantees on their behalf[13].

The PFMA is applicable for any Concession Project which makes use of: (i) public budget; (ii) public assets; and, (iii) government guarantees or other contingent liabilities. This means that Concession Projects are generally subject to PFMA requirements, as they commonly:

- involve the use of public assets, whether land or building, or intangible assets such as monopoly rights created by concession agreements;
- impact the public budget, either through direct payments from the government or the allocation of revenue streams to the private party that would otherwise accrue to the government;
- involve contingent liabilities including guarantees or potential compensation payments.

The PFM Act stipulates that while the Minister of Finance has the power to borrow and issue guarantees, the debt or guarantee must be approved by Parliament. In addition, only the Minister of Finance can approve tax exemptions[14].

The 2022 PFM Regulations set guidelines for areas such as budget preparation; budget execution and expenditure management; loans management; accounting and reporting; internal control and audit; and management of public property. They include a section on public investment management (Part XII), which is relevant for concessions as it includes guidance on the (i) application of the regulations to investment Projects in general, (ii) principles of budget unity, (iii) verification of affordability, (iv) budget documentation requirements, (v) concession agreements, (vi) and Project changes.

On budgeting, the PFM Regulations require the Minister to develop an annual Fiscal Policy Framework Paper, that sets expenditure ceilings and government priorities.[15] The PFM Regulations also outline the need for the National Budget to include information on externally financed expenditures and list outstanding multiannual commitments, debts and contingent liabilities.[16] In terms of roles and responsibilities, the Regulations indicate that requisitions for multiannual commitments must be approved by the Minister of Finance and that they must not be entered into without an appropriation in the National Budget.[17]

[11] PFM Act Article 8
[12] PFM Act Article 36
[13] PFM Act Article 37
[14] PFM Act Article 5
[15] PFM Regulations Article 8; https://mof.gov.so/publications/2021-budget-policy-framework-paper
[16] PFM Regulations Article 14, 18, 25
[17] PFM Regulations Article 25

Appendix 2: Concession Projects

Article 3 of the PPCDA defines a concession as "*the grant of an interest in a public asset by a contracting authority to a non-public entity for a specified period during which the asset may be operated, managed, utilized or improved by the non-public entity for a fee or royalties or other consideration under the conditions specified in the concession agreement*".[18] This definition is further elaborated by:

- A list of contract types which are explicitly considered concessions covering a wide range of arrangements[19], from outsourcing to typical PPP structures to partial privatization. This list is non-exhaustive and power is given to the IMCC to identify 'other business arrangements' which could be considered concessions.
- a wide range of economic activities including infrastructure development, extractive industries such as oil and gas exploration and extraction, and agriculture where Concession Projects may be developed. This list is non-exhaustive and power is given to the Council of Ministers to expand this list.

The definition of a Concession in the Somali legal framework is generally consistent with typical definitions of a public-private partnership ("**PPP**") PPP. There is no universally accepted definition of PPPs[20]. However, a PPP can be defined as a long-term contract between a procuring entity and private partner under which a private party:

- performs a public function or provide a service on behalf of a procuring entity;
- receives a benefit for performing a public function or service by way of:
  - compensation from a procuring entity;
  - charges or fees collected by private party from users or consumers of a service provided to them by the private party; or
  - a combination of such compensation and such charges or fees; and
- is generally responsible for risks arising from the performance of the function in accordance with the terms of the concession contract.

In practice, a Project considered as a concession under the Somali legal framework would be considered a PPP in most jurisdictions. The term PPP is more widely used to capture the nature of Projects which are covered under the PPCDA. However, the term concession is the term referenced in the prevailing Somali legal framework and, therefore, these SOPs use the term concession throughout.

[18] There are two definitions of the term Concession in the PPCDA. The one included here is from Article 3. Article 108 also contains a definition of Concession which differs slightly in that it does not contemplate the payment of fees to the private party; however, this definition is inconsistent with several limbs of Article 108, in particular limb f and e, which clearly indicate concession arrangements where fees are paid to the private party. As a result, the definition in Article 3 is used here as it is more consistent with the broader PPCDA.

[19] Article 108

[20] IMF, 2004; OECD, 2008; European Commission, 2004; Standard and Poor's, 2005; EIB, 2004

Appendix 3: Concession Approvals and the Project Cycle

	Approval	Required Documents	CTU Role[21]	IMCC Role
Project Selection	Certificate of Concession	Concept Note (Appendix 4: **Concession Project Concept Note**)	Advise Minister of Finance, who will issue Certificate of Concession or reject, in consultation with the DG responsible for Finance.	In the event of a USP, approve or reject upon request of Minister of Finance
Project Preparation	Concession Bid Documents	Certificate of Concession Feasibility Study (Appendix 5: **Feasibility Study** Concession Bid Documents (Appendix 6: **Concession Bid Documents**) Briefing Note (Appendix 7: **CTU Briefing Note on Concession Bid Documents**)	Review documents for completeness within 7 days Prepare briefing note to recommend approval or rejection to IMCC within 45 days, seek DG of Finance opinion on affordability and FCCL	Approve or reject within 30 days after receiving the briefing note * IMCC may only approve Projects which meet affordability and FCCL requirements as determined by the DG of Finance
Project Procurem	Bid Evaluation Panel	Procuring entity to notify CTU 30 days in advance of first submission date	Forward request to IMCC	IMCC to appoint Bid Evaluation Panel

[21]zAll references to days in this SOP refer to calendar days.

	Evaluation Report, Negotiation Benchmarks, and Negotiation Team	Evaluation Report (Appendix 8: **Bid Evaluation Report** Proposed Negotiation Scope	Recommend approval or rejection of the evaluation report and negotiation scope within 21 days	Approve or reject the evaluation report within 14 days. Where approved, issue the negotiation benchmarks and appoint negotiation team.
	Negotiation with subsequent bidder, Negotiation Benchmarks	Proposed Negotiation Scope	Recommend approval or rejection within 7 days	Approve or reject within 14 days. If required, reissue the negotiation benchmarks.
	Negotiation report and concession contract	Negotiation Report Final concession contract	Recommend approval or rejection of negotiation report and final concession contract within 21 days	Approve or reject the negotiation report and concession contract within 30 days. * IMCC may only approve Projects which meet affordability and FCCL requirements as determined by the DG of Finance MoF to witness signing of concession contract
Project Implementation	Renegotiation benchmarks and negotiating team	Request for renegotiation	Advise IMCC on the request and the negotiation scope within 14 days	Approve or reject the request within 14 days. Where approved, issue the negotiation benchmarks and appoint negotiation team
	Contract Amendment	Negotiation Report Revised concession contract	Recommend approval or rejection of negotiation report and revised concession contract within 14 days	Approve or reject the negotiation report and concession contract within 30 days. * IMCC may only approve Projects which meet affordability and FCCL requirements as determined by the DG of Finance MoF to witness signing of concession contract

Appendix 4: Concession Project Concept Note

Concept notes shall include at a minimum:

– a description of the procuring entity and why the proposed Project falls within its jurisdiction;

– a description of the proposed concession Project, including:

  - sector and type of Project/infrastructure;
  - the proposed role and responsibilities of the private sector contractor;
  - proposed location of the Project;
  - a list of state assets that may be required for the Project;
  - a description of any government support, including direct payments, in-kind contributions, guarantees or incentives; and
  - the proposed term for the concession contract.

– a preliminary assessment of the public need for the proposed Project, including a description of the benefits to society and alignment with the national development plan;

– a preliminary assessment of economic feasibility and affordability or a cost-benefit analysis;

– a preliminary technical description of the proposed Project, including requirements for connections to existing assets or services;

– a preliminary assessment as to why the Project may achieve value for money and should be delivered as a concession; and

– a preliminary assessment of Project risks.

Appendix 5: Feasibility Study

The feasibility study shall contain:

- details regarding salient features of the proposed Project;
- explanation of the strategic and operational benefits of the proposed Project in relation to its objectives;
- description in specific terms:
  - in the case of a performance function, the nature of the function concerned and extent to which it may be performed by the private party;
  - proposed design standard and detailed output specifications of the Project, in particular for infrastructure or other assets which are to be developed under the Project;
  - proposed commercial terms, including fees or charges that may be levied or payments that the private party may be expected to receive;
  - in the case of use of government property, description of the property concerned and the types of use to which the property may be subjected;
  - in case of incurring any financial commitments by the procuring entity or the imposition of fees on end users, demonstration of the affordability of the Project;
  - in case there is any government support measure or fiscal commitment, descriptions of such support (as either incentives, direct fiscal commitments or guarantees)
- proposals for allocation of financial, technical and operating risks between the partners;
- demonstration of the anticipated value for money to be achieved based on the comparative analysis of the risk adjusted cost of delivering the Project through concession versus traditional public procurement;
- estimated capital investment of the Project;
- Project procurement, implementation and operation plan;
- assessment of the technical and economic viability of the Project;
- description of environmental and social impact assessments;
- details of the outcome of any stakeholder consultation or market soundings that took place as part of the feasibility and Project appraisal phase;
- the manner by which Somali citizens may be empowered and participate in the Projects; and
- any other information desirable to support the feasibility study.

Appendix 6: Concession Bid Documents

The concession bid documents shall contain at a minimum:

- a Project information memorandum, which shall cover the followings but not limited to:
    - the background of the Project;
    - objectives of the proposed concession;
    - expected improvements or deliverables; and
    - outline of expected Project outcome and benchmarks for measuring the attainment of Project objectives;
- tender documentation which shall include a complete draft Request for Proposals as well as other tender documentation relevant for the specific Project, potentially including a Request for Expression of Interest, Request for Qualifications, or other as appropriate. These documents shall clearly indicate the procurement method proposed for the Project and shall cover:
    - an indication of whether or not there will be a pre-bid meeting and if so the date, time and venue;
    - criteria for technical and financial qualification, for examination or evaluation of bids and for award of concession;
    - all relevant forms necessary for submitting bids, including: letter of bid, technical and or financial proposal forms, form of bid security and performance security, or others as appropriate.
    - time and venue for submission and opening of bids.
- complete draft concession contract(s), which shall clearly include:
    - the rights, responsibilities and obligations of the parties;
    - minimum performance specifications and standards which clearly capture the detailed nature of the infrastructure or services which are acceptable to the procuring entity;
    - charges and fees that will be collected and any adjustment formula or requirements;
    - FCCL of the procuring entity or the government;
    - the ownership of any assets used in or developed under the concession, both during and following the termination of the contract;
    - periodic financial and operational record keeping and reporting requirements, including the submission of financial statements and reporting on the attainment of minimum performance specifications and standards;
    - events of default of both parties and a process for early termination of the contract if such defaults are not remedied or in cases of prolonged force majeure; and,
    - specification of governing law and procedures for dispute resolution.

Appendix 7: CTU Briefing Note on Concession Bid Documents

Project Key Information	
Project Name and Term	
Project Description	[Describe the salient features of the proposed Project. Clearly specify if the Project is a USP.]
Project Status	[Has received a certificate of concession on X date, if a USP, received IMCC approval on X date. Has/has not provided all relevant Project documentation to the CTU including a complete feasibility study and complete concession bid documents. The CTU has/has not been involved in the preparation of Project documentation.]
Estimated Investment Cost	
CTU Recommendation	Indicate whether the CTU recommends the IMCC approve or reject the Project and specify key justification for the recommendation.
Project Structure	
Technical specifications	[clear specifications of the infrastructure asset and/or public service to be provided by the private partner have/have not been developed. They include:]
Technical feasibility	[Describe whether the required technical specifications and Project objectives have been demonstrated to be achievable using available technology] [Key technical or operating risks are/are not identified. These risks include X,Y Z]
Commercial Basis and Financial Feasibility	[Describe the source(s) of revenue for the private party and whether these sources have been demonstrated to be sufficient for the private party generates an appropriate, but not excessive, return on its investment]
FCCLs	[The Project involves the following FCCLs: include each that is relevant and describe the specific obligation: - Fiscal commitments (proposed government payments, transfer of government assets, or allocation of government revenue stream); - Contingent Liabilities (revenue/volume or other guarantee, compensation commitments, etc.). [The FCCLs have been reviewed by the debt management and budget departments of the Ministry of Finance and according to the DG of Finance meet/do not meet the relevant requirements. Where they do not meet the relevant requirements, provide details on how they fail to do so.]
Legal Basis	[The procuring entity has the legal right to deliver the proposed infrastructure asset or public service and to delegate the same to a private party. The procuring entity also has the legal authority to meet its obligations under the concession contract.]

concession contract	[The draft concession contract is in compliance with relevant legal and regulatory framework requirements and appropriately covers the elements required in the PPCDA and the IMCC SOPs.] [The obligations of the procuring entity and the private partner are/are not clearly specified. Provide a summary of key responsibilities by party.]
Risk Allocation	[The concession contract clearly allocates risks to both the private party and the procuring entity which are appropriate for the achievement of the objectives of the Project and the protection of the interests of the government. Key risks are allocated as follows:]
Value for Money	[Based on the Projects risk allocation and expected investment and operating costs and revenues, the delivery of the Project as a concession does/does not demonstrate the potential to generate Value for Money. Key factors driving this finding include:]
Social and Economic Impact	[The social economic impact of the Project has been assessed and is well understood. Key impacts include: list as appropriate A stakeholder consultation was held on X date and highlighted the following relevant stakeholder views:]
Proposed Procurement Approach and Tender Documents	
Procurement Method	[If not open competitive tendering, what procurement method is specified and is it appropriately justified based on the Project and the procuring entity's request.]
Process	[To indicate what tender stages will be followed, whether there will be a REOI, RfQ, RfP, etc. and approximate timetables for the same. Describe how a Project would be awarded: an example for a typical process would be: Award of the Project is based on a pass/fail prequalification, followed by a scored technical and financial proposal which are submitted in separate sealed envelopes. Technical proposals will be evaluated first and proposals that do achieve a technical score of X will not be considered and their financial bids are not to be opened. The financial bid is based on a single financial bid parameter where possible. A preferred bidder will be recommended who receives the highest combined technical and financial scores, where the weight of the technical score is X and the weight of the financial score is Y. Timetables are/are not appropriate for the proposed process and Project.]
Tender Documentation	[The tender documents are/are not clear and in compliance with PPCDA and IMCC SOP requirements. Where they are not in compliance with relevant requirements, include a list specifying the deficiencies. In particular note whether: - Qualification and evaluation criteria at each stage of the tender process are/are not clear, objective and relevant to the Project. - Communication during the tender process is/not appropriate. It does/does not support pre-bid negotiation of the concession contract. - Conditional bids are/are not allowed.]

Appendix 8: Bid Evaluation Report

The bid evaluation report shall at least comprise the following:

- a summary of the submissions received at each stage of the process and an assessment of their responsiveness on the basis of the requirements set out in the proposal;
- the pre-qualification criteria, a description of the extent to which each bidder demonstrated it met the pre-qualification criteria and the results of the pre-qualification (where applicable);
- the evaluation criteria that were used to evaluate bid responsiveness and assess and score the proposals;
- details of any clarification of the proposals sought by the BEP and the responses received in response to the clarifications;
- results of the technical evaluation, including an assessment of each proposal relative to each technical evaluation criteria sufficient to justify the score assigned to the proposal by the BEP;
- results of the financial evaluation;
- name of the bidder with the highest overall score (in accordance with the evaluation criteria specified in the bidding documents);
- name of bidder with the second highest overall score and third highest overall score (in accordance with the evaluation criteria specified in the bidding documents); and,
- details of any conditions stipulated in the bids of the bidders with the first, second and third highest overall scores that would need to be addressed in negotiations.