

**ECONOMIC COMMUNITY OF
WEST AFRICAN STATES**



**COMMUNAUTE ECONOMIQUE
DES ETATS DE L'AFRIQUE
DE L'OUEST**

ECOWAS TENDERS CODE

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Part I: General Provisions

Chapter I: Definitions. Principles and Scope of Application

Article 1: Definitions

In this Code, the following definitions shall apply:

“Allotment” means to divide the contracts into several lots due to economic, financial or technical reasons. Each lot shall be an independent unit to be awarded separately.

“Approving Authority” means the person in charge of verifying the observations made by the Legal Affairs Department and the Financial Controller and deciding on the need to refer them back to the Awarding entity or approve the procurement procedures.

“Awarding Entity” means the entity or person in charge of organising the selection of the co-contractor and awarding the contract in conformity with the provisions of this Code. It shall comprise, in line with the thresholds annexed to this Code, the Public Contracting Officer, the Procurement Committee and the Procurement Board.

“Bid” means all the technical and financial submissions made by a supplier, contractor, or service provider in response to the terms of a procuring entity’s invitation;

“Bidder” means a natural or legal person submitting a bid;

“Bidding documents” means the documents provided by the procuring entity to bidders as a basis for preparation and submission of their bids;

“Bid Validity” is the period within which the bidder is bound by its offer and such offer **cannot be withdrawn without forfeiting its bid security.**

“Call for Expression for interest” means technical request from a procuring entity to consultants specifying the services to be delivered and indicating the required qualifications and experiences

“Candidate” means a natural or legal person invited or selected by a Procuring Entity to take part in public contracting ;

“Community” the Economic Community of West African States which establishment is reaffirmed under Article 2(1) of the Revised Treaty;

“Consultant” means a natural or legal person under contract with a procuring entity to provide intellectual services;

“Contracting” means the purchasing, hiring or obtaining by any other contractual means of goods, works and services including intellectual services by a procuring entity;

“Contracting Authority” means the person endowed with the authority to legally commit the procuring entity or its duly-mandated representative.

“Co-contracting” refers to a situation where the Community enters into a contract with several suppliers, contractors and service providers who shall be responsible for the delivery of goods works and services;

"Contractor", "supplier" and "service provider" means any natural or legal person or group of such persons and/or bodies entering into a public contract with a procuring entity for the execution of works, the acquisition of goods or the provision of services;

“Days”: means calendar day

“Goods” means objects of every kind and description including, but not limited to raw materials, products, equipment and commodities and other physical objects of every kind and description, whether in solid, liquid or gaseous form, and electricity, as well as installation, transport, maintenance or similar obligations related to the supply of the goods if their value does not exceed that of the goods themselves;

"Head of Institution" means the head of any ECOWAS Institution as defined in the specific protocol of each Institution;

“

“Institutions of the Community” are entities established in accordance with Article 6 of the Revised ECOWAS Treaty and they include:

- The ECOWAS Parliament;
- The Community Court of Justice;
- The Commission, its Agencies and Offices;
- The West African Health Organisation;
- The Intergovernmental Action Group Against Money Laundering in West Africa;
- Economic and Social Council; and
- Any other Institutions of the Community as may be established in accordance with the provisions of the ECOWAS Treaty;

"Notice of invitation to bid” means all public advertisements in relation to the procurement of contracts, public invitation for applications or bids issued for the purpose of notification that a tender is being organized for the award of a contract;

“Open Tendering” means a process where candidates or applicants are invited through public advertisement.

“Restricted Tendering” is a process whereby candidates or applicants are directly invited to bid without any public advertisement.

“Pre qualification” (“pre selection” with respect to consultants) means a formal procedure whereby candidates, contractors or consultants are invited to submit details of their resources and capabilities which are determined prior to invitation to bid on the basis of minimum criteria on experience, resources, capacity and financial standing;

“Procuring Entity” means the institution, agency or office which expressed the need that has triggered the procurement process

“Procurement Manual” means the enabling procedures developed by ECOWAS for the implementation of this Code;

“Procurement Unit” means the structure in each Institution which shall have the responsibility of coordinating the implementation of the overall procurement process;

“Public Contract” means written contract for pecuniary interest entered into by a procuring entity and a contractor or contractors for the supply of goods, the execution of works or services;

“Public Contracting Officer” means the Officer authorised by virtue of the Regulation governing his/her appointment to oversee the directorate responsible for the management of procurement of goods, works and services in the relevant Institution;

“Public intellectual services contract” means public contract related to activities of an intellectual and immaterial nature that do not lead to a measurable physical output. They include training, auditing, software development, and other consultancy services, such as management, engineering services, construction supervision, financial services, procurement services, social and environmental studies and identification, preparation, and implementation of projects;

“Public service contracts” means public contract other than public works or supply contracts;

“Public supply contracts” means public contracts having as their object the purchase of goods;

“Request for proposals” means the selection documents used by the procuring entity to invite submission of proposals from consultants;

“Service” means any object of contracting other than goods and works;

“Terms of reference” means the statement issued by the procuring entity giving the definition of the objectives, goals and scope of the services, including ,where applicable, the means to be used; it applies only to intellectual services;

“Treaty” means the Revised ECOWAS Treaty of 1993 as amended amendments;

“Works/ Public works contracts” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building or structure, such as site preparation, excavation, erection, building, installation of equipment and materials, decoration, as well as services incidental to construction, such as drilling, mapping, satellite photography, seismic investigations and similar services provided the value of those services does not exceed that of the construction itself.

Article 2: Principles

The principles below shall govern the award, execution and control of public contracts concluded by any Institution resulting in the award of a public contract, irrespective of the nature of the goods, works, or services provided or their quantity or price. The principles are as follows:

- a) Transparency
- b) Equity/Fairness/equal opportunity
- c) Effectiveness
- d) Economy/efficiency/value for money

Article 3: Scope of Application

1. The provisions of this Code are applicable to all public contracts within ECOWAS Institutions irrespective of their source of funding such as;
 - a) the general budget of the Community;
 - b) external funding; and
 - c) any other special funds.

Unless otherwise agreed with the individual partners and without prejudice to the objectives of the Community.

Article 4: Public Access

This Code, the Procurement Manual and its Standard Bidding Documents shall be made accessible to the public, including through electronic means of communication

Article 5: Threshold of Contracts

2. The thresholds for contracts are as set out in Schedules 1-9 of this Code and may be reviewed only by the Council of Ministers. Procurement proceedings and contract awards by Institutions of the Community shall be carried out in accordance with the provisions of this Code.

Chapter II: Responsibilities for Procurement Proceedings and Contract Awards

Article 6: Awarding, Approving and Contracting Authorities

1. The Awarding Entity is the Procurement Committee or Procurement Board or Officer responsible for selecting a candidate or contractor through processes specified in this Code for the award of a contract.
2. The Approving Authority is the officer entrusted to endorse the reports of the Awarding Authority and makes recommendation to the Contracting Authority to sign the contract;
3. The Contracting Authority shall be the President or an Officer designated by him to sign and monitor the performance of the contract.
4. The responsibilities attached to each Authority depending on the threshold are indicated in schedules 1-9.
5. The Approving and Contracting Authorities may delegate their functions whilst considering the principles of segregation of functions.
6. The Awarding Authority shall not delegate its functions.

Article 7: Public Contracting Officer and Functions

1. The Public Contracting Officer, based on the thresholds indicated in Schedules 1 – 9, shall be:
 - i. Head of Procurement Division or Director responsible for Procurement (Commission); .
 - ii. Head of Procurement Unit or Director responsible for Procurement (Other Institutions);
 - iii. Administration Officer of the Agency or Office or Director responsible for Procurement in the Commission (Agencies and field Offices).

In all cases, the PCO shall have the responsibility to:

- a) Drive and monitor the procurement processes with the relevant Procurement Committees in the procuring entities;
 - b) Prepare the bidding documents, Request for Quotations, Request for Proposals and advertisement;
 - c) Prepare and submit draft contracts for review and approval;
2. The Public Contracting Officer shall be assisted in the execution of his/her functions by competent procurement staff in all ECOWAS Institutions to manage procurement processes.

3. The Public Contracting Officer of each Institution shall be solely responsible for advertising or soliciting for bids, proposals or quotations in accordance with the conditions set forth in this Code.

Article 8: Procurement Committee and Procurement Board

1. There is hereby established:
 - a) A Procurement Committee in each Institution of the Community.
 - b) An ECOWAS Procurement Board for the Community.
2. These entities shall be responsible for ensuring the quality of Tender documents, opening and evaluation of bids, proposals and quotations and award of contracts in compliance with the thresholds set out in this Code.
- 3.
4. Upon the recommendation of a Procurement Committee or the ECOWAS Procurement Board, the Approving Authorities shall endorse the award and the Contracting Authorities shall sign the contract.
5. For the Commission, the Procurement Committee shall be composed as follows:
 - a) The Commissioner for Finance and the Commissioner for Human Resources – Chairperson, and Vice Chairperson;
 - b) Director of Finance – Member;
 - c) Director of Legal Affairs of the ECOWAS Commission - Member;
 - d) Director of the Beneficiary Directorate - Member
 - e) –Two other Directors appointed by the Approving Authority - Member
 - f) Director responsible of Procurement – Secretary
 - g) Representatives of the Chief Internal Auditor and the Financial Controller - Observers

A Technical Sub-Committee shall be established with responsibility for the evaluation of all bids. Membership of this Sub-Committee shall comprise of the following;

- a. Director of Finance;
- b. Director of the Beneficiary Directorate;
- c. One Director from the two appointed Directors;
- d. Director responsible for Procurement Secretary;
- e.

The Procurement Committee may co-opt Technical Expert(s) of the Community to assist the Technical Sub-Committee.

6. For the other Institutions, the Procurement Committee shall be composed as follows:
 - a) Deputy Heads of Institution (and the case of the Community Parliament, the highest ranked Director except the DAF) – Chairperson
 - b) 2 Co-opted Directors by the Head of the institution except the DAF – Member
 - c) Principal Accountant responsible for Budget - Member
 - d) Legal Officer of the institution - Member;
 - e) Representative of the Beneficiary Directorate - Member

f) Head of Procurement Unit or Procurement Officer – Secretary) Representative of the Financial Controller - Observer

A Technical Sub-Committee shall be established with responsibility for the evaluation of all bids. Membership of this Sub-Committee shall comprise of the following;

- a. Principal Accountant responsible for Budget;
- b. Representative of the Beneficiary Directorate;
- c. One Director from the two appointed Directors;
- d. Head of Procurement Unit;

The Procurement Committee may co-opt Technical Expert(s) of the Community to assist the Technical Sub-Committee.

7. Where any Institution lacks the requisite capacity for the composition of the Procurement Committee, such membership shall be drawn from the Commission or any other ECOWAS Institution.

8. The ECOWAS Procurement Board shall be composed as follows:

- a) Vice President of the Commission – Chairperson
- b) Commissioner for Finance – Member
- c) Head of the Beneficiary Institution(s) / Department (in the case of the Commission)- Member (s)–A Head of the Institution to be appointed by the President of the Commission – Member
- d) Director of Finance of the Beneficiary Institution - Member
- e) Director of Legal Affairs of the ECOWAS Commission - Member
- f) Heads of Procurement of the Commission and the Beneficiary Institution – Secretaries
- g) The Chief Internal Auditor and the Financial Controller - Observers

A Technical Sub-Committee shall be established with responsibility for the evaluation of all bids. Membership of this Sub-Committee shall comprise of the following;

- a. Commissioner for Finance;
- b. Head of the Beneficiary Institution / Department in the case of the Commission;
- c. The Head of the Institution appointed by the President;
- d. Director responsible for Procurement of the Beneficiary Institution - Secretary;

The Procurement Board may co-opt Technical Expert(s) of the Community to assist the Technical Sub-Committee.

9. In either the case of the Committee or the Board, (except for the Chairperson or Vice Chairperson in the case of the Commission) where the substantive officer is unavailable, he or she shall delegate a representative at appropriately senior level (at least Head of Division).

10. Quorum and Decision for the Procurement Committee and Procurement Board shall be as follows:

- a) Meetings and proceedings of the Committee shall be valid only where at least five (5) of its members including its Chairman are present;

- b) Meetings and proceedings of the Board shall be valid only where at least four (4) of its members including its Chairman are present; and
- c) Decisions of the Committee and of the Board on the technical evaluation report shall be taken by consensus which shall be based on the criteria specified in the bidding document.

11. The Technical Experts, secretaries and Observers shall not be part of the decision making process.

12. The Procurement Committee or the Procurement Board may, after the opening of bids and proposals, authorize the technical sub-committee(s) to review and evaluate the bids or proposals. The sub-committee shall submit a report on the technical and financial evaluation of the bids within the time limit provided in Article 34 (Evaluation of Bids) of this Code.

Article 9: Independent Assurance and Control in the Procurement Process

- 1. Pre-audit by the Office of the Financial Controller –Pre-Audit checks on Procurement of Goods , Works and Services shall be conducted by the Financial Controller in accordance with the functions stipulated in the Financial Regulations
- 2. Post-Audit checks by the Office of the Chief Internal Auditor –Post-Audit checks on the system of the internal controls in procurement processes shall be conducted in accordance with the functions stipulated in the financial regulation.
- 3. Procurement Audits by external auditors appointed through the Audit Committee by the Council of Ministers. Procurement audits shall cover all procurements undertaken during a year and all institutions including their Agencies and Offices. It shall be performed at least every three years.

Article 10: Record of Proceedings of Entities

The Head of Procurement Unit shall maintain records of public contracting proceedings in sufficient detail to allow control and verification in accordance with the provisions of this Code. The contents of the records shall be as prescribed in the Procurement Manual.

Article 11: Procurement Manual

The mechanisms governing procurement activities shall be set forth in the Procurement Manual.

Chapter III: Entities Responsible for Dispute Resolution and Sanctions in Contracting Proceedings

Article 12: Dispute Resolution Committee

- 1. In the event of a dispute arising out of the execution of the Procurement Processes of any Institution of the Community, a Dispute Resolution Committee shall be established.
- 2. The Dispute Resolution Committee shall conduct inquiries, investigate complaints and allegations of violations of this Code with a view to settling the issues raised.

3. The Dispute Resolution Committee shall apply the procedures spelt out in the Procurement Manual.

Article 13: Sanctions Committee

1. There is hereby established a Sanctions Committee which pronounces sanctions, including exclusions, according to the provisions of this Code against any natural person or legal entity in any contracting process, found in violation of any provisions of this Code or the Procurement Manual.
2. Sanctions and exclusions should be determined in an impartial and realistic manner, and be proportionate to the gravity of the violation committed.
3. The Sanctions Committee shall apply the rules of procedure as spelt out in this Code.

Article 14: Composition of the Dispute Resolution Committee and of the Sanctions Committee

1. The Dispute Resolution Committee is composed of three (3) members, two of whom are designated by the relevant Approving Authority, one designated by the President of the Commission who shall act as the chairperson of the Committee. Members of the Committee shall not have been part of the specific procurement process. The Committee may appoint experts including representative of the Private Sector to assist in consideration of complaints;
2. The Sanctions Committee is composed of 5 (five) members:
 - ✓ 3 (three) members designated by the President of the Commission;
 - ✓ one independent expert designated by the President of the Commission – member;
 - ✓ a representative of the Private sector designated by Private sector organization-member.

Article 15: Referral to the Competent Authorities

Where, based on the decisions of the Dispute Resolution Committee, or the Sanctions Committee, there is prima facie evidence of a criminal offence on the part of any person, natural or legal, the Head of the Institution concerned shall refer the matter to the competent authorities.

Chapter IV: Eligibility and Qualification of Candidates and Bidders

Section I: General Eligibility

Article 16: Eligibility

Without prejudice to any conditions spelt out in this Tenders Code, any candidate whether a natural person or a legal entity is eligible to participate in the contracting process with the Community or its Institutions.

Article 17: Exclusions from Contracting Process

1. The following candidates are excluded from entering into a contract with the Community or its Institutions:
 - a) Any candidate that is insolvent, in receivership, bankrupt or being wound up, or whose business activities have been suspended;
 - b) Any candidate, whether a natural person or a legal entity found to be in violation of any provisions of this Code or the Procurement Manual;
 - c) Any person or legal entity **whose** administrators or directors have been convicted of a criminal offence or have been found to be in violation of a tax law unless rehabilitated;
 - d) Any candidate who has been a subject of a contract termination by reason of default or negligence in the execution of an earlier contract awarded by the Community Institutions;
 - e) Any candidate who in the past five 5 years preceding the beginning of the contracting proceedings, was temporarily excluded from participating in any public contracting proceedings pursuant to a decision rendered by the Sanctions Committee, or any other national, foreign or international organisation, on grounds of misrepresentation in relation to a false statement as to their qualifications to enter into a public contract;
 - f) Any contractor or consultant blacklisted and/or barred from taking part in public contracting in a foreign country by an international organization or other foreign institution on grounds of fraud or corruption;
 - g) Any State owned company not financially and legally autonomous; and
 - h) Any candidate in which any member of the procuring entity has a financial or personal interest.
2. In pursuance of Community human and financial capacity development in ECOWAS, foreign firms that do not enter into joint venture agreement with Member States' firms shall not be eligible to participate in the tender where the contract is wholly financed by Community Funds.
3. The above provisions shall also apply to natural or legal persons acting as sub-contractors to the main contractors.

Article 18: Disqualification of Bidders

- 1) The procuring entity shall reject a bid, proposal or quotation if it is found that the candidate or bidder has directly or indirectly made an offer of an inducement to any member of the procuring entity in connection with the contracting proceedings.
- 2) Such rejection and the reasons thereof, shall be included in the record of the procurement proceedings and duly communicated to the candidate or bidder who may file for review of the rejection under the provisions of Articles 83 and 84 of this Code.

Section II: Qualification of Candidates and Bidders

Article 19: Technical and Financial Qualifications

- 1) In order to participate in contracting proceedings, each candidate or bidder shall demonstrate legal capacity to enter into the contract. All bidders in addition to requirements contained in any solicitation document shall:
 - a) possess the necessary:
 - i. professional and technical qualifications to carry out particular procurements;
 - ii. sound corporate and financial standing;
 - iii. equipment and other relevant infrastructure;
 - iv. personnel to perform the obligations of the procurement contracts.
 - b) not be in receivership, the subject of any insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;
 - c) have fulfilled all its obligations to pay taxes, pensions and social security contributions;
 - d) not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
 - e) accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procuring entity is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all respects.
- 2) Prior to awarding the contract, it must also demonstrate that it has fulfilled its fiscal and social security obligations.
- 3) Evidence of such qualifications shall be verified by the procuring entity requesting the submission of the following supporting documents with the bid in the bidding documents:
 - a) all documents showing evidence of the legal status, technical capability and solvency of enterprises, and qualifications of their staff;
 - b) an attestation giving information on the candidates, or bidders in accordance with a model established by the procuring entity;
 - c) the documents required under the terms of paragraph (a) above must include at least:
 - i. a statement on the enterprise's technical facilities;
 - ii. a description of the manpower (number and qualification) available to the enterprise;
 - iii. financial statements, showing a balance sheet, statement of turnover and financing plans for the last three years;
 - iv. a statement of similar contracts carried out by the applicant;
 - v. documentary evidence of the enterprise's corporate standing.

- 4) Misrepresentation in relation to the information required under this Article may lead to the disqualification of a bidder or, the immediate cancellation of the contract, at the risk and expense of the declarant without prejudice to the imposition of sanctions applicable in such cases under this Code. This decision shall be subject to the same legal recourse set out in Articles 83 and 84 of this Code.

Article 20: Certificate of Classification

The procuring entity may request any candidate to provide a certificate of classification from a regional or national entity responsible for the contractors' classification in order to participate in the bidding process.

Article 21: Registration of Enterprises

The Procurement Unit of each Institution shall establish a register of enterprises to be used in the transparent and objective selection of short-lists, purely by merit, in requests for quotations, restricted bidding or direct contracting. The Director responsible for Procurement in the Commission shall aggregate the register of enterprises established by the Institutions into a Master Record of Enterprises. The modalities for establishing this register shall be set out in the Procurement Manual.

Chapter V: Subcontracting and Group Contracts

Article 22: Subcontracting

1. The contractor or successful bidder may sub-contract parts of a public contract up to a maximum of 30% of the contract value upon the approval of the procuring entity. Such an approval shall include the conditions for payment of the sub-contractor. No contract shall be subcontracted to the extent that such subcontract may result in revision of the main contractor's pre or post qualification.
2. Bidders should indicate in their bid, the references of any sub-contractors they intend to use as well as the part and value of the main contract they intend to sub-contract.

If a subcontractor expects to be paid directly, the main contractor must also obtain the consent of the procuring entity on the conditions of payment of each subcontractor. The main contractor remains personally responsible for the execution of the contract.

Article 23: Group Contracts

1. Several suppliers, contractors, service providers or consultants may be jointly or severally responsible for the execution of a contract. In such a case, they must appoint one of them as their designated Lead Partner;
 - i. Where the contract is not divided into lots, all partners are jointly and severally liable for the execution of the entire contract. Where however the contract is divided into lots, each partner shall be liable only for his share, in accordance with the bidding documents. The Joint Venture shall appoint one of the Firms to represent it, and all its

members shall sign the contract. However, the Lead Partner has joint responsibility with each of the other partners.

- ii. In case of Joint Venture, and separate contracts are signed with each of the partners, one of them is appointed as coordinator. Each partner is liable for the contracted lot, while the coordinator has oversight responsibility for all the lots.

Part II: Procurement Proceedings

Chapter I: Procurement Planning

Article 24: Procurement Plan

1. All procuring entities shall prepare an annual procurement plan which shall be submitted for approval along the following lines:
 - a) Preparing the needs assessment and evaluation;
 - b) Identifying the goods, works or services required;
 - c) Taking into consideration appropriate market and statistical surveys and on this basis preparing an analysis of the cost implications of the proposed procurement;
 - d) Aggregating its requirement whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
 - e) Integrating its procurement expenditure into its yearly budget;
 - f) Prescribing any method for effecting the procurement, subject to the necessary approval under this Code.
2. This plan shall be submitted to the Approving Authorities for validation and approval and may be reviewed quarterly. It shall also be published in the Websites of all ECOWAS Institutions.
3. No contracting requirements for a given quantity of goods, works or services shall be split with the intention of avoiding a contracting procedure stated in this Code. Any member of the procuring entity found to be in breach of this provision against such splitting of contracting requirements shall be sanctioned according to ECOWAS Financial Regulations and Staff Rules.
4. No Procurement will be approved if it is not programmed under the procurement plan nonetheless, in exceptional circumstances this procurement must be submitted to the Committee for validation and approval.

Article 25: Identification of Needs

1. Identified goods, works and services shall meet the needs of the procuring entity.
2. The procuring entity shall determine the project components, the quantities and specifications of the goods, works or services to be procured prior to initiating the contracting process.

3. The technical standards and specifications set out in the bidding documents shall comply with all the set criteria and shall not make reference to trademarks, brand names or catalogue numbers except as specified in the Article 45 . 3 .c of this Code or Annex H of the Procurement Manual.
4. There shall be no request for proposals or bid invitation, nor award of contract without a certification issued by the procuring entity that sufficient funds are available in an amount equal to the value of the contract.

Article 26: Allotment

1. Where the allotment of the public contract is technically and financially more advantageous and aims at reducing the cost on the procuring entity, the contracting of goods, works or services shall be divided into lots that may be awarded to different bidders.
2. The instructions to bidders shall determine the number, nature and the importance of the lots. It shall also indicate how bids for one or more lots may be submitted and the basis for award. The procuring entity shall award the contract to the lowest evaluated responsive combination of bids. The bidders are required to present separate bids for each lot.
3. Where one or more lots have not been awarded, the procuring entity may engage in new contracting proceedings after modifying the scope of the remaining lots.

Chapter II: Methods of Procurement

Section I: General Provisions

Article 27: Methods of Procurement

1. In conformity with the provisions of this Code, a contracting Institution shall conclude goods, works and services contracts by means of open public tendering (International, Regional or Local), restricted tendering (International, Regional or Local), Request for Quotation, Direct Contracting as provided in the Procurement Manual.
2. Procurement of intellectual services shall be carried out based on Quality and Cost Based Selection, Quality Based Selection, Consultant's Qualification, Selection under Fixed Budget, Least Cost Selection or Direct Contracting.

Article 28: Language and Currency

1. Any documents written, published and provided to bidders or produced by them shall, in accordance with Article 87(2) of the Revised Treaty, be prepared in at least one of the working languages of the Community.
2. The bidding documents shall indicate that a candidate or bidder may quote the price of his bid in the currency of any Member State of the Community or in ECOWAS Unit of Accounts. A

candidate or bidder wishing to submit a bid denominated in several currencies, including foreign currency, may do so provided the number does not exceed three.

Article 29: Advertisements

1. Procuring entities shall, subject to the method of procurement, publish invitations to bid or request for expression of interest on all ECOWAS Institutions Website and or a daily newspaper of Member States. Every invitation to bid or request for expression of interest shall be published in accordance with the format contained in the ECOWAS Standard bidding documents.
2. Publication on the ECOWAS Institutions websites may be supplemented by regional or international publication.
3. General Procurement notices are published in the newspapers of Member States at the beginning of every year by the contracting Authority based on the approved Procurement Plans. In case of updates of the Procurement Plans, modifications are brought to the knowledge of the candidates through publications in the ECOWAS Institutions websites.

Article 30: Selection Process applicable to public goods and works contracts

1. The bid selection process comprises the selection of the lowest evaluated responsive bid which has without negotiation met the technical requirements as provided for in the evaluation criteria put forth in the bidding document and expressed in monetary terms.
2. If bidders have not been prequalified, the procuring entity shall determine whether the bidder whose bid has been determined to offer the lowest evaluated cost has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, the procuring entity shall make a similar determination for the next-lowest evaluated bidder.
3. Bidding may be open or restricted. Open competitive bidding is a process open to all bidders, subject to the exclusions and qualifications set forth in Articles 17 and 19 of this Code respectively. Open competitive bidding may be preceded by prequalification proceedings.

Article 31: Open Call for tender without Prequalification

1. Invitations to bid shall be published according to the modalities defined in Article 29 of this Code.
2. Bids shall be subject to local, regional or international publication, according to thresholds specified in the Schedule to this Code or such additional criteria as the nature of the contract, the estimated cost, or its complexity.
3. Each invitation for bidding shall at least set out the following information and requirements:
 - a) the object of the contract;
 - b) source of financing;

- c) the number of lots, the nature and importance of each lot, where necessary, the minimum or maximum number of lots for which a bidder may submit bids and be the successful bidder;
- d) the place where the bidding documents may be inspected and the procedure for obtaining these documents;
- e) the name of the Institution empowered to award the contract;
- f) the place, date and time limit for the receipt of bids;
- g) the time frame during which bidders are bound by their bids shall be specified in the bidding documents;
- h) the amount required as provisional guarantee, if applicable;
- i) evidence of the bidders' qualification, technical capability and solvency;
- j) where applicable, any other conditions as the procuring entity may consider necessary.

Article 32: Submission of Bids

1. The deadline for the submission of bids shall be four(4) weeks for Regional and Local Bids and a minimum of six (6) weeks for International Bids so as to accord prospective bidders sufficient time to prepare and to submit their bids in line with international best practices as provided for in the Procurement Manual.
2. All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format in the tender documents, contain all the information related to the bidder, the administrative documents required, the bid security and separately the technical and financial offers signed by an official authorised to bind the bidder to a contract and placed in a sealed envelope.
3. Bids may be sent by public or private mail services, or by hand and should remain sealed until the bid opening.
4. All submitted bids shall be deposited in a secured tamper-proof bid-box.
5. All bids submitted shall be in one of the Community official languages.
6. The procuring entity shall issue a receipt showing the date and time the bid was delivered. Upon receipt, the envelopes shall be recorded by order of arrival in a special register.
7. Bid opening shall coincide with the date and time of the deadline for bid submission.
8. Any bid received after the time and date set for the submission of bids shall not be opened and must be returned to the bidder.
9. No communication other than as provided for in this Code Procurement Manual or bidding document shall take place between procuring entities and any bidder after the publication of a bid solicitation.

Article 33: Opening of Bids

1. Bid opening shall take place immediately after the date and time set for bid submission.

2. The envelopes containing the bids shall be opened in the presence of the bidders or their representatives who wish to attend.
3. The name of each bidder, the price of the bid and of alternatives or discounts, if any, and the time frame for execution are read out, and the submission of the required bid security indicated. This information is recorded in the minutes of the bid opening session and subsequently issued by the Public Contracting Officer to all bidders.

Article 34: Evaluation of Bids

1. The Procurement Committee or Procurement Board shall evaluate bids according to the provisions of this Code and the Procurement Manual within a maximum of fifteen (15) days starting from the date of the opening of the bids.
2. The Procurement Committee or Procurement Board shall reject bids not in compliance with the bidding documents. After detailed evaluation, the contract shall be awarded to the lowest bid which, in essence is technically compliant and qualified, and subsequently submitted to the appropriate approving authority for approval. That are not responsive to the bidding documents.
3. Alternative bids may be taken into consideration according to the provisions of the bidding documents.

Article 35: Information to Bidders

1. Within three (3) working days of the approval of the evaluation report by the competent authority, the Public Contracting Officer shall inform the successful bidder that its bid has been accepted and unsuccessful bidders that their bids have been rejected.
2. The Public Contracting Officer shall, within five (5) working days of a request in writing, inform any unsuccessful bidder of the reasons for the rejection of its bid, and any other necessary information without disclosing information deemed confidential for the knowledge of competitors on the other bidders.

Article 36: Bid Validity

The bidder shall be bound by the bid during the time frame specified in the bidding document. Any bidder may choose not to accept extension of the bid validity after the original validity period has expired without forfeiting his bid security. If a bidder receives the award notification after the expiry of such period, he may also choose not to accept to sign a contract without forfeiting his bid security.

37: Period of Signing the Contract

The contract shall be signed by the successful bidder, but not before the expiry of a period of not less than fourteen (14) days from the notification of the award of the contract to all competitors by the Public Contracting Officer. This allows them to lodge any bid protest in relation with the award of the contract, as specified in Articles 83 and 84 of this Code.

Article 38: Extension of the Deadline for Bid Submission

1. Where less than three bids are received, the Public Contracting Officer shall postpone the opening of bids and advertise in the same media used for the initial invitation to bid, for bids to be submitted within a new period of fifteen (15) working days.
2. If, at the end of this new period, at least one (1) bid is submitted, the procedure shall be carried on according to the provisions of Article 33(Bid Opening) of this Code.

Section II: Bidding Preceded by Pre qualification Proceedings

Article 39: Conditions for Pre-qualification Proceedings

1. The procuring entity may engage in pre qualification proceedings with a view to identifying, prior to the submission of bids or proposals, candidates that are qualified. The use of pre qualification proceedings is mandatory in the case of large or complex contracts for the supply of equipment or provision of construction services, or for specialized services.
2. The qualification of candidates under this Article is exclusively determined on the basis of their capacity to perform the contract in a satisfactory manner, according to the following criteria:
 - a) candidate's experience and past performance in similar contracts;
 - b) manpower, installations and equipment to be used to perform the contract; and
 - c) financial capability.

Article 40: Prequalification Notice of Invitation

The prequalification notice shall be published in the same manner as the invitation to bid referred to in Article 31 of this Code.

Article 41: Evaluation of Prequalification

1. The Technical Subcommittee referred to in Article 8. 4 shall review all the applications and retain all those satisfying the pre-qualification conditions. . In arriving at a decision, the Technical Subcommittee shall apply only the criteria set forth in the pre-qualification documents.
2. The Public Contracting Officer shall notify each supplier, contractor or service provider submitting an application to pre-qualify within three (3) working days, whether or not he has been pre qualified and shall make available to any of them, upon request, the names of all suppliers or contractors that have been pre-qualified.
3. Only suppliers, contractors or service providers that have been pre-qualified are entitled to participate further in the contracting proceedings.

4. The Public Contracting Officer, shall upon request communicate to suppliers, contractors and service providers that have not been pre-qualified the grounds for their rejection within five (5) working days.
5. The procuring entity may require a supplier, contractor or service provider that has been prequalified to demonstrate again if selected its qualifications in accordance with the same criteria used to pre qualify it before concluding a contract.

Section III: Two-Stage Bidding

Article 42: Conditions and Procedures for two-stage bidding

1. The Public Contracting Officer may engage in contracting by means of two-stage bidding in order to obtain the most satisfactory solution to its procurement needs, when, as a result of the complex nature of the procurement or the need for performance criteria, it is not feasible to formulate detailed technical specifications for the goods or works or, in the case of services, to identify their characteristics.
2. Two-stage bidding may be preceded by prequalification proceedings conducted in accordance with Articles 39 to 41 above.
3. In the first stage of the two-stage bidding, bidders are invited to submit their technical proposals on the basis of a conceptual design or of performance specifications. The evaluation of the technical bids may require the contracting officer to revise the cost estimate of the project. In the second stage of the two-stage bidding, bidders meeting the qualification criteria and whose bid was found technically acceptable at the first stage, are invited to present final technical and financial proposals on the basis of the bidding documents revised as needed by the Public Contracting Officer.

Section IV: Restricted Bidding

Article 43: Conditions for Restricted Bidding

1. Restricted bidding is a procedure open only to bidders who have been directly invited by the Public Contracting Officer to submit a bid.
2. Restricted bidding may be conducted when the goods, works or services in question are available only from a limited number of entities, provided that the Public Contracting Officer solicits bids from all those suppliers, contractors or service providers meeting the criteria determined by the procuring entity. The Public Contracting Officer shall seek bids from a list of potential suppliers broad enough to ensure competitive prices, and such list to include all suppliers when there are only a limited number.

Section V: Request for Quotations

Article 44: Conditions and Procedure for Request for Quotations

1. Where the estimated value of the contract for goods, works or services is less than a specific amount set forth in the schedule in the annexes attached to this Code, the procurement processes may be conducted on the basis of a request for quotations from selected persons or entities; in that case, at least three quotations will be chosen, if available, from the procurement entity's list of suppliers, according to the procedures referred to in this Code.
2. The method and criteria used for selection shall conform to the relevant provisions contained in Chapter 4 of this Code.
3. The request shall contain a clear statement of the requirements of the procuring entity as to quality, quantity, terms and time of delivery, terms and schedule of payments, validity provisions of quotations, as well as other special requirements and elements that must be included in the quoted price.
4. The contract is awarded to the candidate who meets the requirements of the procuring entity stipulated in paragraph (2) of this Article and who quotes the lowest price unless that price exceeds, by a significant margin, the price of similar items available on the market.
5. A procuring entity shall not divide its procurement into separate contracts for the purpose of invoking paragraph (1) of this Article.
6. Each supplier, contractor or service provider is permitted to give only one price quotation and is not permitted to change its quotation.
7. No negotiations shall take place between the procuring entity and a supplier contractor or service provider, with respect to a quotation submitted.

Section VI: Direct Contracting

Article 45: Conditions and Procedures for Direct Contracting

1. When the procuring entity engages in direct contracting, it shall prepare a description of its needs and any special requirements as to quality, quantity, terms and time of delivery.
2. The contract indicates the financial statements and costing procedure of the contractor, such as the requirement to present balance sheets, schedules of assets and liabilities, and project accounts. If project accounts are not available, all the documents allowing the verification of the price breakdown should be submitted.
3. Procurement may be made by direct contracting for goods , works and , services in the following cases only:

- a) procurement of additional supplies or works of a similar nature where it is established that a new competitive bidding would not provide any benefit and that prices obtained during the contract extension are reasonable. If the extension is predictable from the onset, the initial contract must have some provisions to that effect.
- b) if the additional procurements are for standardized equipment or spare parts compatible with the equipment already in use. In order to justify this procedure, the initial equipment must function properly and, generally, the quantity of the new supplies should be less than the one already procured and the price reasonable; in addition, the advantages of going for another brand and source of supply must have been known and that option rejected.
- c) where the required equipment must have exclusive rights and be supplied by a single supplier (single source).
- d) where the company responsible for the design process requires that the essential parts to be purchased come from a particular supplier so as to ensure that the equipment is working properly.
- e) in exceptional circumstances, for example, in response to natural disasters or for special security reasons when it is in the best interests of the Institution.

4. Concerning consultant contracts, the Procuring Entity may only use direct procurement in the following cases:

- a. For missions that are natural extension of activities undertaken by the Consultant concerned;
- b. In emergency situations, as part of an intervention following a disaster or for consultancy services immediately after an emergency or for special security reasons;

When a company is the only one with the requisite qualifications or experience needed for the particular assignment.

5 Direct contracting may only be used when suppliers, contractors or service providers accept to be subjected to price verification during the execution of the contract.

6. The Public Contracting Officer may, after being duly authorized by the Awarding Entity, may enter into a direct contract with a qualified supplier, consultant, contractor or service provider.

Article 46 Conditions for sole Sourcing

1. As an exception to Article 45 (4) of this code, when goods, works or services are available only from a vendor, the Public Contracting Officer, after obtaining the authorization of the Awarding Entity, may procure the goods, works or services by soliciting a proposal or price quotation from a single supplier, contractor or service provider.

Section VII: Provisions Applying to Intellectual Services

Article 47: Request for Proposals

1. A procuring entity shall request proposals for services or, where appropriate, invite consultants to submit expressions of interest in order to shortlist candidates from which proposals can be requested. This invitation shall comply with Articles 29 (1) (2) (Advertisement) of this Code.

2. Where the request for expression of interest procedure is used, a shortlist of at least 6 candidates, based on their capacity to perform the required service, is established in order to ensure adequate competition in line with the provisions of Article 41 of this Code as evaluated from their expression of interest documents submitted.

3. The procuring entity shall use criteria established by it and endorsed by the approving authority to evaluate the proposals and determine the relative weight to be accorded to each such criterion and the manner in which they are to be applied in the evaluation of proposals. The criteria shall be in the request for proposals document and may only be applicable to the following:

- a) The qualifications, experience, reputation, reliability and professional and managerial competence of the provider and of the personnel to be involved in providing the services;
- b) The responsiveness and quality of the technical approach and methodology of the proposal to the requirements of the procuring entity, as indicated in the Terms of Reference;
- c) The extent of participation by ECOWAS citizens staff;
- d) Any other requirements for administrative and scientific development, operational skills and in some specific circumstances training and transfer of knowledge.
- e) The financial proposal, including any ancillary or related costs;

4.

- a) A firm that has been engaged by the procuring entity to provide goods, works or services other than consulting services for a project, and any of its affiliates, shall be disqualified from providing subsequent consulting services related to those goods, works or services.
- b) Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services other than consulting services resulting from or directly related to the firm's consulting services.
- c) For such preparations or implementation, for the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography and satellite imagery.

Article 48: Selection Process

1. The selection shall be based on the technical quality of the proposal, that is, the consultant's relevant experience and the expertise of its staff, and the proposed work methodology, as well as the price of the proposal.;

Alternatively the selection may be made on the basis of the quality of the technical proposal submitted within a predetermined fixed budget or on the basis of the best financial proposal submitted by the candidates having obtained an acceptable technical score pre-disclosed in the request for proposals.

2. Technical proposal opening shall take place immediately after the deadline for proposals submission. The opening of the financial proposals is a public opening and qualified consultants, the proposals of whom passed the technical evaluation, are invited to be present if they chose to do so.
3. Contracts are awarded to the best evaluated proposal on the basis of a combination of the technical and financial criteria as determined in request for proposal.
4. The contract shall be negotiated with the selected candidate. Negotiations shall not be simultaneously done with several candidates. Negotiations shall include discussions of the organization and timing of intervention of the consultant, procuring entity's inputs, but shall not alter the original terms of reference or the terms of the contract, nor the unit price proposed by the consultant.
5. When negotiations are concluded, the other qualified consultants are informed of the rejection of their proposal within three (3) working days.
6. When the services are of an exceptionally complex nature or of a considerable impact on future projects or when they may lead to the submission of proposals which are difficult to compare, the consultant may be selected exclusively on the basis of the technical quality of his proposal.
7. Contracts referred to in paragraph 6 of this Article may only be awarded to candidates who accept to be subjected to price verification during the performance of the services, in accordance with the provisions of Article 45 of this Code.

Section VIII: Electronic Procurement

Article 49 Electronic Procurement

Communications, which are required by this Code, may be conducted by electronic means according to the conditions set forth below:

- a) The bidding documents or request for proposals may be communicated to bidders by electronic means.
- b) Unless it is otherwise provided for in the notice of invitation, bids, proposals or quotations may be submitted by electronic means according to conditions specified in the Procurement Manual.
- c) The provisions of this Code referring to methods of written communication do not preclude the use of electronic communication to the extent that the procuring entity is authorised to use electronic means.

Chapter III: Bidding Documents and Bid Security

Section I: Bidding Documents

Article 50: List of Bidding Documents

The list of the documents required in the invitation to bid, with or without prequalification, and of the bidding documents themselves shall be specified in the Procurement Manual.

Article 51: Availability of Bidding Documents

The procuring entity shall provide bidding documents, including a format of the contract, immediately after first publication of the bid notice to all suppliers, contractors or service providers who may respond to the invitation to bid on payment of a non refundable fee for which a receipt shall be issued.

Section II: Bid Security

Article 52: Conditions Related to Bid Security

1. The procuring entity may include in the bidding documents a condition that bids must be accompanied by a bid security in the form of an irrevocable letter of credit, certified cheque, surety, bond or bank / Insurance guarantee which could be issued by a reputable bank in an ECOWAS Member State. This guarantee is mandatory for procurement above 100,000 UA. Such guarantee is not required for the contracting of intellectual services.
2. The procuring entity must not reject a bid security issued by a reputable foreign bank/insurance company located outside the territory of the ECOWAS Member States with a corresponding bank or insurance company in an ECOWAS Member State..
3. Bidding documents should specify the amount of the bid security. The amount of such security shall be between one (1) and two (2) per cent of the contract cost estimate, or the bid price, and shall remain valid for 30 days following the expiry of the bid validity.
4. Bid security may be forfeited if a bidder withdraws his bid within the validity period or, in the case of a successful bidder, if the bidder fails to sign the contract or to furnish performance security, if so required.

Article 53: Return of Bid Security

The procuring entity shall have no claim on the bid security, and shall promptly return, or effect the return of the bid security document, after whichever of the following that occurs earliest:

- a) The expiry of the bid security;
- b) The entry into force of a public contract and the provision of a performance bond, if such security is required by the bidding document;
- c) The cancellation of the bidding proceedings;
- d) The withdrawal of the bid prior to the deadline for the submission of bids.

Chapter IV: Evaluation of Bids

Article 54: Evaluation Process

1. At the meetings and proceedings of the Procurement Committee or the Procurement Board, the Chairman shall ensure compliance with the provisions of this Code. The deliberations of the Committee or the Board shall be treated as absolutely confidential.
2. The procuring entity may ask bidders in writing for clarifications on their bids in order to assist in the evaluation of bids. No change in the substance of the bid, including changes in price, and changes aimed at making an unresponsive bid responsive shall be sought, offered or permitted.

Article 55: Conformity to Requirements

1. Subject to the provisions of Articles 16 to 21 of this Code, the procuring entity shall retain any bid that conforms to the requirements set forth in the bidding documents.
2. Bidders may also submit a bid consisting of a variant that may be considered by the Procurement Committee or the Procurement Board only where such option has been expressly authorized in the bidding document.

Article 56: Evaluation Criteria and Report

1. The procuring entity shall evaluate and compare responsive bids in order to ascertain the successful bid, in accordance with the provisions of Articles 30 and 48 of this Code.
2. The evaluation criteria for goods, works and services shall be objective and quantifiable, and shall be expressed in monetary terms.
In the case of intellectual services, evaluation criteria shall be given relative weights specified in the Request for Proposals and evaluation procedure.
3. The procuring entity shall prepare a detailed report on the evaluation and comparison of bids, including the names of the bidders, the specific reasons on which its recommendations for the award of each contract are based, the main conditions of the contract, the contract amount, the implementation period and specific remarks. All bidders shall be notified of this report and the outcome of the evaluation process published on the ECOWAS Institutions Websites following the approval of the Approving Authority..

Article 57: Preference

1. Candidates and bidders residing in an ECOWAS Member State may enjoy a preference in public contracting proceedings. Any preference shall be expressed as a percentage of the price of the bid and shall not exceed ten (10) per cent of the offered price for works and fifteen (15) per cent for goods and services including consultancy services. No preference can be invoked if it is not so provided in the bidding documents.

2. Citizens of ECOWAS and legal persons incorporated in ECOWAS Member States may be granted a margin of preference as provided for in paragraph 1 above only if they meet the following criteria, namely:
 - a) if they are ECOWAS member State citizens and tax resident in one of these States; and
 - b) for legal persons,
 - i. if they are incorporated or registered in an ECOWAS member State and are tax resident in that State;
 - ii. if, at least fifty one (51) per cent of the authorised capital of the company is owned by ECOWAS member State nationals, and their board of directors are controlled by nationals of these States;
 - c) for both natural and legal persons if,
 - i. for contractors, at least fifty (50) per cent of Community inputs are being used and seventy (70) per cent of their technical executive and staff on the construction site are ECOWAS member State nationals;
 - ii. for suppliers, at least fifty (50) per cent of the total value of the goods are made or manufactured in an ECOWAS member State;
 - iii. for service providers (including consultancy services), at least fifty (50) per cent of their services are provided by ECOWAS member State nationals;
 - iv. they do not subcontract more than twenty (20) per cent of the contract, excluding advances, to foreign suppliers, contractors or service providers;
 - v. there is no arrangement whereby more than thirty (30) per cent of the net profits or other tangible benefits of the ECOWAS member State company will accrue or be paid to persons that are not nationals of that state or to entities which would not be eligible under this Article.
 - d) in case of a partnership or joint venture agreements with a foreign partner, the preference shall be granted to the bidder where the minimum domestic content is not, in total, less than the one applicable in the case of a single contractor, and is provided by a national of an ECOWAS State, in compliance with paragraphs b and c of the present Article.
 - e) In case of procurement funded from external sources, the provisions stated above shall apply except otherwise agreed with the funding partner.

Article 58: Unsuccessful/ Cancellation of Contracting Process

1. Where specifically provided for in the bidding document, the procuring entity may reject all bids not in conformity with the stipulated requirements, declare the contracting process unsuccessful and/or cancel the contracting process.
2. An invitation for competition shall be declared unsuccessful in the following cases:
 - a) where no bid is received by the closing deadline and at the place fixed in the invitation to bid for the receipt of bids;
 - b) where no bid is deemed acceptable after examination and evaluation;
 - c) where all the bids are for an amount higher than the determined budget for the contract. However, in that case, before declaring a bidding process unsuccessful, the

Awarding Entities shall consider the possibility of reducing the quantity of works, services and supplies or of obtaining additional funds.

3. The bidders shall be informed accordingly and their bid security returned to them within three (3) working days of cancellation.
4. Within fifteen (15) working days, a new invitation to bid may be published on the basis of a revised requirement, or a contract negotiated according to the provisions of Article 44 paragraph 4 of this Code.
5. The conditions for rejection of all bids or cancellation of the contracting process and for proceeding with a new invitation to bid shall be specified in the bidding documents.

Chapter V: Award and Entry into force of the Contract

Article 59: Contract Award

1. In conformity with Article 8 of this Code, the Procurement Committee or Procurement Board shall award contracts on the basis of the recommendations of the technical sub-committees referred to under Article 8(4 and 7) of this Code. The evaluation report submitted by the technical sub-committees to the Procurement Committee or Procurement Board for approval of award recommendations shall be considered within ten (10) working days of its submission. The Procurement Committee or Procurement Board may either:
 - a) approve the recommendation and award the contract in the form specified in the bidding documents or request for proposals or quotations; or
 - b) refuse such approval and refer the evaluation back to the relevant sub-committee or with an instruction to re evaluate the bids or recommendation or bidding or any other action as specified in this Code.
2. The said instruction in 1 (b) above shall provide the committee either with new information, or specify the factual or legal grounds supporting a different interpretation to be made of the terms and conditions of invitation, or analysis of the responsive bids, proposals or quotations, or the recommendation for further action.
3. Bidders shall not be requested to modify their bids as a condition for award, nor to undertake responsibilities not stipulated in the bidding documents, or to change their prices.
4. Except in the case of intellectual services or direct or single-source contracting, no negotiations shall take place between the procuring entity and a contractor, supplier or service provider, with respect to a submitted bid or proposal.
5. The Approving Authority shall approve the award made by the Procurement Committee or Procurement Board within ten (10) working days of the submission of the recommendation report from the Procurement Committee or Procurement Board.
6. No public contract shall enter into force before the process specified in this Article.

Article 60: Notification of Award

The Contracting Authority shall communicate the award to the successful bidder not later than three (3) days after the approval referred to in Article 59 of this Code and the bidder, on acceptance, would be bound by the terms and conditions of the award.

Article 61: Conclusion, Signature and Entry into Force of the Contract

1. Subject to the approval prescribed in Article 59 of this Code, where a bid, proposal or quotation has been accepted, the procuring entity which issued the invitation for bid, proposal or quotation and the person whose bid, proposal or quotation has been accepted shall enter into a formal contract for the supply of goods, the undertaking of works or services, as the case may be.
2. This process shall be the responsibility of the Public Contracting Officer who, upon the advice of the Directorate of Legal Affairs, shall work out the details of the contract within ten (10) working days from the notification of award. Such contract shall be in such form and shall contain such terms, conditions and provisions as contained in the bidding documents or request for proposals or quotations.
3. The draft contract shall be forwarded to the Office of the Financial Controller for endorsement in line with the provisions of the Financial Regulations within five (5) working days of receipt of the document.
4. Contracts shall be signed by the successful bidder or by his duly authorised representative or in the case of consortia, by their duly authorised agent within the time frame prescribed under Article 37 of this Code.
5. The contract shall enter into force once either upon signature by both parties or on the date to be provided for in the contract. It shall thereafter be published, specifying the name and address of the successful bidder that has been awarded the contract and the contract price. Bid security shall be immediately returned to the other bidders. For the successful bidder, the bid security shall be returned upon submission of the Performance Bond.
6. Contracts which are not approved and signed in accordance with the provisions of this chapter shall be null and void and of no effect.

Part III: Contract Execution

Chapter I: General Provisions

Article 62: Form of Contracts

1. The contract consists of all the documents which are referred to in Article 65 hereinafter. The contract must be duly endorsed and signed in accordance with the provisions of Articles 60 and 61 of this Code, prior to the commencement of execution of the contract.
2. Contracts shall include the following essential information amongst others:
 - a) the names, designation and addresses of the contracting parties;
 - b) the scope of supply, works or services;
 - c) reference to the Articles of this Code under which the contract is concluded, and the listing by order of priority of contract documents as prescribed in the bidding documents;
 - d) the sources of funds and language of the contract;
 - e) the contract price with its terms of payment;
 - f) the provisions for payment in foreign currency with respect to the inputs from non domestic sources;
 - g) the period of execution of the works and services or the date of delivery of the goods;
 - h) the conditions of acceptance or delivery of the goods, works or services;
 - i) the conditions of payment and, where the contract value should be revised, the terms of the review and the conditions for its application;
 - j) the amount of guarantee required;
 - k) the requisite insurance cover to be provided by the successful bidder;
 - l) where necessary the regulatory provisions governing international transit and transport operations;
 - m) the provisions governing contract termination;
 - n) the date of contract notification;
 - o) the bank account where payments shall be made;
 - p) the applicable law and competent jurisdiction in case of conflict arising out of the execution of the contract.

Article 63 Types of Contract

1. Contracts can be classified into different categories according to the provisions governing the modalities for their execution as contained in the Procurement Manual. These include Framework ,Purchase Order Contract, Goodwill Contracts and Programme Contracts.
2. *A framework contract is an agreement between one or several procuring entities aimed at establishing the terms governing contracts to be awarded over a given period, particularly with regard to the cost and, where appropriate, the quantities envisaged*
3. A Purchase Order contract is a contract with which the Community negotiates contracts for its current yearly requirement, the exact quantity of which cannot be determined at the beginning of the year or which exceeds its storage capacity.

- a. These contracts shall indicate the minimum and maximum limits of the services or goods to be provided, expressed in terms of quantity or value.
- b. The contracts shall be concluded for a period not exceeding one year. However, they may contain a clause on an optional renewal for a maximum of two years, with each party having the right to give notice of renunciation of the said clause.
- b) Such services or goods referred to in paragraph (2) of this Article, shall be delivered on the basis of purchase orders which shall indicate the quantity to be supplied and the place and date of delivery.
- c) Payment for Framework or Purchase order contracts is often done in batches, particularly in cases where requirements are aggregated to accord institutions the advantage of economies of scale.
4. Goodwill contracts are contracts under which the Community undertakes to award to contractors all orders in respect of a particular category of services, for a fixed period not exceeding two years, without having to specify the quantities and value of the orders in the contract document. The bidding documents shall indicate the quantities normally required over a similar period and the approximate schedule of delivery, thereby allowing candidates the opportunity to calculate unit costs on the basis of a manufacturing schedule to be determined by them. Thereafter, the same procedure shall be followed as in the case of Framework or Purchase Order Contracts.
5. Programme contracts are investment operations funded by the Community through special arrangements within the framework of a programme, where the total commitment, corresponding to the total estimated cost, is left open and is matched by grants made available yearly to cover each segment of the contract to be executed. The contract is concluded for a period of more than one year and is executed in annual segments which content is determined each year after the corresponding budget is voted.

Article 64: Contract Price

1. The contract price shall cover all the expenses resulting directly and indirectly from the execution of the works, supply of goods or provision of services.
2. The price consists of either a unit price applied to the quantities, or is time-based in case of intellectual services, actually undertaken, or a lump sum, where the total value of the contract is determined in advance, or a combination of both, or calculated on a fixed cost plus fee basis. Under this latter arrangement, the Community reimburses the actual and verified expenses incurred by the contractor, supplier or service provider, to which it adds a fee or coefficient earmarked to cover general costs, taxes, levies and profits. The value of the different elements which are used to determine the amount payable shall be indicated in the contract.
3. The contracts are concluded on the basis of a fixed price. Contracts may exceptionally be concluded on the basis of a provisional price with suppliers or contractors who accept to be subjected to price verification during the execution of the contract in accordance with the provisions of Article 45 paragraph 3 of this Code. Contracts based on provisional

prices shall specify the accounting obligations of the suppliers or the contractors as well as the conditions governing the determination of the final price.

4. Contract prices can be fixed or adjustable in the following circumstances:
 - a) The Contract price is fixed when it cannot be modified during the execution of the contract as a result of a change in economic circumstances. Fixed-price contracts are only concluded when the foreseeable changes in the economy do not expose the parties to unpredictable risks.
 - b) Price adjustment provisions shall be included in contracts which extend beyond eighteen (18) months and are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen months. Prices may be adjusted by use of a prescribed formula which breaks down total price into components that are adjusted by price indices specified for each component or alternatively, on the basis of documentary evidence provided by the supplier or contractor which shall be easily verifiable.
 - c) Conditions under which prices may be reviewed shall be determined for each type of contract in the general administrative provisions applicable to contracts and detailed in the special administrative provisions outlining conditions governing each contract, with particular emphasis on the review formula, the start-off threshold, the neutralization margin and all other special conditions.
 - d) Advances shall not be subject to review. Where advances are deducted from the sums payable as progress payments or balances to the contractor, the price review clause shall apply only to the amount outstanding from the initial cost after deduction of all advances.

Article 65: General and Special Conditions of Contract

1. Conditions of Contract govern the execution of the contract and include General and Special Provisions.
 - a) General Conditions (GC) of Contract include administrative provisions applicable to a category of contracts. Conditions of General Technical Provisions include technical provisions applicable to the execution of works or supply of goods and services of the same nature.
 - b) Special Conditions (SC) of Contract include administrative provisions specific to each contract. Special Conditions of Technical Application include technical provisions specific to the execution of works or supply of goods and services. The Special Conditions of Contract identify the General Conditions of Contract that they supplement or amend.
2. General Conditions of Contract shall include a provision requiring that the supplier, contractor or service provider and their sub-contractors comply with legislative provisions governing the environment and workers' protection.

Article 66: Delivery and Acceptance

Prior to acceptance, procuring entities shall ensure that appropriate mechanisms and procedures in the procurement manual are applied to ensure that goods, works and services delivered are in accordance with the terms of the procurement contract.

Article 67: Penalty for Delayed Completion

1. Where a contractor, service provider, supplier party to the contract fails to complete the works or services (including intellectual services) or deliver the goods within the agreed time for completion or extension period, it may be liable for the payment of liquidated damages or penalties subject to a maximum amount defined in the contract.
2. This provision shall be applied without prior notice and the damages shall initially be deducted from the amounts owed to the supplier, contractor or service provider and subsequently from the securities. Where the balance is insufficient to offset the amount of damages, a payment order shall be issued to cover the outstanding amount and subsequently, the contract is terminated for non-performance.
3. The supplier, contractor or service provider shall be compensated according to the provisions of the contract documents, for any loss or damages they may suffer in the execution of the contract as a result of default by the procuring entity

Chapter II: Contract Securities

Article 68: Performance Securities

1. Contractors, suppliers or service providers, either from the public or the private sectors, must provide a performance security to guarantee the proper execution of the contract and against reimbursement of any amount owed by them in connection with the contract. Consultants are not subject to this requirement.
2. The Contracting Authority determines the amount of the security which shall specifically be provided for in the special conditions of the contract, depending on the contract value and the risk. Such amount shall not exceed ten (10) per cent of the initial contract price, subject to any further increase or decrease that may occur during contract execution.
3. The Performance Security shall be provided within twenty (20) calendar days after notification of the contract and, in any event, before any disbursement can be made on the part of the Community.
4. The performance security should be returned within one (1) month after the expiry of the warranty period or, if such period is not stipulated in the contract, immediately following the acceptance of the goods, works or services, according to the modalities determined in the conditions of contract.

Article 69: Form of Securities

1. Securities are submitted in the form of a surety bond or on first demand bank / insurance guarantee which may be issued by a reputable Bank / Insurance company in an ECOWAS member state. A security issued by a reputable foreign bank located outside the ECOWAS Member States with a corresponding bank in one of the Member States may be accepted by the procuring entity.

2. The securities provided for under Part III, Chapter II of this Code may be replaced by a joint and several guarantor whereby a third party undertakes to pay to the procuring entity any sums owed by the supplier, contractor or service provider in respect of the contract up to the amount posted as guarantee.

3. The joint and several guarantor shall be chosen from approved reputable banks / insurance companies.

4. The joint and several guarantee shall be in a format specified by the procuring entity. The form shall contain an undertaking to pay on first demand, any amount owed by the contractor up to the amount guaranteed.

Article 70: Other Securities

1. Where the contract provides for advance payment, the supplier, contractor or service provider, shall provide a security for the repayment of the advance payments. Advance payment shall not exceed thirty (30) percent of the contract price.
2. If the contractor receives advance payments for the purchase of materials or goods, the ownership of these materials is transferred to the procuring entity. The contractor shall be legally responsible for the care of these materials.
3. Where the contract specifies a warranty period, a portion of each payment shall be retained by the procuring entity as retention guarantee in order to secure the full compliance with the contract obligations. The sum retained by the procuring entity as determined by the Contracting Authority, which may be replaced by a joint and several guarantee, should not exceed ten (10) percent of the total amount of the payments and shall be specified in the conditions of contract depending on the contract value and risks. In any case, the retention guarantee shall be entirely returned at the expiry of the guarantee period. This period is the period during which the work is accepted and the facility utilized during which any defects discovered shall be rectified by the contractor at no liability to the contractor. The duration of the guarantee period shall be fixed in the contract.
4. The contract shall determine, where necessary, any guarantees other than those stipulated above which may, under special circumstances, be required of the supplier or contractor to ensure the discharge of his obligations. The contract shall define the rights of the procuring entity in relation to such guarantees.

Chapter III: Modifications during the Execution of the Contract

Article 71: Modification in the Contract Quantities or Price

1. Any variations to the initial contract shall be embodied in an amendment to the contract except in the cases specified in paragraphs (a) and (c) of this Article.
 - a) Variations in the execution of contracts for works, supplies or services not exceeding ten percent (10%) of the total value of the contract shall be verified and approved by an order issued by the procuring entity.

- b) Where the variation in the quantity of the works, supplies or services exceeds 10 percent but is less than or equal to twenty five percent (25%) of the basic contract value, such variation shall be the subject of an amendment to the contract.
 - c) Where the totality of the variation in the quantity of the works, supplies or services exceeds twenty five percent (25%) of the contract value calculated on the basis of initial costing, a new contract shall be drawn up using the same procedure as for the initial contract.
 - d) The total amount granted by virtue of amendments in respect of a single contract shall not exceed twenty five percent (25%) of the initial contract value.
 - e) Price reviews in compliance with contractual terms shall not justify the introduction of amendments to the contract.
2. Additional clauses shall be drawn up and approved under same terms as the initial contract.
 3. No additional clauses shall be added after final delivery of the goods and services.

Chapter IV: Payments in Public Contracts

Article 72: Advance Payments Progress and Final Payments

Suppliers, contractors and service providers are entitled to advance payments and progress payments in accordance with the provisions set forth below. Each contract shall specify the administrative and technical conditions governing the payment of the advances or progress payments referred to in this chapter.

Article 73: Advance Payments

1. Advance payments may be made under the contract. The total amount of these advance payments may not, in any case, exceed thirty (30) percent of the initial price of the contract for works, goods and services and intellectual services.
2. Advance payments and their terms of payment must be specified in the bidding documents or request for proposals. Whatever the amount is, they should be fully secured by a bank / insurance guarantee, or a joint and several guarantee. For intellectual services, this guarantee is not required if the advance payment is limited to a maximum of Ten (10) per cent of the total contract price.
3. Advance payments are reimbursed according to a fixed rate specified in the contract, by deduction from the sums due to the supplier, contractor or service provider, and in any event before the end of the contract. In the case of a total or partial termination of the contract, the procuring entity has the right, without prejudice to other outstanding payments, to demand immediate refund of outstanding advances.
4. If preparatory operations for construction or supply of goods or services require prior commitment of funds, advance payments may be made to the contractor to carry out these operations. The cause, the amount and the terms of payment of such advances shall be stated in the special conditions of contract for each individual contract.

5. The total amount paid as advance payments under paragraphs 1 and 4 of this Article must not exceed Thirty (30) per cent of the initial value defined as the basic contract cost excluding all amendments or increases resulting from a price review.

Article 74: Progress Payments

1. Payments for contracts are made through progress payments except for contracts of less than three months duration, in which case progress payments are optional.
2. The amount of progress payments should not exceed the value of the goods, works or services (including intellectual services) for which they are made, less repayment of the advance payments, if any, and subject to deduction of the amount retained as guarantee, under the terms of Article 70 of this Code.
3. When progress payments are made against predetermined execution phases and not against physical completion, the contract may determine, in the form of a percentage of the initial price, the amount of each progress payment.
4. General Conditions of Contract specify for each type of contract the periods or the technical phases of contract execution at which progress payments shall be made.
5. A supplier, contractor or service provider shall not use the supplies for which the advance or progress payments have been made for any works or services other than those specified in the contract. Breach of this provision may lead to termination of the contract by the procuring entity.
6. In the event of disagreement as to the amount to be disbursed as progress payment, the amount shall be calculated on the temporary basis of the payment approved by the procuring entity for the execution of the contract. Where progress payment is less than the final amount due to the contractor, supplier or service provider, the latter shall not be entitled to interest in respect of the outstanding difference. Progress payment may not be considered as final payment. The beneficiary shall be deemed indebted in outstanding amount until settlement of the balance of the contract amount.

Article 75: Modalities of Payment

1. Payment can be effected by means of cheque or bank transfer in accordance with the provision of the Financial Regulations.
2. The Contracting Authority must certify all progress and final payments and arrange for payments to be made within a period not exceeding Thirty (30) calendar days starting from the date of the submission of an invoice.

Article 76: Delayed Payment

When payments have not been made within the period set forth above, the contractor, supplier, service provider or the Consultant is entitled to the payment of interest from the expiry of the contract time for payment at a rate specified in the Special Conditions of Contract., based on the discount rate adopted by the central bank of the member state where the contract is being executed, increased by one point.

Article 77: Final Payment

Final payment occurs when the contractor, supplier, service provider or the Consultant is paid the amounts due in respect of the execution of the contract including, the additional payment due to the sums retained as guarantee, where applicable, and in accordance with the provisions of Articles 68 and 70 of this Code, and after deduction of all advances or amounts due which have not been recovered by the procuring entity. This also takes into consideration final accounts at the end of the defects liability period and delivery of all goods, works and services under the contract.

Article 78: Direct Payments to sub-contractors

1. The provisions set forth above are applicable to sub-contractors, agreed upon in writing prior to or after the signature of the contract whose conditions of payments have also been approved, provided the sub-contractors are entitled to direct payments.
2. Advances shall be payable, at their demand, directly to sub-contractors on a pro rata basis in accordance with their share of the contracted work and subject to the contractor having put up the guarantee in cases where the contract makes provisions for payment of a surety to guarantee such advance.
3. Payments to the sub-contractor are made upon submission of documentation certified by the contractor, supplier or service provider. As soon as these documents are received, the procuring entity gives notice to the sub-contractor of the payments which have been approved by the contractor, supplier or service provider.
4. If the contractor, supplier or service provider does not approve the sub-contractor's payment request, the latter may appeal to the Contracting Authority, who notifies the contractor, supplier or service provider accordingly. The latter must promptly justify why it did not certify the sub-contractor's performance, failing which the Contracting Authority will arrange for direct payment to the sub-contractor of the amount due.

Chapter V: Pledging of the Contract

Article 79: Modalities for Pledging of the Contract

1. Where a supplier, contractor or service provider wishes to pledge its contract, the Contracting Authority delivers to the latter a certified true copy of the original of the contract provided with reference to "single copy delivered in view of pledging the contract" bearing a signature of the concerned authority in due form as on the original.
2. A sub-contractor whose direct payment has been approved may cede or pledge all or part of his credits up to an amount which shall not exceed the monies directly payable to him. For this purpose, the sub-contractor shall receive a certified true copy of the original contract and where applicable, the additional agreement engaging him as directly paid sub-contractor.
3. The contract shall indicate the nature and amount of the services to be sub-contracted. This amount shall be deducted from the contract price in order to ascertain the maximum amount which may be pledged by the contractor.

4. The beneficiary of the pledge shall notify the Contracting Authority of the release of the credits and shall give him the copy above referred along with a copy of the pledge instrument as documentary evidence. Notification shall be effected by registered mail.
5. The beneficiary of a pledge may transfer part or the totality of its rights to another credit institution which shall so inform the Contracting Authority for payment purposes.
6. The rights of beneficiaries under the provisions of this Code, subject to the laws governing the contract which is being executed, shall prevail against any other rights with the exception of the following rights related to payments to the treasury, legal costs and workers entitlements.
7. Where, after the notification of contract award, the contractor plans to assign a portion of the contract to sub-contractors benefiting from direct payments, he must request a modification of the certified true copy of the contract.

Chapter VI: Contract Management

Article 80: Inspection, monitoring and auditing of public contracts

1. All contracts concluded by the Community Institutions shall be subject to technical inspections, performance monitoring, and audits.
2. These functions of inspection, monitoring and auditing shall be conducted directly by the competent departments of the Institutions or by private entities engaged by the Community Institutions for such purpose.
3. The conditions and modalities for technical inspection and monitoring shall be fixed in the technical specifications for each category of contract.

Chapter VII: Termination and Suspension of Contracts

Article 81: Termination

The contract may be terminated according to the conditions stipulated below:

1. By the procuring entity in the following cases:
 - a) the supplier, contractor or service provider's failure to perform its obligations;
 - b) its liquidation, or if it is forbidden by a court decision to pursue its activity, its bankruptcy, unless the procuring entity accepts an offer made by its creditors,
 - c) its death, civil or physical incapacitation, except where the procuring entity agrees that the contract be completed by its heirs or successors or any person designated by a court of law; or
 - d) for convenience.
2. By the supplier, contractor or service provider,

- a) in case of delayed payments, in accordance with the contractual terms, and where such delays contravene the contractual deadlines or are prejudicial to the execution of the contract,
 - b) In case of a suspension of the contract decided upon pursuant to 84 of this Code.
3. Any contract may be terminated if its execution becomes impossible due to "force majeure".
 4. Except in the case of termination declared pursuant to Article 83(3) (a), (b) and (c), the supplier, contractor, service provider or the Consultant is entitled to a termination compensation in the form of a percentage of the remaining part of the contract to be performed. This percentage is determined in the special Conditions of Contract governing each type of procurement.
 5. Notwithstanding the reasons for the termination of a contract, the procuring entity shall, on the one hand, take an inventory of works or services performed and of supplies received with a view to effecting payment therefore and, on the other, value measures for their conservation. The deduction of the value of current performance from contract value shall be decided by the procuring entity who shall inform the contractor, supplier, service provider or Consultant accordingly by registered mail.

Article 82: Suspension

If for unpredictable reasons (physical conditions, political situation, suspension of the membership of a Member State, etc) there are circumstances that prevent the normal continuation of the contract, the procuring entity may suspend the execution of the contract before its term.

1. Where the duration of the suspension exceeds ninety (90) days within the overall execution period of the contract, the supplier, contractor or service provider is entitled to terminate the contract. The suspension entitles the contractor to the payment of related damages as may be specified in the special conditions of contract.

PART IV: Review

Chapter I: Contract Award Review

Article 83: Amicable Settlement and Administrative Review

1. Any disagreement between the supplier, contractor or service provider and the procuring entity arising out of the implementation or interpretation of this Code may be settled amicably. The parties shall make every effort to reach amicable settlement of the matter.
2. However, any supplier, contractor or service provider that claims to have suffered, or that may suffer loss or injury due to a breach of a duty imposed on the procuring entity by this Code may seek review in accordance with the provisions of Articles 83 to 85 of this Code.
3. The following however shall not be subject to the review provided for under paragraph 1 of this Article:
 - a) the selection of a method of a procurement pursuant to Articles 27, 31-47 of this Code
 - b) the choice of a selection procedure pursuant to Articles 30(1) and 48
 - c) the limitation of procurement proceedings in accordance with Article 57 of this Code on the basis of Community citizenship
 - d) a decision by the procuring entity under Article 58 to reject all bids and cancel the contracting process
 - e) a refusal by procuring entity to respond to an expression of interest in participating in the request for proposal proceedings pursuant to Article 47.
4. This protest shall be sent to Contracting Authority within ten (10) working days following the publication of the decisions that are being contested. The Head of Institution shall with the assistance of the relevant services within the institution review the protest.
5. After the submission of a protest, the Contracting Authority shall notify all competitors in the contracting proceedings to which the protest relates of its substance.

Article 84: Review by the Dispute Resolution Committee

1. If within ten (10) working days of submission of the protest to the Contracting Authority, the matter remains unresolved under Article 83, the aggrieved party shall refer the matter to the Dispute Resolution Committee established under Article 12 of this Code, for decision, and shall inform the contractor and supplier accordingly. The Rules of procedure for the Dispute Resolution Committee shall be as provided for in the Procurement Manual.
2. Within ten (10) working days of the request submission the Dispute Resolution Committee shall issue a written decision, stating the reasons, and, if the complaint is upheld, indicating the corrective measures to be taken. All parties in the review proceedings shall be notified of the decision which shall also be published in the ECOWAS Institutions Websites.
3. The Dispute Resolution Committee, unless it dismisses the request, may order the procuring entity to proceed in a manner conforming to this Code and/or Procurement Manual,

suspend, in whole or in part, an unlawful act or decision made by the procuring entity, including the decision to award or conclude a contract. However, the Committee has no jurisdiction for awarding a contract in lieu of the process, or to substitute another bidder to the one chosen by the procuring entity.

4. The Dispute Resolution Committee shall, before taking any decision regarding a request for review, notify all parties in the procurement proceedings and shall take into account information and arguments received from such parties and from the procuring entity.
5. The Dispute Resolution Committee may also exercise the same powers over the procurement process in case it receives any substantial information even from a third party to the proceedings, on any irregularity or violation of the provisions of this Code committed during a procurement process.
6. The decision of the Dispute Resolution Committee is final unless further proceedings are instituted as provided for under Article 85 of this Code.

Chapter II: Contract Disputes

Article 85: Dispute Resolution

Failing the resolution of the protest under Articles 85 and 86 of this Code the protest may be settled in the following manner:

- i. arbitration in accordance with the provisions of the contract;
- ii. referral to the Community Court of Justice established under Article 15 of the Revised Treaty.

Part V: Provisions Related to Ethics and Sanctions

Article 86: Ethics Infringements and Sanctions of ECOWAS Staff and Officials

1. Each ECOWAS staff or official shall declare any interest that he/she may have in any supplier, contractor or service provider, and shall take no part in, nor seek to influence in any way, procurement proceedings in which that supplier, contractor or service provider is involved or liable to become involved in.
2. Each ECOWAS staff or official having participated directly or indirectly in procurement proceedings or in the contract execution in violation of the provisions of this Code shall incur the sanctions provided for in the ECOWAS Staff Regulations and Financial Regulations and shall in any event be prohibited from participating in any further procurement proceedings.

Article 87: Infringements by Candidates, Bidders and Awardees

1. Where a procuring entity is, after appropriate investigations, satisfied that a person or firm has provided false allegation or falsification of the content of the certificates or documents contained in its bid or proposal, or has engaged in corrupt or fraudulent practices in competing for or executing a contract, it shall:
 - a) reject the proposal for qualification or award of such a contract; and
 - b) submit the content of its investigations to the Sanctions Committee established under Article 13 of this Code.
2. Where the Sanctions Committee is convinced that the alleged practices were committed, it may:
 - a) declare any person or firm ineligible for a maximum period of ten years to be awarded a Community contract;
 - b) decide to pronounce the termination of the awarded contract; cancel any registration or certificate of qualification or classification that were granted to the said person;
 - c) impose a fine on the said person to a level defined in the procurement manual
 - d) in case the investigations conducted revealed any criminal offence committed in the course of the procurement proceedings, refer the matter to the appropriate competent authorities.
3. The Sanctions Committee shall make its decision within Fifteen (15) working days starting from the date of the relevant application, stating the reasons for its decision, which shall be immediately binding and published without prejudice to any recourse before competent authorities or courts.
4. The Community shall keep and update continuously the record of the persons barred from participating in public contracting.

Title VI: Final Provisions

Article 88: Procurement Manual

The President of the Commission shall issue a Procurement Manual on the ECOWAS Tenders Code and the standard procurement documents.

Article 89: Amendments

All proposals of amendment from Community Institutions shall be forwarded through the President of the ECOWAS Commission to the Council of Ministers and the Code shall be amended accordingly.

Article 90: Transitional Provisions

1. The present Code shall govern the procurement of goods, works and services (including intellectual services), as of its coming into effect, three (3) months after its publication.
2. Upon the coming into effect of this Code, all regulations or rules relating to public procurement shall cease to have any effect in relation to any procurement process of goods, works or services within the Community.
3. Notwithstanding the above, any procurement proceedings initiated, or contract entered into before the coming into force of this Code shall be subject to the provisions of the previous Code.

Article 91: Entry into force and Publication in the ECOWAS Official Journal

1. This Tenders Code shall enter into force on 1st January 2014.
2. The Tenders Code shall be published in the Official Journal of the Community by the President of the Commission within thirty (30) days of its signature by the Chairman of the Council of Ministers, It shall also be published in the National Gazette of each Member State within the same time frame.

Article 92: Language

This Code shall be published in the English, French and Portuguese languages.

Schedule 1: Commission Goods and Services

UA Value	Procurement Method	Public Contracting Officer	Awarding Entity	Approving Authority	Contracting Authority
Up to 20,000	Request for Quotation	Head of Procurement Division (HOPD)	HOPD	Commissioner, General Administration and Conference (CGAC)	Director General Administration (DGA)
20,001-100,000	ECOWAS Local Open / Restricted Competitive Bidding (simplified solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Committee	Vice-President ECOWAS Commission (VP)	CGAC
100,001 – 350,000	Open / Restricted ECOWAS Regional Competitive Bidding (Advertised; formal solicitation)	Director Responsible for Procurement	Procurement Committee	VP	CGAC
Over 350,000	International Competitive Bidding/Limited ICB (formal solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Board	President of the ECOWAS Commission (President)	CGAC

Any Amount	Sole / Single Source (Subject to Direct Contracting Procedures)	Director Responsible for Procurement/HOPD	HOPD / Procurement Committee / Board	President / VP/CGAC (Appropriate Awarding Authority)	CGAC/DGA
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Schedule 2: Commission - Works

UA Value	Procurement Method	Public Contracting Officer	Awarding Entity	Approving Authority	Contracting Authority
–Up to 40,000	Request for Quotation (RFQ)	Head of Procurement Division (HOPD)	HOPD	CGAC	DGA
40,001-200,000	ECOWAS Local Competitive Bidding (simplified solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Committee	VP (Commission)	CGAC
200,001 – 500,000	Open Regional Competitive Bidding (formal solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Committee	VP (Commission)	CGAC

Over 500,000	International Competitive Bidding (formal solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Board	President	CGAC
Any Amount	Sole / Single Source (Subject to Direct Contracting Procedures with justification)	Director Responsible for Procurement/HO PD	HOPD / Procurement Committee / Board	President / VP/CGAC (Appropriate Awarding Authority)	CGAC/DGA

Schedule 3: Commission - Consulting Services

UA Value	Selection Method	Public Contracting Officer (PCO)	Awarding Authority	Approving Authority	Contracting Authority
Individual Consultant					
Up to 20,000	Consultant Qualification (CQ)	Head of Procurement Division (HOPD)	HOPD in Liaison with the User Department / Directorate	CGAC	DGA
20,001 - 50,000	Consultant Qualification (CQ) with advertisement (Local/Regional)	Head of Procurement Division (HOPD)	Procurement Committee	VP (Commission)	CGAC
Any Amount	Direct Contracting (with justification)	Head of Procurement Division (HOPD)	HOPD / Procurement Committee / Board	CGAC / VP / or President (Commission) /	DGA / CGAC
Firms					
Up to 250,000	Fixed Budget Selection (FBS) Least Cost Selection (LCS) Consultant Qualification (CQ) (Local/Regional Advertisement)	Director Responsible for Procurement	Procurement Committee	VP (Commission)	CGAC
Over 250,000	Quality Based Selection (QBS) Quality and Costs Based Selection	Director responsible for Procurement	Procurement Board	President (Commission)	CGAC

	(QCBS) (International Advertisement)				
Any Amount	Direct Contracting (with justification)	Head of Procurement Division (HOPD) / Director responsible for Procurement	HOPD / Procurement Committee / Board	CGAC / VP / or President (Commission) /	DGA / CGAC

Schedule 4: Institutions Goods and Services

UA Value	Procurement Method	Public Contracting Officer	Awarding Entity	Approving Authority	Contracting Authority
Up to 20,000	Request for Quotation	Head of Procurement Unit (HOPU)	HOPU	Head of Institution (HOI) / Secretary General	Director of Administration and Finance (DAF)
20,001-100,000	ECOWAS Local Competitive Bidding (simplified solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Committee	VP Commission	Head of Institution (HOI) / Secretary General
100,001 – 350,000	Open ECOWAS Regional Competitive Bidding (Advertised; formal solicitation)	Director Responsible for Procurement	Procurement Committee	VP Commission	Head of Institution (HOI) / Secretary General
Over 350,000	International Competitive Bidding/Limited ICB (formal solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Board	President of the Commission	Head of Institution (HOI) / Secretary General
Any Amount	Sole / Single Source (Subject to Direct Contracting	Director Responsible for Procurement/ HOPU	HOPU / Procurement Committee / Board	President / VP (Commission) / Head of Institution	Head of Institution (HOI) / Secretary General

	Procedures)			(HOI)/ Secretary General (Appropriate Awarding Authority)	
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Schedule 5: Other Institutions - Works

UA Value	Procurement Method	Public Contracting Officer	Awarding Entity	Approving Authority	Contracting Authority
–Up to 40,000	Request for Quotation (RFQ)	Head of Procurement Unit (HOPU)	HOPU	HOI / Secretary General	DAF
40,001-200,000	ECOWAS Local Competitive Bidding (simplified solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Committee	VP (Commission)	HOI / Secretary General
200,001 – 500,000	Open Regional Competitive Bidding (formal solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Committee	VP (Commission)	HOI / Secretary General
Over 500,000	International Competitive Bidding (formal solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Board	President	HOI / Secretary General
Any Amount	Sole / Single Source (Subject to Direct	Director Responsible for Procurement/HOPD	HOPD / Procurement Committee /	President / VP (Commission) / HOI/	HOI / Secretary General /

	Contracting Procedures with justification)		Board	Secretary General (Appropriate Awarding Authority)	DAF
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Schedule 6: Other Institutions - Consulting Services

UA Value	Selection Method	Public Contracting Officer (PCO)	Awarding Authority	Approving Authority	Contracting Authority
Individual Consultant					
Up to 20,000	Consultant Qualification (CQ)	Head of Procurement Unit (HOPU)	HOPU in Liaison with the User Directorate	HOI / Secretary General	DAF
20,001 - 50,000	Consultant Qualification (CQ) with advertisement (Local/Regional)	Head of Procurement Unit (HOPU)	Procurement Committee	VP (Commission)	HOI / Secretary General
Any Amount	Direct Contracting (with justification)	Head of Procurement Unit (HOPU)	HOPU / Procurement Committee / Board	HOI / Secretary General / VP / President (Commission)	DAF / HOI/ Secretary General
Firms					
Up to 250,000	Fixed Budget Selection (FBS) Least Cost Selection (LCS) Consultant Qualification (CQ) (Local/Regional Advertisement)	Director Responsible for Procurement	Procurement Committee	VP (Commission)	HOI / Secretary General
Over 250,000	Quality Based Selection (QBS) Quality and Costs Based	Director responsible for Procurement	Procurement Board	President (Commission)	HOI / Secretary General

	Selection (QCBS) (International Advertisement)				
Any Amount	Direct Contracting (with justification)	Head of Procurement Unit (HOPU) / Director responsible for Procurement	HOPU / Procurement Committee / Board	HOI/ Secretary General / VP / or President (Commission)	DAF / HOI / Secretary General

Schedule 7: Field Agencies and Offices Goods and Services

UA Value	Procurement Method	Public Contracting Officer	Awarding Entity	Approving Authority	Contracting Authority
Up to 20,000	Request for Quotation	Administrati on Officer (AO)	AO	Director	Head of Administratio n and Finance (HAF)
20,001-100,000	ECOWAS Local Competitive Bidding (simplified solicitation; adequate competition required)	Director Responsible for Procurement	Procuremen t Committee	VP (Commissio n)	CGAC
100,001 – 350,000	Open ECOWAS Regional Competitive Bidding (Advertised; formal solicitation)	Director Responsible for Procurement	Procuremen t Committee	VP	CGAC
Over 350,000	International Competitive Bidding/Limi ted ICB (formal solicitation; adequate competition required)	Director Responsible for Procurement	Procuremen t Board	President	CGAC
Any Amount	Sole / Single Source (Subject to Direct Contracting Procedures)	Director Responsible for Procurement/ HOPD	HOPD / Procuremen t Committee / Board	President / VP/CAC (Appropriat e Awarding Authority)	CGAC/DGA

Schedule 8: Field Agencies and Offices Works

UA Value	Procurement Method	Public Contracting Officer	Awarding Entity	Approving Authority	Contracting Authority
–Up to 40,000	Request for Quotation (RFQ)	Administration Officer (AO)	AO	Director	HAF
40,001-200,000	ECOWAS Local Competitive Bidding (simplified solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Committee	VP (Commission)	CGAC
200,001 – 500,000	Open Regional Competitive Bidding (formal solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Committee	VP (Commission)	CAC
Over 500,000	International Competitive Bidding (formal solicitation; adequate competition required)	Director Responsible for Procurement	Procurement Board	President	CGAC
Any Amount	Sole / Single Source	Director Responsible for	HOPD / Procurement	President / VP/CGAC	CGAC/DGA

	(Subject to Direct Contracting Procedures with justification)	Procurement/HOPD	Committee / Board	(Appropriate Awarding Authority)	
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Schedule 9: Field Agencies and Offices - Consulting Services

UA Value	Selection Method	Public Contracting Officer (PCO)	Awarding Authority	Approving Authority	Contracting Authority
Individual Consultant					
Up to 20,000	Consultant Qualification (CQ)	Administrati on Officer (AO)	AO in Liaison with the User Division	Director	HAF
20,001 - 50,000	Consultant Qualification (CQ) with advertisement (Local/Regional)	Head of Procuremen t Division (HOPD)	Procurement Committee	VP (Commissio n)	CGAC
Any Amount	Direct Contracting (with justification)	Head of Procuremen t Division (HOPD)	HOPD / Procurement Committee / Board	CGAC / VP / or President (Commissio n) /	DGA / CGAC
Firms					
Up to 250,000	Fixed Budget Selection (FBS) Least Cost Selection (LCS) Consultant Qualification (CQ) (Local/Regional Advertisement)	Director Responsible for Procurement	Procurement Committee	VP (Commission)	CGAC
Over 250,000	Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS) (International	Director responsible for Procurement	Procurement Board	President (Commission)	CGAC

	Advertisement)				
Any Amount	Direct Contracting (with justification)	AO / Director responsible for Procurement	AO / Procurement Committee / Board	Director / CGAC / VP / or President (Commission) /	HAF / DGA / CGAG