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FINANCE COMMITTEE ON THE STAFF REGULATIONS, STAFF
SKILLS AUDIT, PROCUREMENT CODE AND TRAVEL POLICY**

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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:

“Administrative Requirements” means the administrative criteria set by the Public Contracting Officer to qualify a bidder.

“Affiliate”, an entity is an *affiliate* of another entity if:

- (i) either entity controls or has the power to control the other; or
- (ii) a third party controls or has the power to control both entities.

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“Bid Validity” means the period within which the bidder is bound by its offer and such offer **cannot be withdrawn without forfeiting its bid security.**

“Community” means the Economic Community of West African States referred to under Article 2(1) of the Revised Treaty;

“Competitive Dialogue” means an interactive multistage selection arrangement that allows for dynamic engagement with Proposers;

“Complaint” means a protest regarding an award process;

“Conviction” means a judgement of a criminal offense rendered by any court of competent jurisdiction;

“Contracting” means a situation where the Community enters into a contract with one or several suppliers, contractors and service providers who shall be responsible for the delivery of goods works and services;

“Coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

“Collusive practice” means an arrangement between two or more interested parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

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

“Contracting Authority” means the President of the Commission or any other person the President delegates to commit the Procuring Entity and ensure execution of the contract;

“Contractor”, “Supplier” or “Service Provider” means any natural or legal person or group of bodies entering into a public contract with a Procuring Entity for the execution of works, the acquisition of goods or the provision of services;

“Corrupt Practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

“Dispute” means disagreement regarding a contract;

“Division in Lots” means sharing of a Contract into several Lots due to economic, financial or technical reasons. Each Lot shall be an independent unit to be awarded separately;

“Direct Contracting” means contracting without competition;

“Eligibility” means the criteria that determine the participation of a natural person or a legal entity in the contracting process with the Institutions of the Community;

“Emergency Situations” mean unpredictable or unforeseeable circumstances in which there is the need for immediate intervention and under which due Procurement process is not followed.

“Evaluation Committee” means an ad hoc committee appointed by the Contracting Authority for the evaluation of bids with a value above the threshold set in Annex I of this Code;

“Evaluation Entity” means a committee or person in charge of examining all bids and proposals received during the procurement processes, organising the selection and awarding the contract in conformity with the provisions of this Code.

“Exclusion” means a decision by the Contracting Authority to exclude a vendor from participating in ECOWAS contracting processes for a specified or indefinite period of time;

“Financial Requirements” mean financial criteria set by the Public Contracting Officer to qualify a bidder;

“Framework Agreements” mean contractual arrangements to enter into preliminary agreements concluded between one or more economic operators and one or more Procuring Entities, in order to establish the terms governing the signing and execution of ‘specific contracts’ which may be awarded during a given period. The framework agreement fixes the duration, subject, price, maximum value, implementation rules and the quantities envisaged;

“Fraudulent practice” means any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

“General Procurement Notices” means a list of contract opportunities in Goods, Works and services published at the beginning of every year by the Procuring Entity based on the approved procurement plan”;

“Goods” means tangible or intangible items to be procured by the Procuring Entity 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” mean entities established in accordance with Article 6 of the Revised ECOWAS Treaty 1993) as amended and they include:

- The ECOWAS Parliament;
- The Community Court of Justice;
- The Commission, its Agencies and Offices;
- The ECOWAS Bank for Investment and Development (EBID)
- The West African Health Organisation (WAHO);
- The Intergovernmental Action Group Against Money Laundering in West Africa (GIABA); • Economic and Social Council (ESC); and

- Any other Institutions of the Community as may be established in accordance with the provisions of the ECOWAS Treaty;

The word ‘Institution(s)’ is used interchangeably with ‘ECOWAS’

“**Intellectual Services**” mean services related to activities of an intellectual and non-material nature that do not lead to a measurable physical output. They include but shall not be limited to 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;

“**International Competitive Bidding**” means the process where the procurement is advertised in and beyond the ECOWAS Member States;

“**Local Competitive Bidding**” means the process where the procurement is only advertised and carried out in the country of the Procuring Entity;

“**Man-made disaster**” means a disastrous event caused directly or indirectly by one or more identifiable deliberate or negligent human actions.

“**Natural disaster**” means a disastrous event caused by natural hazards.

“**Non-Consulting Services**” means services not requiring intellectual or creative input from the service provider – *see also Intellectual Services*;

“**Invitation to Bid**” means all public advertisements to all eligible interested bidders in relation to a specific procurement activity.

“**Obstructive Practice**” means:

- i. deliberately destroying, falsifying, altering, or concealing of evidence material to an investigation or making false statements to investigators in order to materially impede an ECOWAS investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- ii. acts intended to materially impede the exercise of the ECOWAS investigation and audit rights;

“**Open Tendering**” means a process where bidders are invited through public advertisement;

“**Procurement Plan**” means an annual planning document sequencing procurement activities, prepared based on the approved budget.

“**Pre-Qualification (PQ)**” means a formal procedure by which bidders are invited to submit details of their experience, technical and financial capabilities prior to a bidding process.

“**Post-Qualification**” means a formal procedure whereby bidders are evaluated, prior to award, on their experience, technical and financial capabilities to confirm their ability to perform a contract;

“**Procuring Entity**” means the Institution, Agency or Field Office which expresses the need that triggers a procurement process;

“**Procurement Manual**” means Standard Operating Procedures developed for the implementation of the ECOWAS Procurement Code;

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

“**Probity Audits**” mean independent reviews of Procurement activities to ascertain the consistent implementation of the provisions of this Procurement Code and its Manual, in line with best practice principles of fairness, competition and transparency;

“Proposal” means all the technical and financial submissions made by an intellectual services provider in response to a Request for Proposal;

“Proposer” means a participant in a Competitive Dialogue process or in an intellectual services process;

“Public Contract” means written contract for pecuniary interest entered into by a Procuring Entity and a contractor or consultant for the supply of goods and related services, execution of works or intellectual services;

“Public Contracting Officer” means the Officer authorized by virtue of the Regulations governing his/her appointment to oversee the directorate responsible for the management of procurement of Goods, Works and Services in the relevant Institution;

“Public Private Partnership (PPP)” means a long-term Goods, Works, Non-consulting Services, and/or Intellectual Services contract between a private and a public entity, in which risk and management responsibility are shared, and remuneration is linked to performance;

“Public Supply Contracts” means public contracts with the objective of purchase of goods;

“Regional Competitive Bidding” means a process where the procurement is advertised in all ECOWAS Member States;

“Request for Expression of Interest (REoI)” means an invitation by a Procuring Entity to consultants specifying the intellectual services to be delivered and indicating the qualifications and experience required for shortlisting;

“Request for Proposals” means a detailed document prepared by the Procuring Entity, requesting shortlisted firms to submit proposals (technical & financial);

“Restricted Tendering” means a process whereby identified prospective bidders are directly invited to bid without any public advertisement;

“Review Entity” means the person or Committee in charge of verifying the conformity and compliance with the procurement procedure by the Evaluation Entity.

“Review Committee” means the entity responsible for the final review of the procurement process conducted by the Procuring Entity in line with the threshold as stipulated in Annex 1 - Schedules 1 – 8.

“Suspension” means a temporary measure taken by the Sanction Committee to exclude a service provider from ECOWAS Procurement process;

“Technical Specifications” mean the technical requirements set out in the Bidding Document to qualify a bidder.

“Terms of Reference” means the statement issued by the Procuring Entity giving the objectives, goals, scope of services, and qualifications.

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

“Urgency” means a situation requiring immediate action but which is not caused by external or unforeseen factors and which may not trigger the use of procedures applied to “Emergency Situations”;

“User” means any Requesting Entity within the ECOWAS Institutions which expressed the need and is the beneficiary of the procured goods, works or services;

“Works/ Public Works contracts” means physical material or non-material works associated with the construction, reconstruction, demolition, repair or renovation of a building, 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 ECOWAS 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:** this principle requires review of the procurement activities, supported by appropriate documentation and disclosure. Transparency requires:
 - (i) that relevant procurement information be made publicly available to all interested parties, consistently and in a timely manner, through readily accessible and widely available sources at reasonable or no cost;
 - (ii) appropriate reporting of procurement activity; and
 - (iii) the use of confidentiality provisions, where justified.
- b. Equity/Fairness/Equal Opportunity:** This principle refers to:
 - (i) equal opportunity and treatment for all service providers;
 - (ii) competitive tendering;
 - (iii) equitable distribution of rights and obligations between the Contracting Entity and bidders and consultants; and
 - (iv) credible mechanisms for addressing procurement related complaints and providing recourse.
- c. Effectiveness:** this principle implies the degree to which ECOWAS objectives are achieved and targeted problems are timely resolved in line with due process.
- d. Economy/Value for Money:** this principle means the effective, efficient, and economic use of resources, which requires an evaluation of relevant costs and benefits, along with an assessment of sustainability, quality, and non-price attributes and/or Life Cycle Costs (LCC), as appropriate. Price alone may not necessarily represent value for money. Life Cycle Costs shall be defined in the Procurement Manual.
- e. Efficiency & Proportionality:** Procurement arrangements are generally time-sensitive and strive to avoid wastes and delays. The principle of efficiency requires that Procurement Processes are proportional to the value and risks of the underlying project activities.
- f. Integrity:** The principle of integrity requires that funds, resources, assets, and authority are used solely for the intended purposes and aligned to the best interest of the ECOWAS community and the beneficiaries of the proceedings.

Article 3. **Gender Equality**

Terms of Reference (ToR) and Technical Specifications for public procurement shall be designed to ensure equal opportunities for both men and women.

Article 4. **Accessibility for Persons with Disabilities**

All Goods, Works, and Services intended for the use of persons, whether external public or staff of the Procuring Entity, must include in their Technical Specifications accessibility requirements for persons with disabilities except in duly justified cases or for security reasons.

Article 5. Respect for the Environment

1. Subject to the principles governing the award of procurement contracts such as equal opportunities and non-discrimination, environmental issues must be considered from the initial stage of design of public procurement procedures.
2. The Terms of Reference/Guidelines/Technical Specifications should be environmentally friendly provided this does not lead to a reduction or distortion of the competition.

Article 6. Scope of Application and Exclusions

1. The provisions of this Code are applicable to all public contracts within ECOWAS Institutions irrespective of their source of funding, unless otherwise agreed with a funding partner(s) and in line with the objectives of the Community.
2. The following Institution and Agencies are excluded from the scope of application of this Code:
 - a. The ECOWAS Bank for Investment and Development (EBID);
 - b. The West African Monetary Agency (WAMA)
 - c. The West African Monetary Institute (WAMI)
 - d. The West African Power Pool (WAPP)

Article 7. Public Access

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

Article 8. Threshold of Contracts

1. The thresholds for contracts are as set out in Annex 1 - Schedules 1-8 of this Code and may be reviewed only by the Council of Ministers.
2. The Schedules are designed in four sets with distinct attributions for the Commission, the Other Institutions, Field Agencies and Offices with dedicated thresholds for Goods and related Services, Works and Intellectual Services.
3. The thresholds determine:
 - a. Value of the procurement package
 - b. The choice of procedure and method of procurement;
 - c. The Public Contracting Officer
 - d. The Evaluating Entity
 - e. The Review Entity
4. The publication arrangements to be used for each selection method and threshold are defined in Annex 2 of this Code.

Article 9. Eligibility

Without prejudice to any conditions spelt out in this Procurement Code, any bidder whether a natural person or a legal entity is eligible to participate in a procurement process with the ECOWAS Institutions.

Article 10. Exclusions from Procurement Process

1. Bidders in the following situations are excluded from the procurement process of Community

Institutions:

- a. any bidder that is insolvent, in receivership, bankrupt or being wound up, or whose business activities have been suspended;
 - b. any bidder found to be in violation of any provisions of this Code;
 - 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 any tax laws;
 - d. any bidder who is excluded from participating in any public contracting proceedings pursuant to a decision rendered by the Sanctions Committee, on grounds of contract termination by reason of default or negligence in the execution of an earlier contract awarded by the Community Institutions;
 - e. any bidder who is excluded from participating in any public contracting proceedings pursuant to a decision rendered by the Sanctions Committee, or any other national, foreign or similar international organisation on grounds of misrepresentation in relation to a false statement as to their qualifications to enter into a public contract;
 - f. any bidder blacklisted and/or debarred from taking part in public contracting by a similar international organization or other foreign institution.
 - g. any State-owned company not financially and legally autonomous and/or does not operate under commercial law; and
 - h. any bidder with which any member of the procuring entity had/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 a tender process 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 11. **Disqualification of Bidders**

1. The procuring entity shall reject a bid, proposal or quotation if it is found that the bidder or bidder has directly or indirectly engaged in fraudulent practices as defined in Article 117 relating to Fraud and Corruption.
2. Such rejection and the reasons thereof, shall be included in the record of the procurement proceedings and duly communicated to the bidder or bidder who may file for review of the rejection under the provisions of Article 89 of this Code.

Chapter II -Responsibilities for Procurement Proceedings and Contract Awards

Article 12. **The Contracting Authority**

1. The Contracting Authority is the President of the Commission or any other person the President delegates to commit the procuring entity and ensure execution of the contract.
2. Within the limits imposed by the internal regulation and by the Financial Agreement with external donors or financial institutions, the Contracting Authority may delegate its powers depending on the nature of the procurement and under defined thresholds.

3. Such power shall derive from the legal texts applicable to the Institution or in the framework of powers delegated with signature of Financial Agreements or Financial Conventions with external donors or financial institutions.
4. The Contracting Authority delegates the conduct of all procurement processes to the Public Contracting Officer, the Evaluation Entity and the Review Entity required to take part in the process according to the provisions of this Code while maintaining its prerogatives as the final decision maker.

Article 13. Public Contracting Officer and Functions

1. The Public Contracting Officer, based on the thresholds indicated in Annex 1 - Schedules 1 – 8, shall be:
 - a. for the ECOWAS Commission, the Director responsible for Procurement;
 - b. for the other Institutions, the Director responsible for Procurement;
 - c. for the Agencies and field Offices, the Administration Officer of the Agency or Office or, if the threshold requires so, the Director responsible for Procurement;
2. Public Contracting Officers, based on the thresholds indicated in Annex 1 - Schedules 1 – 8, are responsible for implementing this Procurement Code and its Manual. In addition, the Institutions, Agencies and field Offices are responsible for developing the Procurement Manual and the required templates.
3. The Public Contracting Officer shall have the responsibility to:
 - a. liaise with the procuring Institution/Directorate/Agency/Division/Office to clearly identify the needs and contribute to aligning the requirements with the offer of the market;
 - b. contribute to the preparation of the Procuring Entity’s annual procurement plan, taking into account packaging critical paths, complexity and available resources;
 - c. contribute to the revision of the technical specifications and terms of reference.
 - d. prepare the bidding documents, request for quotations and request for proposals;
 - e. make the arrangements for the advertisements required by the Code;
 - f. after the award, assess and submit draft contracts for review and approval;
 - g. communicate with the bidders for requests for clarifications.
 - h. report on procurement activities.
4. The Public Contracting Officer shall be assisted in the execution of his/her functions by competent procurement staff in all ECOWAS Institutions.

Article 14. The Bid Opening Committee

1. The Contracting Authority shall appoint a bid opening committee that is composed of at least three members including one representative of the Procuring Entity and one representative of the Procurement Unit.
2. The bid opening committee shall be responsible for the public opening of bids at a time and place as stipulated in the Bidding Document.

Article 15. The Evaluation Entity

1. At the end of its work, the Evaluation Entity formulates a “recommendation of award” supported by complete evaluation reports when the procedure requires so.

2. For contracts of low value in line with the thresholds indicated in Annex 1 - Schedules 1 – 8, the Evaluation Entity can be a single functionary or a panel of functionaries including the beneficiary Directorate/Agency without the obligation of constituting an Evaluation Committee.
3. In all other cases, the Evaluation Entity shall have the form of Evaluation Committee entrusted by the Contracting Authority pursuant to the provisions in Article 16 of this Code.
4. The Evaluation Entity shall neither modify, allow Bidders/Consultants to modify their bids/proposals as a condition for award, nor to undertake responsibilities not stipulated in the bidding documents, or to change their prices.

Article 16. The Evaluation Committee

1. Bids with a value above the threshold set in Annex II of this Code, shall be evaluated by an Evaluation Committee set up by the Contracting Authority or its delegate in a timely manner.
2. Under the same conditions, the intervention of the Evaluation Committee is required also during the negotiation of addendum(a) for on-going contracts.
3. The Contracting Authority shall make sure that evaluators are available during the scheduled evaluation period and will appoint alternate evaluators for each procedure to prevent delays in case of unavailability. Evaluators must be provided with adequate information regarding the planned timetable and the workload that the evaluation implies. Every evaluator must have reasonable command of the language in which the bids/proposals are submitted.
4. The composition of the Evaluation Committee shall remain strictly confidential all along the evaluation process and never disclosed to the bidders.
5. All participants in the evaluation process shall be free of conflict of interest as defined in Article 118 of this Code. The members and the observers shall sign a Declaration of Impartiality and Confidentiality using the standard template in use for the Evaluation Committees.
6. When a member becomes aware that he/she is in a situation which might generate a potential conflict of interest, he/she shall notify the Public Contract Officer by giving details of the particulars that created the potential conflict of interest and recuse him/herself from further participating in the meetings or decisions in relation with that particular procurement process. Such circumstances shall be recorded in the report of meetings.
7. **Composition of the Evaluation Committee**
 - a. The Evaluation Committee shall comprise of three (3) or five (5) evaluators including Representatives from the User Directorate, the Directorate of Finance and the Directorate in charge of Procurement. There shall be an alternate for each evaluator. The Directorate in charge of Procurement shall serve as Secretary to the Committee. For tenders estimated above 500,000 UA and for Intellectual Services proposals estimated above UA 250,000 the Committee shall have five evaluators. The evaluators shall have equal scoring rights.
 - b. Quorum for the Evaluation Committee shall be as follows:
 - (i) For a Committee of three: Two (2) evaluators;
 - (ii) For a Committee of five: Three (3) evaluators.
 - c. The Contracting Authority shall appoint Staff with Minimum level of P3/P4 Grade as Evaluation Committee Members. In case of non-availability of Staff at the prescribed minimum level, the highest-ranking competent Staff may be appointed to serve on the Committee.

- d. The functional level of the evaluators and their alternates shall be adequate to the complexity and value of the contract under scrutiny;
 - e. The Contracting Authority shall ensure appropriate representation of the User Department of the contract under scrutiny;
 - f. The Contracting Authority will appoint alternate evaluators with the same functional level for each procedure to prevent delays in case of unavailability;
 - g. Evaluation committee members must attend all meetings. Any substitution due to unavailability with the alternates must be recorded in the evaluation report;
8. Use and Role of Technical Experts
- a. In case the evaluation requires expertise not available among the evaluators, technical experts may be called to assist the committee by decision of the Contracting Authority responsible;
 - b. Technical experts provide the evaluators with a technical opinion about the bids/proposals under scrutiny, but they do not take part in the decision-making process.
 - c. Technical experts must be made aware of their obligation of impartiality and confidentiality and sign the correspondent declaration.
9. Presence of Observers during the Evaluation Process
- a. The Contracting Authority may authorize the presence of observers during the evaluation process. The observers shall have no voting powers.
 - b. Observers may be from other Departments/Directorates/Agencies internal to the Institution/Community, be designated by the donor who eventually is financing the contract or be members of Technical Assistance Teams supporting ECOWAS.
 - c. Observers do not take part in the evaluation decision and shall not intervene unless their opinion is requested by the Committee.
 - d. The presence of the Observers is not mandatory for each session of the Committee.
 - e. Observers are bound by the same obligations of impartiality and confidentiality as Evaluation Committee members and must sign the Declaration of Impartiality and Confidentiality.
10. All the members of the Evaluation Committee shall be collectively and individually accountable for any decision and recommendation made by the Evaluation Committee.
11. The Role of the Secretary
- a. The role of the Secretary shall be assumed by the Procurement Division.
 - b. The Secretary shall participate in the evaluation and in addition contribute to the evaluation process in relation with the procedures, principles and regulations contained in this Code and any other legal document applicable to the specific procedure.
 - c. The Secretary shall be responsible for carrying out all administrative tasks connected with the procedure, including but not limited to preparing/circulating the declarations of impartiality and confidentiality; keeping the reports of all meetings, attendance lists and relevant records and documents. At the end of the process, (s)he shall compile the evaluation report with annexed supporting documents in the required format.
12. Confidentiality of the Process

- a. For supplies and works tenders, apart from the public bid opening session in the procedures that foresee such session, the proceedings of the Evaluation Committee are conducted “*in camera*” and are confidential.
- b. For service tenders and calls for proposals, apart from the public bid opening session of the financial proposals, the proceedings of the evaluation committee, from the opening of bids/proposals to the conclusion of the work of the evaluation committee, are conducted “*in camera*” and are confidential.
- c. In order to keep the proceedings confidential, attendance at evaluation committee meetings is strictly limited to the committee members, technical experts and authorised observers.
- d. The bids and any other working documents including reports, drafts and notes of the Evaluation Committee shall be kept in a safe place during the pauses or interruptions of the evaluation. The secretary will ensure that this provision is strictly respected.
- e. The documents are confidential and shall not be shared to anyone for any reason whatsoever outside the Evaluation Committee.
- f. The exigency of confidentiality is extended even after the end of the evaluation process and the Procurement Division/Unit shall arrange for a proper secured archiving space for the period required by this code or the requirement of the donor in sight of ex-post audit, verifications or claims.
- g. Any attempt by a Bidder/Consultant to influence the process in any way will result in the immediate exclusion of its bids or proposal from further consideration. Without prejudice to the application of further sanctions, such occurrence shall be circumstantiated and recorded in the Evaluation Report.

13. Particular Situations

- a. In duly justified cases, for instance when the members/experts/observers are in another country, proceedings may be done using videoconference systems. The system to be used has to support end-to-end encryption and this option has to be enabled by the IT Department;
- b. Any electronic transfer of information and documents needed under this modality must also guarantee its confidentiality;
- c. Such occurrence shall be recorded in the Evaluation Report.

14. At the conclusion of its work, the Evaluation Committee shall make its recommendation through an evaluation report formulating:

- a. a recommendation of award identifying the winner and the maximum value of the contract to be signed; or
- b. a recommendation of cancellation of the procedure under the conditions of Article 87. (2).

15. In the case of paragraph 14 (b) above, the Evaluation Committee may suggest the suitable way forward in the Interest of the Community and in line with this Code subject to the approval of the Contracting Authority before any further action is taken.

Article 17. **The Review Entity**

1. The Review Entity is the Committee or Person endowed with the power of:
 - a. verifying that the recommendations of award/cancellation formulated by the Evaluation Entity are in line with the principles and dispositions of this Code;

- b. clearing the conclusions of the Evaluation Entity and follow up with the completion of the procedure;
 - c. not clearing such conclusions if found in breach of the rules set up in this Code;
 - d. asking for revisions/amendments motivating the decision in line with the rules;
 - e. asking for complement of information and recur to internal/external expertise (Legal, Financial or Technical), when deemed necessary to protect the financial interest of the Community before issuing the clearance.
2. For contracts above the thresholds as indicated in Annex 1 - Schedules 1 – 8, the Review Entity shall take the form of Review Committee as described in Article 18 of this Code.
 3. The Review Entity (or any member of the Review Committee) shall not have been involved in the award process.
 4. For the purpose of maintaining a clear segregation of functions, in the same procedure the functions of Review Entity and Contracting Authority shall be different.
 5. The evaluation report shall be considered within fifteen (15) calendar days of its submission.

Article 18. The Review Committee

1. The Review Committee is appointed:
 - a. for the Commission by the President,
 - b. for Institutions, Field Agencies and Offices by the Head of Institution by delegation.
2. The President can also refer to the Review Committee any specific procedure.
3. In the case of the Commission, the contracting Authority (The President of the Commission) shall appoint the review committee which shall comprise of the following members:
 - i. The Head of Compliance at the ECOWAS Commission, Chairperson;
 - ii. The Director of Legal, Member;
 - iii. The Director of Strategic Planning, Monitoring & Evaluation, Member.
4. The President shall also appoint at least two (2) alternate members of the Review Committee to deal with absences of any of the two (2) members of the Review Committee. In case of the absence of the Chairperson of the Review Committee, the President of the Commission shall appoint a provisional Chairperson from the Office of the President. The alternate members of the Review Committee shall not be from departments/offices to which the original three (3) members belong, the user Department, the Department of Finance or the Department responsible for Procurement.
5. In the case of other Institutions, Agencies and Offices, the President or through delegation shall appoint the Review Committee along the same functional lines as in the case of the Commission.
6. The Review Committee shall only meet with a minimum number of three (3) including alternates where applicable but the Chairperson or his/her provisional replacement must be present.
7. The President or Head of Institution has the power at any time to revoke and/or substitute members if he/she deems it necessary in the interest of the Community.
8. The quorum for deliberations shall be a minimum of three (3) members.
9. All members of the Review Committee shall be free of conflict of interest as defined in Article 118 of this Code. The members and the observers shall sign a Declaration of Impartiality and Confidentiality using the standard template being used by the Evaluation Committees.

10. When a member becomes aware that he/she is in a situation which might generate a potential conflict of interest, he/she shall notify the Review Committee by giving details of the particulars that created the potential conflict of interest and recuse him/herself from further participating in the meetings or decisions in relation to that particular procurement process. Such circumstances shall be recorded in the report of meetings.
11. The Secretariat shall be the responsibility of the Director in charge of procurement for the Commission or any Officer with equivalent function for other Institutions, Agencies and offices. In case of absence, the Director shall be substituted by the Head of Procurement (P5) for the Commission or any other officer with equivalent function for other Institutions, Agencies and offices.
12. The Secretariat of the Review Committee has no voting rights and shall be responsible for distributing the documents to be reviewed, organizing logistics of the meetings, recording the deliberation and decision, securing the signatures of all members, and maintaining the records and archives
13. The responsibilities of the Review Committee shall be as follows:
 - (i) in general, to conduct reviews as spelt out below and come up with one of the following:
 - a) issue a “No Objection” if it is determined that a given procurement exercise complied with the applicable provisions of the Procurement Code, or
 - b) issue an “Objection” if it is determined that one or more applicable provisions of the Procurement Code were not followed.
 - (ii) in specific:
 - a) review the recommendations for award/cancellation formulated by the Evaluation Entity to determine if said recommendation followed the procurement process as spelt out in the approved Procurement Code;
 - b) review the recommendations of the Evaluation / Negotiation Committees, as reflected in the evaluation/ negotiation report, to determine if it followed the Procurement Code with respect to the qualification, evaluation and award criteria indicated in the solicitation documents;
 - c) determine if the principles of public procurement, as stated in Article 2 are respected and applied in all procedures proposed in the Procurement Plan;
 - d) determine if the appropriate procurement method was used for the procurement of services, goods and works to obtain the best Value for Money for the Community;
 - e) determine if addenda to existing contracts are appropriate, justifiable and in the interest of the Community, and in compliance with the provision of Article 105 of this Code;
 - f) determine if the requests for using direct contracting for contracts above the thresholds are justifiable pursuant to Article 52 of his Code for Goods, Works and Service contracts or Article 64 for intellectual services.
 - g) determine if any derogation from using the standard solicitation documents and procurement methods is necessary and in the interest of the Community;
14. The Review Committee may endorse or object to the recommendation of an Evaluation Committee. Any rejection or objection of a solicitation documents or evaluation / negotiation reports shall be duly substantiated with reference to the relevant provision of this code.

15. Whenever a disagreement arises between the Review Committee and the Evaluation Committee, the matter shall be referred to the President or Head of Institution, Head of Agency or Head of Bureau for final decision. The Commissioner responsible for Procurement at the Commission and/or Director Responsible for Procurement at the Institutions or Agencies or Bureau shall escalate the matter to the President or the Head of Institution or Head of Agency or Head of Bureau.
16. Reviews shall be done in a period not exceeding fifteen (15) calendar days from the day of receipt of the Evaluation Committee report.

Article 19. Confidentiality and Communication

1. To ensure equal opportunity to all bidders, the entire process of contracting shall be conducted with the highest level of confidentiality.
2. Without prejudice to the principle of transparency and other obligations, in particular those relating to the publication of the contract award notice to unsuccessful bidders and consultants, the Contracting Authority shall not disclose information provided by bidders, and consultants in their bids/proposals marked as confidential. This may include proprietary information, trade secrets and commercial or financially sensitive information.
3. Communications between the Contracting Authority and bidders, and consultants during the different stages of the procurement process shall be in writing with proof of receipt.
4. The methods of communication and the level of information that can be disclosed at the different stages of the procedures is better described further in this Code and in the Procurement Manual.
5. The functionaries, internal technical staff or external technical assistance (if any) involved in the process of preparation of bidding documents, including technical specifications and terms of reference and call for proposals including guidelines and financial data, shall be made aware of their obligation of maintaining confidentiality and objectivity and sign an appropriate declaration to be filed with the bid dossier.
6. Written records of the entire procurement procedure must be kept confidential by the contracting authority and the documents filed in accordance with the policy adopted by the institution on physical and digital archiving. Tenders or proposals must not leave the room/building in which the committee meetings take place before the conclusion of the work of the evaluation committee. They must be kept in a safe place when not in use.
7. The identity of the evaluators, technical sub-committees (if any) and external evaluators (if any) shall be kept confidential. All participants in the evaluation process must be made aware of their obligations of confidentiality and impartiality and sign an appropriate declaration that will be annexed to the evaluation report.

Article 20. Quality Assurance and Control in the Procurement Process

1. Post-Auditing on the procurement processes and the internal controls related thereto shall be conducted by the Office of the Auditor-General in accordance with the provisions of the Procurement Code, and the Financial Regulations.
2. Procurement audits shall be performed by external auditors at least every three (3) years. The Audits shall cover all procurement activities undertaken during the period under review.

Article 21. Record of Proceedings of Entities

1. The Public Contracting Officer shall maintain records of public contracting proceedings and documents 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.
2. The Public Contracting Officer shall provide for an appropriate filing system, both electronic and physical, ensuring proper and secured archiving spaces.
3. Documents shall be preserved for at least seven (7) years. The retention period starts at the beginning of the year following the conclusion of the respective procurement activities.

Article 22. Procurement Reporting

1. The Public Contracting Officer shall prepare quarterly and annual procurement reports for Management.
2. These reports shall cover all procurement activities with sufficient details and in formats prescribed in the Procurement Manual.
3. The Public Contracting Officer in the Commission shall consolidate all annual procurement reports from each Institution/Agency by end of February of the following year.

Article 23. Procurement Manual

The details of the procedures governing procurement activities as set forth in this Code and the Standard Templates and Documents to be used shall be set forth in the Procurement Manual.

Chapter III Complaints

Article 24. Complaints Resolution Mechanism

1. The purpose of the Complaint Resolution Mechanism is to conduct inquiries, investigate complaints and allegations of violations of this Code with a view to settling the issues raised during the procurement process before the award of contract.
2. Additional procedures on the Complaints Resolution Mechanism, are spelt out in the Procurement Manual.

Article 25. Complaints Procedure

1. The ECOWAS Commission's response on procurement-related complaints shall be by the Director of Administration and General Services (DAGS), and for other Institutions, Agencies and Offices, the response shall be by any Officer with the equivalent function.
2. An unsuccessful bidder that wishes to make a complaint on a Contract award do so to the Director of Administration and General Services in writing to explain the basis of the complaint within fifteen (15) calendar days (i.e. the "Notice Period") of the issuance of the solicitation, addendum, Notice of Award or other action related to the solicitation.
3. Protest notifications that are submitted after the 15-day Notice Period or without a basis for the protest are not entertained.
4. Upon receipt of a written protest from an unsuccessful bidder, the Director Administration and General Services or for other Institutions, Agencies and Offices, the response will be provided by any Officer with equivalent function shall:
 - (i) Provides the protestor with a written acknowledgement;

- (ii) Initiates a review of the protestor's allegations; and
 - (iii) Following the conclusion of the review, provides the protestor with formal written notification of the decision and the basis upon which it was made.
5. A decision will be final and conclusive unless, within fifteen (15) calendar days from the date of receipt of the decision, the protestor files a written appeal with the Contracting Authority. The determination by the Contracting Authority shall be final and conclusive.

Chapter IV - Disputes Resolution and Sanctions

Article 26. Contract Disputes

1. The parties shall make every effort to amicably settle any dispute which may arise between them.
2. Upon failure of the parties to reach amicable settlement, a party may request settlement through Alternative Dispute Resolution in line with the applicable provisions in the contract.
3. Upon failure of Alternative Dispute Resolution, a party may request settlement through arbitration in line with the applicable provisions in the contract.

Article 27. Sanctions Committee

1. There is hereby established a Sanctions Committee with the power to pronounce sanctions, against any natural person or legal entity involved in the procurement process, guilty of violation of any provisions of this Code or its Manual of Procedure. ECOWAS staff involved in this procurement or contracting process shall be sanctioned in accordance with the ECOWAS Staff Regulation.
2. The Sanctions Committee composed of three (3) or five (5) members shall make decisions by consensus.
3. The Chairperson and Members of the Committee shall be appointed by the President.
4. All members of the Sanctions Committee shall be free of conflict of interest as defined in Article 118 of this Code without prejudice to the sanctions spelt out in the code of Ethics.
5. The Sanctions Committee shall be supported by the Director in charge of Procurement in the Commission or in case of absence of the Director by the Head of Procurement Division. The Secretariat is in charge of distributing the documents to be reviewed, organizing logistics of the meetings, recording the deliberations and decisions, securing the signatures of all members on the Committee, and maintaining the records and archives.
6. After deliberations, the Sanctions Committee shall pronounce sanctions and transmit same to the Commissioner of General Administration and Conference who shall notify the concerned party of the sanctions. The President of the Commission and the Heads of the Institutions are informed accordingly.
7. The sanctioned party has ninety (90) calendar days to appeal to the President of the Commission. At his/her own discretion, the President may establish an ad hoc committee to provide clarifications and justifications to support his/her decision.

Article 28. Referral to the Competent Authorities

Where, based on the decisions of the Sanctions Committee, there is prima facie evidence of a criminal offence on the part of any person, natural or legal, the President shall refer the matter to the Competent Authorities of the host Member State

Part II: Procurement Proceedings

Chapter V- General Provisions

Article 29. Language and Currency

1. Any documents written, published and provided to bidders/consultants or produced by them shall be prepared in, at least, one of the working languages of the Community.
2. Invitations for bids/request for expression of interest shall be:
 - a. for local competitive bidding in one working language of the Community;
 - b. for regional and international competitive bidding in three working languages of the Community;
3. Bidding documents/request for proposals shall be:
 - a. for local competitive bidding in one working language of the Community;
 - b. for regional and international competitive bidding in at least two working languages of the Community;
4. Responding bids/proposals shall be in one of the three working languages of the Community.
5. Contracts shall be signed in the language of the bid/proposal.
6. The bidding documents/ request for proposals shall indicate that a bidder/consultant may quote the price of his/her bid/proposal in the currency of any Member State of the Community and/or in any convertible currency. A bidder/consultant wishing to submit a bid/proposal denominated in several currencies, including convertible currencies, may do so provided the number does not exceed three.
7. For the purpose of the evaluation, bids/proposals shall be compared using the ECOWAS official exchange rate.

Article 30. Advertisements

1. The modalities for advertising of public contracts are described in the Annex 2 of this Code.
2. The ECOWAS website is intended to be the principal interface between the Community and the Public and therefore shall be constantly updated. Publication on the ECOWAS Institutions websites may be supplemented by regional or international publications.
3. Annual procurement plans, once validated, shall be published at the beginning of every year and within twenty-one (21) calendar days after plans are updated.
4. As a disclaimer, it shall be mentioned on the website that publishing the annual procurement plan does not bind the Contracting Authority to finance the contracts proposed and that modifications may intervene during the year.
5. General Procurement Notices (GPN) are published in the newspapers of Member States at the beginning of every year by the Contracting Authority based on the approved Procurement Plans.
6. Specific Procurement Notices (SPN): *Open call for tender or request for expression of interest* are published subject to the method of procurement and associated threshold. 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.
7. *Notifications for Contract Awards* shall comprise the outcome of the procedure for the award of contracts containing the identification references mentioned in the contract notice, the contractor

selected, the value of the contract and the Legal Basis. The Contracting Authority may consider disclosing qualitative grounds for award.

8. All disputes and complaints irrespective of the value shall be published when lodged. The publication shall indicate the time required to reach a decision in accordance with the Procurement Manual.
9. All decisions of the Sanctions Committee shall be published within one month after reaching the decision.

Article 31. Technical and Financial Qualifications

1. In order to participate in contracting proceedings, each bidder shall demonstrate 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 execute a contract;
 - ii. sound corporate and financial standing; iii. equipment and other relevant infrastructure; iv. personnel to execute the 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 and social security contributions;
 - d. not have a director or any senior management officer who has been convicted in any country for any criminal offence relating to fraud and corruption and other 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. Evidence of such qualifications shall be verified by the Evaluation Entity requesting the submission of supporting documents with the bid.
3. 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 Procurement Code.
4. Not have been excluded from the contracting process according to the provisions of Article 10.

Article 32. Certificate of Classification

The procuring entity may request any bidder 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 33. Registration of Enterprises

The modalities for establishing this register shall be set out in the Procurement Manual.

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34. **Subcontracting**

The contractor or bidder may sub-contract parts of a public contract up to a maximum of 30% of the contract value upon the approval of the Contracting Authority. 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 shall 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.
3. If a subcontractor expects to be paid directly, the main contractor must also obtain the consent of the Contracting Authority on the conditions of payment of each subcontractor. The main contractor remains fully responsible for the execution of the contract.

Article 35. **Joint Ventures**

In Joint Ventures all partners are jointly and severally liable for the execution of the entire contract.

Chapter VI - Procurement Planning

Article 36. **Identification of Needs**

1. Identified Goods, Works and Services shall meet the needs of the Procuring Entity.
2. The needs assessment shall consider the nature and capacity of the targeted market. The Procuring Entity, through the Directorate in charge of Procurement, shall update its knowledge of the market diversity and capacity.
3. The procuring entity shall determine the components, the quantities and specifications of the Goods, Works or Services to be procured prior to initiating the contracting process.
4. The Technical Standards and specifications set out in the bidding documents shall comply with all the set criteria and shall not refer to trademarks, brand names or catalogue numbers except as specified in Article 52 or Article 64 of this Code as the case may be.
5. There shall be no request for proposals or bid invitation, nor award of contract without confirmation by the procuring entity that funds are available in an amount equal to the value of the contract.

Article 37. **Procurement Plan**

1. The purpose of the annual procurement plan is to:
 - a. constitute a strategic procurement activity planning tool
 - b. ensure the availability of the budget envelope for each procurement action, following its approval;
 - c. provide information to the potential bidders about upcoming opportunities.
 - d. constitute a procurement monitoring tool for the Contracting Authority;

- e. constitute a time management tool for procurement activities to be carried out in a timely manner.
2. 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.
3. This plan shall be submitted to the Contracting Authority for review and approval by 31st January of each year and may be reviewed quarterly or as required by emergency situations as described under Article 76 of this Code
4. The procurement plan and any revision, once approved, shall be published on the ECOWAS website and on the website of the relevant Institutions.
5. No contracting requirements for a given quantity of Goods, Works or Services shall be split with the intention of avoiding a particular contracting procedure stated in this Code. Any member of the procuring entity found to be in breach of this provision shall be sanctioned according to ECOWAS Financial Regulations and ECOWAS Staff Regulations.
6. No procurement activity shall be conducted if it is not programmed under the approved Procurement Plan. Nonetheless in exceptional circumstances such procurement must be submitted to the Contracting Authority for validation and approval.

Article 38. Division into Lots

1. Where the division into Lots 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 by the Procuring Entity.
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 shall be submitted and the basis for award. The procuring entity shall award the contract to the best value of combination of bids. The bidders are required to present separate bids for each lot.

Chapter VII - Open Call for tender for goods, works and service contracts

Article 39. Process of procurement of goods, works and service contracts

The process starts with the invitation for bids or advertisement of the procurement opportunity after which bidders can purchase the bidding document and prepare bids. The submission of bids is immediately followed by the public opening of bids and bid evaluation. Once evaluation is concluded

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the bidders are notified of the bid award. After a standstill period of fifteen (15) calendar days the Contracting Authority and the successful bidder sign the contract after which contract execution starts.

40. **General provisions for Goods, Works and Service contracts**

The bid selection process comprises the selection of the most responsive bid to achieve Value for Money, 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 with the most responsive bid to achieve Value for Money 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 responsive bid to achieve Value for Money.

Article 41. **Open Call for Tender without Prequalification**

1. Open call for Tender without prequalification shall be the default method of procurement.
2. Procurement procedures are open where all interested economic operators may submit a bid.
3. Invitations to bid shall be published according to the modalities defined in Article 30 of this Code.
4. Bids shall be subject to Local, Regional or International publication, according to thresholds specified in the Schedule of this Code or such additional criteria as the nature of the contract, the estimated cost, or its complexity may permit.
5. Each invitation to bid shall set out the following information and requirements:
 - a. ECOWAS unique bid reference;
 - b. Country(ies) in which the contract(s) will be executed;
 - c. the object of the contract, the nature of the product or service to be procured, generic specifications, quantity, delivery period
 - d. the source of financing;
 - e. the bid language(s);
 - f. 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;
 - g. the place where the bidding documents may be inspected and the procedure for obtaining these documents;
 - h. the cost of the bidding document, if applicable;
 - i. the value and form of the bid security, if applicable;
 - j. the qualification criteria;
 - k. the name of the Procuring Entity;
 - l. the place, date and time limit for the receipt of bids;
 - m. the required bid validity;
 - n. the type and amount of required guarantee, if applicable;

- o. where applicable, any other conditions as the procuring entity may consider necessary.
6. Invitation to bid with simplified advertising, when required, shall be defined in the Procurement Manual.

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42. **Preparation of Bids**

The time allowed for the preparation of bids shall be four (4) weeks for Local Bids and a minimum of six (6) weeks for Regional and International Bids in order to accord prospective bidders sufficient time to prepare and to submit their bids in line with international best practices.

2. For complex procurement, the Public Contracting Officer may arrange a pre-Bid/pre-Proposal conference in which potential Bidders may meet with the Procuring Entity's representatives to seek clarifications. The Procuring Entity shall also provide reasonable access to project sites for prospective Bidders.
3. Communication with bidders seeking clarifications shall be in line with Article 19 above on Confidentiality and Communication.

Article 43. **Submission of Bids**

1. All bids in response to an invitation to open competitive bidding shall:
 - a. be submitted in writing and/or in any other format prescribed in the tender documents;
 - b. contain all the information related to the bidder;
 - c. contain the administrative documents required;
 - d. contain the bid security, if required;
 - e. contain the technical and financial offers signed by an official authorized to bind the bidder to a contract and;
 - f. be placed in a sealed envelope.
2. Bids may be sent by registered mail services or by hand and shall remain sealed until the bid opening.
3. All submitted bids shall be deposited in a secure tamper-proof bid-box.
4. All bids shall be in the language pursuant to the dispositions in Article 29 of this Code.
5. The Procuring Entity shall issue a receipt showing the place, date and time the bid was delivered. Upon receipt, the envelopes shall be recorded by order of arrival in a special register.
6. 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.
7. No communication other than as provided for in this Code, the Procurement Manual or bidding document shall take place between Procuring Entities and any bidder after the publication of a bid solicitation.

Article 44. **Extension of the Deadline for Bid Submission**

1. In the event that several bid clarifications are requested from one or more than one bidder, or clarifications that substantially change the bidding document, the Contracting Authority may decide to extend the bid submission period by no longer than fifteen (15) calendar days.
2. The decision for extension of bid submission deadline shall be communicated to all bidders that purchased the bidding document, were shortlisted or were prequalified. The decision shall be published not less than fifteen (15) calendar days ahead of the bid closing date and through the same means as the publication of the Specific Procurement Notice.

3. Receiving less than three (3) bids is no reason for extension of bid submission. In this regard, the bids received shall be opened on the bid opening date and examined as per this Code.

45. **Public Opening of Bids**

Bid opening shall be carried out by the Bid Opening Committee and 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 bid opening report shall be prepared in the format contained in the Procurement Manual.
4. 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 or any other information relevant to the type of selection. This information is recorded in the report of the bid opening session and subsequently issued by the Public Contracting Officer to all bidders.

Article 46. **Pre-qualification Proceedings**

1. The procuring entity may engage in pre-qualification proceedings with a view to identifying, prior to the submission of bids, bidders that are qualified. The use of pre-qualification proceedings is appropriate 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 bidders 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. bidder's experience and past performance in similar contracts; b. manpower, installations and equipment to be used to perform the contract; c. financial capability; and d. bidders who are not subject to legal prosecution or declared insolvent due to bankruptcy.

Article 47. **Prequalification Notice of Invitation**

The prequalification notice shall be published in the same manner as the invitation to bid referred to in Article 30 this Code.

Article 48. **Evaluation of Prequalification**

1. The Evaluation Committee shall review all the applications and retain all those satisfying the prequalification conditions on pass/fail criteria, and there shall be no ranking. In arriving at a decision, the Evaluation Committee 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 prequalify within twenty-eight (28) calendar days after the closing date of the submission, of whether or not (s)he has been prequalified and shall make available to any of them, upon request, the names of all suppliers or contractors that have been so prequalified.
3. Only suppliers, contractors or service providers that have been pre-qualified are entitled to participate further in the contracting proceedings.

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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 seven (7) calendar days after receiving the request.
5. The Procuring Entity may require a supplier, contractor or service provider that has been prequalified and selected for award of contract, to demonstrate again its qualifications in accordance with the same criteria used to prequalify it before concluding a contract.

Article 49. **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 Article 46 of this Code.
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 as well as on contractual terms and conditions of supply and/or the qualification of the supplier or contractor. The evaluation of the technical bids may require the contracting officer to revise the cost estimate of the project.
4. All communications between the Procuring Entity and bidders shall be transparent.
5. In the second stage of the two-stage bidding, bidders meeting the qualification criteria and whose bids were found technically acceptable at the first stage, are invited to present final technical and financial proposals on the basis of the bidding documents revised by the Public Contracting Officer.
6. A bidder not wishing to present a final tender may withdraw from the tendering process without forfeiting any tender security that may have been provided.

Chapter VIII - Other Procurement Methods for goods, works and service contracts

Article 50. **Restricted Tendering**

1. All Restricted Tendering shall be approved by the Contracting Authority.
2. Restricted tendering is a procedure open only to bidders who have been directly invited by the Public Contracting Officer to submit a bid.
3. Restricted bidding may be conducted when the goods, works or services in question are available only from a limited number of providers.
4. The Public Contracting Officer shall seek bids from a list of potential suppliers broad enough to ensure competition and such list shall include all suppliers when there is only a limited number of potential suppliers.

Article 51. **Request for Quotations (RFQ)**

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 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 bidder 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. In this case, provisions of Article 87 of this Code shall apply.
5. A Procuring Entity shall not divide its procurement into separate contracts for the purpose of invoking paragraph (1) of this Article.
6. Each bidder shall submit only one price quotation which cannot be changed.

Article 52. **Direct Contracting**

1. Procurement may be made by Direct Contracting for Goods, Works and Services in the following cases only:
 - a. if the additional procurements are for standardized equipment or spare parts compatible with the equipment already in use. In order to justify this procedure,
 - (i) the initial equipment must function properly;
 - (ii) the quantity of the new supplies shall be less than the one already procured and at a reasonable price;
 - (iii) no advantage could be obtained by going for open competition.
 - b. where the required equipment has exclusive rights and are supplied by a single supplier as sole source;
 - c. 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;
 - d. in exceptional and newly emerging circumstances that could not be anticipated or planned, for example, in response to natural disasters, emergency as defined under Article 76 or for special security reasons.
2. When the procuring entity engages in direct contracting, it shall prepare a justification and description of its needs and any special requirements as to quality, quantity, terms and time of delivery for approval by the Contracting Authority.
3. 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 shall be submitted.
4. Direct contracting may only be used when suppliers or contractors accept to be subjected to price verification during the execution of the contract.

Chapter IX - Provisions Applying to Intellectual Services

Article 53. Process of procurement of Intellectual Services

The process starts with the Request for Expression of Interest (REoI) or advertisement of the procurement opportunity after which consultants can express interest in carrying out the services. After evaluation, the Procuring Entity will send a Request for Proposal to shortlisted consulting firms. Upon submission of the Proposals, the Procuring Entity will open the Technical Proposals and undertake the technical evaluation first. After completion, the Contracting Authority will invite the consulting firms who have passed the minimum technical score to participate in a public opening of the Financial Proposals. Once the full evaluation is completed, the best evaluated consulting firm is invited for contract negotiations. Successful negotiations are followed by a standstill period of fifteen (15) calendar days, after which the Contracting Authority and the successful bidder sign the contract before contract execution.

Article 54. Shortlist of Firms

1. The Evaluation Committee shall shortlist firms to provide Intellectual Services for all selection methods except Consultant's Qualification (CQ) and Direct Selection.
2. In using the expression of interest procedure, a shortlist of at least six (6) and not more than eight (8) best qualified firms, based on their capacity to perform the required service, shall be established in order to ensure adequate competition.
3. The period allowed for expression of interest shall not exceed twenty-one (21) calendar days and shall be in line with the provisions of Annex II of this Code.
4. The shortlist shall be based on the Expression of Interest documents submitted or any other source the Contracting Authority may approve.

Article 55. Request for Proposals

1. The Public Contracting Officer shall request proposals for services from the shortlisted firms in accordance with the approved selection method.
2. The Public Contracting Officer shall use criteria established and endorsed by the Contracting 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;
 - 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.

2. The

Article 56. Selection Process

1. The opening of the technical proposals may be public and shall take place immediately after the deadline for proposals submission.

opening of the financial proposals shall be public and only qualified firms whose proposals passed the technical evaluation are invited to be present if they chose to do so.

3. The contract shall be negotiated with the selected firm. Negotiations shall not be simultaneously carried on with several firms. Negotiations shall include, among others; discussions of the organization and timing of intervention of the firm, procuring entity's inputs, but shall not alter substantially the original terms of reference or the terms of the contract. Where price is a selection criterion the unit price proposed by the consultant shall not be negotiated.

4. When negotiations are concluded, the other qualified firms are informed of the rejection of their proposal within five (5) calendar days.

Chapter X - Quality and Cost-based Selection

Article 57. Quality and Cost-based Selection (QCBS)

1. Quality and Cost-based Selection (QCBS) is the default method for Intellectual Services. It is a competitive process among shortlisted consulting firms under which the selection of the successful firm takes into account the quality of the proposal and the cost of the services. For this method:

- i. the Request for Proposals document shall specify the minimum qualifying score for the technical proposals.
- ii. the relative weight to be given to the quality and cost depends on the nature of the assignment.
- iii. among the responsive proposals, the proposal with the highest combined (quality and cost) score is considered the most advantageous proposal.

Chapter XI - Other Selection Methods for Intellectual Services

Article 58. Fixed Budget-based Selection (FBS):

1. Fixed Budget Selection (FBS) is a competitive process among Shortlisted consulting firms under which the selection of the successful firm takes into account the quality of the proposal and the cost of the service. For this method:

- i. In the request for proposals document, the cost of services is specified as a fixed budget that shall not be exceeded.
- ii. The request for proposals document specifies the budget and the minimum qualifying score for the technical proposals.
- iii. The proposal with the highest technical score that is within the fixed budget requirements is considered the most advantageous proposal.

Article 59. Least Cost-based Selection (LCS):

Least Cost Selection (LCS) is a competitive process among Shortlisted consulting firms under which the selection of the successful firm takes into account the quality of the Proposal and the cost of the services. LCS is generally appropriate for assignments of a standard or routine nature (such as

engineering designs of non-complex Works), for which well-established practices and standards exist. For this method:

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- i) request for proposals document specifies the minimum qualifying score for the technical proposals.
- ii) Among the proposals that score higher than the minimum technical score, the lowest evaluated cost is considered the most advantageous proposal.

Article 60. Quality-based Selection (QBS):

1. Under Quality Cost Based Selection (QBS), the Proposal quality is evaluated without using cost as an evaluation criterion. There are two scenarios:
 - a. If the Request for Proposals document requires both technical and financial Proposals, the financial proposal of only the highest technically qualified firm is opened and evaluated to determine the most advantageous proposal.
 - b. However, if the Request for Proposals document requires only technical Proposals, the firm with the highest-ranked technical Proposal is invited to submit its financial proposal for negotiation.
2. QBS is appropriate for the following types of assignments:
 - a. complex or highly specialized assignments for which it is difficult to define precise Terms of reference and/or the input required from the firm and for which the Contracting Authority expects the firm to demonstrate innovation in its proposals;
 - b. assignments that have a high downstream impact; and
 - c. assignments that can be carried out in substantially different ways, so that proposals will not be comparable

Article 61. Consultant's Qualification-based Selection (CQ)

1. Consultant's Qualification-based Selection (CQ) is appropriate for small assignments or Emergency Situations in which preparing and evaluating competitive proposals is not justified and can be used only for contracts up to 300,000 UA.
2. The Procuring Entity shall request expressions of interest (REoI), by providing the Terms of Reference attached to the request. At least three qualified firms shall be requested to provide information about their relevant experience and qualifications.
3. From the firms that have submitted an EoI, the Procuring Entity selects the firm with the best qualifications and relevant experience and invites it to submit its technical and financial Proposals for negotiations.

Article 62. Special Arrangements

Framework Agreements, Competitive Dialogue and PPP arrangements may be used for the procurement of intellectual services.

Article 63. Selection of Individual Consultants

1. Individual Consultants may be contracted where:
 - (i) A team of experts is not required.

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(ii) No additional external support is required.

(iii) The experience and professional qualifications of the individual are the main requirement.

Procuring Entity shall prepare Terms of Reference for the required services prior to advertisement and/or request for proposals.

(i) Shortlisting of at least three consultants shall be based on qualification and experience.

(ii) The final selection may be supported by interviews.

(iii) The Contracting Authority may call upon external assessors to participate in the selection.

3. The Procuring Entity may decide to advertise the opportunity in line with Annex 2 of this Code.

(i) Advertisement shall be subject to local, regional or international publication, according to thresholds specified in the Schedule to this Code or

(ii) Such additional criteria as the nature of the contract, the estimated cost, or its complexity.

4. Framework Agreements, Competitive Dialogue and PPP arrangements may be used for the procurement of individual consultants.

Article 64. **Direct Selection**

1. Concerning intellectual services, the Procuring Entity may only use Direct Selection in the following cases:

(i) As part of an intervention following a disaster or for consultancy services immediately after an emergency or for special security reasons;

(ii) When a company is the only one with the requisite qualifications or experience needed for the particular assignment or sole source.

(iii) for tasks that represent a natural continuation of previous work carried out by the Consultant within the last twelve (12) months, where continuity in the technical approach, experience acquired, and continued professional liability of the same Consultant may make continuation with the initial Consultant preferable to a new competition, if performance has been satisfactory in the previous assignment(s) and the initial contract allows such extension;

2. Direct contracting may only be used when service providers accept to be subjected to price verification during the execution of the contract.

Chapter XII - Special Selection Arrangements

Article 65. **Program contracting**

Program contracting is an investment operation funded by the Community through special arrangements within the framework of a program. This is 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

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period of more than one year. It is executed in annual segments and the content is determined each year after the corresponding budget is voted.

Article 66. Program of International Imports

1. For a program of imports with large-value contracts specified in the procurement plan, an Invitation for Bids with simplified advertising and currency provisions may be used.
2. Invitation for Bids shall be advertised in at least one newspaper of national circulation in the country, or in the official gazette, if any, or on a widely used website or electronic portal with free national and international access, in addition to the ECOWAS website.
3. period allowed for submission of Bids may be reduced to thirty (30) Calendar Days from the date of publication of the Invitation for Bids.
4. Bidding and payment may be limited to one currency widely used in international trade.
5. When a private sector entity handles the procurement of imports, Commercial Practices specified in Article 70 of this Code may be applied.
6. Pre-shipment inspection and certification of imports is one of the risk mitigation measures, particularly for a large import program. The inspection and certification usually cover quality, quantity and reasonableness of price. Imports procured using the open selection methods may not be subject to price verification, but only verification of quality and quantity. However, imports procured using non-competitive methods y additionally be subjected to price verification. Physical inspection services may also be included in the pre-shipment inspections.

Article 67. Commodities

1. Procurement of commodities refers to procuring items including but not limited to commodities such as grains, animal feed, cooking oil, fertilizer or metals either from international or local markets.
2. The procurement of commodities often involves multiple awards for partial quantities to assure security of supply, and multiple purchases over a period of time to take advantage of favourable market conditions and to keep inventories low.
3. A framework arrangement may be established and a list of Bidders drawn up to whom periodic invitations to Bid are issued. For this process:
 - a. Bidders may be invited to quote prices linked to the market price at the time of, or prior to, the shipments and Bid validities shall be as short as possible.
 - b. A single currency, specified in the request for bids document, in which the commodity is usually priced in the market may be used for bidding and payment.
 - c. Standard contract conditions and forms consistent with market practices shall be used.

Article 68. Community Driven Development (CDD)

1. Community Driven Development (CDD) projects generally envisage a large number of smallvalue contracts for Goods, Non-consulting and/or Intellectual Services, and a large number of small Works scattered in remote areas.
2. Commonly used procurement procedures include
 - a. Request For Quotations;

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- b. local competitive bidding which entails inviting prospective Bidders for Goods and Works located in and around the local community;
 - c. direct contracting for small-value Goods, Works, and Non-consulting Services; and
 - d. the use of community labour and resources.
3. The proposed arrangements and the project activities to be carried out by community participation are outlined in the Contract Agreement and Procurement Plan.
4. Procurement arrangements, specifications, and contract packaging may be suitably adapted, when, in the interest of project sustainability, or to achieve certain specific social objectives of the project, it is desirable (in selected project components), to:

- a. call for the participation of local communities and/or nongovernmental organizations (NGOs) in civil Works and the delivery of Non-consulting Services;
- b. increase the use of local know-how, goods, or materials; or
- c. employ labour-intensive and other appropriate technologies.

Article 69. Force Account

1. Force Account, which refers to works such as construction and installation of equipment and Non-consulting Services carried out by a Procuring Entity, using its own personnel and equipment, may be the only practical method of procurement under specific circumstances. A Procuring Entity-owned construction unit that is not managerially, legally, or financially autonomous is considered a Force Account unit. The use of Force Account requires the same rigorous quality checks and inspection as for contracts awarded to third parties.
2. Force Account shall be justified and approved through the Procurement Plan, and may be used for instance under the following circumstances:
 - a. the quantities of construction and installation works that are involved cannot be defined in advance;
 - b. the construction and installation works are small and scattered or in remote locations, so that qualified construction firms are unlikely to bid at reasonable prices;
 - c. the construction and installation works are required to be carried out without disrupting ongoing operations;
 - d. the risks of unavoidable work interruption are better borne by the Procuring Entity than by a contractor;
 - e. where as a matter of the national law or official regulations in such areas as the national security, specialized Non-consulting Services such as aerial surveys and mapping can be carried out only by specialized branches of the Procuring Entity; or
 - f. urgent repairs are needed requiring prompt attention to prevent further damages or works need to be carried out in conflict-affected areas where private firms may not be interested.

Article 70. Commercial Practices

1. Commercial Practices refers to the use of well-established procurement arrangements used by the private sector, normally entities not subject to this Procurement Code, for the procurement of Goods, Works, or Non-consulting Services.
2. Commercial practices may also be used for a program of imports undertaken by private sector entities as specified in Article 66 of this Code.
3. ECOWAS Procurement Principles are the standard for determining the acceptability of Commercial Practices.
4. All Commercial Practices documentation and contracts shall be cleared by the Director of Legal Affairs prior to award and signature.

Article 71. Use of UN Agencies

1. Procuring Entities may select UN Agencies directly in situations where their expertise or rapid mobilization on the ground is critical, in particular, in circumstances of urgent need of assistance or capacity constraints.
2. The use of UN Agencies must be specified in the Procurement Plan and the justification provided shall highlight the specific need as well as mitigation of the risk of substitution of capacities and competencies lacking in the country or region.
3. When entering into a contract with a UN Agency, the standard form of agreement must be reviewed and cleared by the Director, Legal Affairs. In circumstances in which any ECOWAS Procuring Entity and a UN Agency have an established Framework Agreement, any other Procuring Entity may take advantage of the Framework Agreements when entering into a contract with the UN Agency.

Article 72. Competitive Dialogue

1. Competitive Dialogue is an interactive multistage selection arrangement that allows for dynamic engagement with Proposers. The Procuring Entity shall justify the use of Competitive Dialogue in the Annual Procurement Plan. It may only be used for complex or innovative procurement. Competitive Dialogue may be appropriate:
 - a. where a diversity of solutions to satisfy the requirements may be possible, and where the detailed technical and commercial arrangements required to support those solutions require discussion and development between the parties; and
 - b. due to the nature and complexity of the procurement, the Procuring Entity is not objectively able to adequately define the technical or performance specifications and scope to satisfy its requirements and/or fully specify the legal and/or financial arrangements of the procurement.
2. In Competitive Dialogue, the Procuring Entity enters into Dialogue with Initially Selected firms/joint ventures, with the aim of better identifying and defining the means best suited to satisfy the requirements before inviting the firms to submit their final Proposals.
3. Competitive Dialogue can be used for the procurement of Goods, Works, Intellectual and Nonintellectual Services.

Article 73. Competitive Dialogue Safeguards

1. To ensure transparency and accountability the Contracting Authority shall identify an independent Probity Assurance Provider (Probity Auditor). The Probity Auditor shall be appointed at the beginning of the procurement and shall audit the Competitive Dialogue process until the award of contract.
2. The Probity Auditor shall provide independent scrutiny of the procurement process, the procurement decision making process, the dialogue phase with each Proposer, and in particular the conduct of any negotiations that take place.

3. Following the Contracting Authority's decision to award the contract, and before the award of contract is transmitted, the Probity Auditor shall provide a probity report. The report shall be provided to the Contracting Authority.

Article 74. Public Private Partnership (PPP) Arrangements

1. A PPP is a long-term Goods, Works, Non-consulting Services, and/or Intellectual Services contract between a private party and ECOWAS, in which risk and management responsibilities are shared, and remuneration is linked to performance.
2. The private partner procures the Goods, Works, Non-consulting Services, and/or Intellectual Services required from eligible sources, using its own procedures.

Article 75. Public Private Partnership phases

1. The Contracting Authority undertakes the following phases:
 - a. PPP readiness and assessment;
 - b. PPP structuring;
 - c. Selection of the private partner(s);
2. The PPP readiness and assessment consists of the following economic and financial analysis to confirm:
 - a. whether the PPP intervention is adequately justified, on the basis of a sound and quantified economic analysis seeking to achieve Best Value for Money irrespective of implementation as a PPP or through other public-sector procurement;
 - b. whether the project's revenue requirements are within the economic capacity of users and cover to pay the infrastructure service;
 - c. that the project risks were identified and assessed and that mitigation measures were activated, and that the residual risks will not jeopardize sustainability;
 - d. that the chosen PPP scheme resulted from the consideration of alternative PPP schemes and other procurement options; and
 - e. the commercial viability, that is, whether the project is likely to be able to attract good-quality sponsors and lenders by providing robust and reasonable financial returns.
3. The PPP structuring consists at least of an architecture of outputs, risk allocation and performance-based payment mechanisms, thus:
 - a. Outputs need to be Specific, Measurable, Achievable, Realistic, and Time bound (SMART), they need to be monitored, including roles for the Procuring Entity's contract management team, the private partner, external monitors, regulators and users.
 - b. The risk allocation shall be embedded in the contractual provisions. A risk matrix shall exhaustively list project risks and their appropriate allocation to the contractual parties or to third parties as well as risk mitigation measures and anticipated results.
 - c. The contract design shall contain a payment and performance mechanism that sets out the principle of performance-based payments upon meeting the provision of contractual assets and services at the agreed service level and service schedule.
4. The selection of the private partner follows competitive modalities. Alternatively, direct contracting may be considered or another selection method laid under this Code.

Article 76. **Deployment under Emergency Situations**

1. Where the ECOWAS Community faces a disaster and/or where lives of citizens and/or Community assets are in danger, such situations would require ECOWAS to immediately perform rapid deployment of life supporting goods, services and works to ensure timely acquisition and delivery of requirements.
2. In case of emergency situations, the President of the ECOWAS Commission may delegate exceptional authority to procure to a Contracting Authority of his/her choice.
3. This Contracting Authority is authorized to enter into contracts pursuant to **Article 32** of the Financial Regulations of ECOWAS Institutions for amounts not exceeding an initial value of UA2million, without prior review by the President of ECOWAS Commission.
4. Contracting methods that may be used are emergency acquisition procedures like Direct Contracting, Framework Contracts already in place and 'Piggy Backing' from other similar internationally recognized institutions.
5. This Delegation of Authority for Emergency Situations is activated when the President of ECOWAS Commission entrusts the Contracting Authority in writing to respond to Emergency Situations. This exceptional Delegation of authority to procure shall be valid for an initial period of three (3) months from the date of activation and may be extended for additional periods.
6. The delegated Contracting Authority is required to submit to the President of ECOWAS Commission a report on all acquisitions effected under this exceptional authority, at the close of business of each week or each day if required. All contracts exceeding the UA2million threshold indicated in paragraph 3 above must be approved by the President of the Commission and presented to the Office of the Auditor-General of ECOWAS Institutions on an ex post basis for review.
7. This exceptional authority to procure may not be sub-delegated.
8. Humanitarian aid operations shall be conducted in compliance with the principles of international Humanitarian law and with the principles of impartiality, neutrality and non-discrimination.
9. Since disasters are often of a cross-border nature, they may require multilateral and coordinated responses. ECOWAS may enter into agreements with qualified international organizations or governments of ECOWAS member states to better face the emergency.

Chapter XIII - Electronic Procurement

Article 77. **Electronic Procurement**

1. Communications, which are required by this Code, may be conducted by electronic means according to the conditions set forth below.
2. This extends to the entire supply chain, including advertisements, communications and document exchanges among bidders/consultants and other stakeholders of ECOWAS.
3. Access to the system shall be in accordance with the delegation of authority matrix published on the ECOWAS portal.

4. Data and documents sent or notified through such a system:
 - a. shall be considered as equivalent to a paper document,
 - b. shall be admissible as evidence in legal proceedings,
 - c. shall be deemed original and
 - d. shall enjoy legal presumption of its authenticity and integrity.
5. The electronic signatures shall have the equivalent legal effect of handwritten signatures. Signature technologies acceptable to ECOWAS are specified and regularly updated in the procurement manual.
6. The Procurement Manual provides details and remedies under technology failure causing delays and/or errors in electronic procurement submissions.
7. The extent of use of electronic exchange systems and conditions shall be specified in the notices for bids, calls for proposals, request of quotations or any other public procurement procedure.

Chapter XIV - Bidding Documents and Bid Security

Article 78. 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 79. Availability of Bidding Documents

The Public Contracting Officer shall provide bidding documents, including a format of the contract, immediately after the 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.

Article 80. Bid Security

1. The Public Contracting Officer may include in the bidding documents a condition that bids must be accompanied by a bid security issued by a reputable bank or a non-bank financial institution, located in an ECOWAS Member State. This Bid Security/Bond is:
 - a. mandatory for procurement above 50,000 UA;
 - b. not required for the contracting of intellectual services.
2. Bidding documents shall specify the amount of the bid security:
 - a. The amount of such security shall be calculated on the basis of a percentage between one (1) and two (2) per cent of the contract cost estimate and expressed in absolute figures;
 - b. The bid security shall remain valid for 30 days following the expiry of the bid validity.
3. Bid security may be forfeited if a bidder withdraws his/her bid within the validity period, or, in the case of a successful bidder, if the bidder rejects the correction of errors in his/her bid, fails to sign the contract or to furnish performance security, if so required.

Article 81. 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 events occurs earliest:

- a. The expiry of the bid security;
- b. The entry into force of a public contract and the provision of a performance security/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 XV - Evaluation process

Article 82. General Provisions

1. The Evaluation Entity shall evaluate according to the provisions of this Code and the Procurement Manual within a maximum of fifteen (15) calendar days starting from the date of the opening of the bids.
2. The Evaluation Entity shall ensure compliance with the provisions of this Code. The deliberations shall be treated as absolutely confidential.
3. The Evaluation Entity may ask bidders in writing for clarifications on their bids/proposals in order to assist in the evaluation of bids/proposals. Clarifications from bidders/consultants shall be in line with Article 19 of this Code on Confidentiality and Communication. Clarifications from bidders/consultants cannot materially change the content of the bid/proposal.
4. No change in the substance of the bid/proposal, including changes in price, and changes aimed at making an unresponsive bid/proposal responsive shall be sought, offered or permitted.

Article 83. Conformity to Requirements

1. Subject to the provisions of Article 15 , the Evaluation Entity shall retain any bid/proposal that conforms to the requirements set forth in the bidding documents/Request for Proposal.
2. For goods, works and services, bidders may also submit an alternative bid only where such option has been expressly stated in the bidding document.

Article 84. Evaluation Criteria and Report

1. The Evaluation Entity shall evaluate and compare substantially responsive bids in order to achieve best Value for Money, in accordance with the provisions of this Code.
2. A substantially responsive bid is one without major deviations from the criteria.
3. The evaluation criteria for goods, works and services shall be objective and quantifiable, and shall be expressed in monetary terms.
4. In the case of intellectual services, evaluation criteria shall be given relative weights specified in the Request for Proposals.

5. The Evaluation Entity shall prepare a detailed report on the evaluation and comparison of bids in conformity with the formats available in the Procurement Manual, including at least:
 - a. the names of the bidders/consultants,
 - b. the specific reasons on which its recommendations for the award of each contract are based,
 - c. the contract amount, the implementation period and specific remarks.
6. All bidders/consultants shall be notified of the outcome of the evaluation process in writing and by publication on the ECOWAS Institution's Websites following the clearance of the Review Entity/Committee.

Article 85. Margin of Preference

1. Citizens of ECOWAS and legal persons incorporated in ECOWAS Member States may enjoy a preference in public contracting proceedings.
 - a. 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.
 - b. No preference shall 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 all the following applicable criteria:
 - a. for natural persons, if they are ECOWAS Member State citizens and Tax Resident in one of these Member 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 authorized capital of the company is owned by ECOWAS Member State National(s);
 - 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) if they do not sub-contract more than twenty (20) per cent of the contract, excluding advances, to non-ECOWAS Member State suppliers, contractors or service providers;
 - v) if 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 non-ECOWAS Member State Nationals or to entities which would not be eligible under this Article.
 - d. in case of a partnership or joint venture agreements with a non-ECOWAS Member State partner, the preference shall be granted either:

i) 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, ii) if the aggregate domestic content is in compliance with paragraphs b and c of this Article.

3. To benefit from preferences, potential contractors/service providers/bidders/consultants, must always provide substantial documental proof when introducing their bid/proposal.
4. Preferences cannot be granted based on a simple declaration on honor.

Article 86. Abnormally low bids/proposals

1. If, for a given contract, bids/proposals appear to be abnormally low, the Procuring Entity shall, before rejecting such bids/proposals on that ground alone, request in writing details of the constituent elements of the bids/proposals which it considers relevant and shall verify those constituent elements, taking into account the written explanations received.
2. The Procuring Entity may, in particular, take into consideration explanations relating to:
 - a. the economics of the manufacturing process, of the provision of services or of the construction method;
 - b. the technical solutions chosen or the exceptionally favorable conditions available to the bidder/consultant;
 - c. the originality of the bid/proposal and the solutions proposed.
3. Where the Procuring Entity establishes that a bid/proposal is abnormally low as a result of State aid provided, it may reject the bid/proposal on that ground alone only if the bidder/consultant is unable to prove, within a reasonable time determined by the Procuring Entity that the aid in question has been awarded definitively and in accordance with the Laws and decisions of its State of residence.

Article 87. Unsuccessful/ Cancellation of Contracting Process

1. In all cases, the Evaluation Entity may reject all bids/proposals not in conformity with the stipulated requirements, declare the contracting process unsuccessful and/or make recommendation to cancel the contracting process.
2. An invitation for competition shall be declared unsuccessful in the following cases:
 - a. where no bid/proposal is received by the closing deadline;
 - b. where no bid/proposal is deemed acceptable after examination and evaluation;
 - c. where all the bids/proposals are for an amount substantially higher than the budget for the contract and the bidding document has no provision for reducing the contract quantities to meet budget constraints. The scope for intellectual services assignments can be reviewed but without substantial change to the Terms of Reference.
 - d. However, in the latter case, before declaring a bidding process unsuccessful, the Evaluation Entity can:

- i. either seek the approval of the Contracting Authority to negotiate a reduced scope of the contract with the most responsive bidder/consultant;
 - ii. or through the Contracting Authority, seek additional funds from the Procuring Entity.
3. For Goods, Works and Services, the bidders shall be informed accordingly and their Bid Security returned to them within seven (7) calendar days of cancellation.
4. Within fifteen (15) calendar days, a new invitation to bid/ request for proposals may be published on the basis of a revised requirement.

Chapter XVI - Award and Entry into Force of the Contract

Article 88. Notification of Award

1. Within seven (7) calendar days of clearance of the evaluation report by the Review Entity, the Procuring Entity shall notify the successful bidder/consultant of the provisional award of contract.
2. Upon notification of the provisional award for goods, works and services, Bid Securities shall be immediately returned to unsuccessful bidders. For the successful bidder, the Bid Security shall be returned upon submission of the Performance Security/Bond if applicable.

Article 89. Information to Bidders/Consultants

1. The Public Contracting Officer shall in writing inform all unsuccessful bidders/consultants that their bids/proposals have been rejected.
2. In case of a specific written request from a bidder/consultant, the Public Contracting Officer shall, within seven (7) calendar days debrief the requester without disclosing information deemed confidential.

Article 90. Standstill Period

1. The Contracting Authority shall sign the contract with the successful bidder(s)/consultants immediately after a standstill period of fifteen (15) calendar days from the date of notification of the intention to award the contract. **To this effect, the Legal Affairs Directorate shall ensure availability of the draft contract within the stand-still period of fifteen (15) calendar days.**
2. The standstill period is not a requirement in case of negotiated or direct contracting or if only one bid/proposal was submitted after competition.
3. The standstill period may be extended by the Contracting Authority when deemed necessary.

Article 91. Conclusion, Signature and Entry into Force of the Contract

1. Contracts shall be signed between the Contracting Authority and the successful bidder/consultant or his/her duly authorised representative or in the case of consortia, their duly authorised agent within the time frame prescribed under Article 90 of this Code.
2. The Public Contracting Officer shall work out the details of the contract in line with the bidding documents or request for proposals or quotations.
3. State-owned-Enterprises (SOEs) shall be eligible to sign ECOWAS contracts if administratively and legally independent and operating under commercial law.
4. The contract shall enter into force upon signature by both parties. The date of the last signature is the valid date of entering into force. The final contract award shall be published after signature

by both parties, specifying the name and address of the successful bidder/consultant that has been awarded the contract and the contract price.

5. Contracts which are not approved and signed in accordance with the provisions of this chapter shall be null and void.

Part III: Contract Execution

Chapter XVII - General Provisions

Article 92. Form of Contracts

1. The contract consists of all the documents which are referred to in the paragraph hereinafter. The contract must be duly endorsed and signed in accordance with the provisions of Article 90 and Article 91 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 shall 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;

- q. Provisions and penalties for payment and implementation delays;
- r. A clause on Force Majeure, meaning any unforeseeable and irresistible act of nature, any act of war, invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, provided that such acts arise from causes beyond the control and without the fault or negligence of the Contractor.

Article 93. **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.
2. **Lump-Sum Contracts.** Under a lump-sum contract, the contractor/Consultant agrees to perform the scope of services for a fixed contract amount. Payment percentages or amounts may be linked to the completion of contractual milestones or determined as a percentage of the value of the work to be done. Lump-sum contracts may be appropriate when:
 - a. the scope of the procurement activity can be clearly and accurately specified and can be linked to milestone payments at the time of selection; and
 - b. the contractor is responsible for delivering the completed Works, Plant, or pre-built information technology solutions, as in turnkey contracts, and can be paid on a lump-sum basis per contractual milestones.
3. **Contract based on Unit Prices.** This type of contract is based on estimated quantities of items and contractual unit prices for each of these items and is paid on the actual quantities and contractual unit prices.
4. **Time-based Contracts.** Under time-based contracts, the payment is made on the basis of agreed rates and time spent, plus reasonable incurred reimbursable expenses.
5. **Reimbursable-cost Contracts.** Under reimbursable-cost contracts, payments cover all actual costs, plus an agreed fee to cover overhead and profit.

Article 94. **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. 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 modification during the execution of the contract in accordance with the provisions of article 52. 3. 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 accordance with the provisions in the contract.

Article 95. **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 of Contract (GCC) include administrative provisions applicable to a category of contracts.
 - b. Special Conditions of Contract (SCC) include administrative provisions specific to each contract. SCC identify the General Conditions of Contract that are supplemented or amended.
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.
3. Conditions of contract shall include technical chapters describing the required Goods, Works or Services.

Article 96. **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 technical specifications in the contract.

Article 97. **Liquidated damages**

1. Where a contractor, service provider, supplier, party to the contract, fails to complete the works or services or deliver the goods within the agreed time for completion or extension period, it may be liable for the payment of liquidated damages subject to a maximum amount defined in the contract not exceeding 10% of the contract amount.
2. When the liquidated damages exceed 10% of the contract amount, the Contracting Authority shall take actions to terminate the contract in line with Article 115 of this Code.
3. 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.
4. 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 XVIII - Special types of contractual arrangements

Article 98. **Framework Agreement Arrangements**

1. Framework agreements are a procurement selection method to enter into preliminary agreements, the purpose of which is to establish the terms, particularly relating to the duration, subject, price,

maximum contract value, implementation rules and the quantities envisaged governing follow-up 'specific contracts' which may be awarded during a given period.

2. In the case of having more than one supplier in the framework agreement, there shall be a minicompetition among the suppliers.
3. The duration of such framework agreements per typology shall be defined in the procurement manual and, in any case, may not exceed four (4) years.
4. Framework agreements shall be governed by the provisions of this Code concerning the award procedure, including advertising.
5. An institution may explore adopting and using Framework Agreements or Long-Term Agreements (LTAs) established by other International Organizations ('piggy backing') subject to mutual approval.
6. Framework Agreements may be used for the procurement of Goods, Works, Intellectual and Nonintellectual Services as follows:
 - a. Framework agreement for supplies is an agreement on the basis of which the Procuring Entity 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. In addition: i) the bidding document shall be designed to define the unitary price for each item. ii) the 'specific contract' shall be concluded for a period not exceeding one year.
iii) the 'specific contract' mentioned above may take the form of Purchase Order indicating the contract of reference, the quantity and the date and place of delivery.
 - b. Framework agreements for works are agreements under which the Procuring Entity undertakes to award to one or more contractor's orders in respect of a particular category of works, for a fixed period not exceeding two years, without having to specify the quantities and value of the orders in the agreement document. In addition:
 - i) The bidding documents shall indicate a list of works required over a similar period and the approximate schedule of delivery, thereby allowing contractors the opportunity to calculate unit costs on the basis of a work schedule to be determined by them.
 - ii) The 'specific contract' mentioned above may take the form of a Service Order indicating the contract of reference, the place and the time schedule for execution of the works.
 - c. Framework agreements for non-consulting services are agreements under which the Procuring Entity undertakes to award to a service provider all orders in respect of a particular category of service, for a fixed period not exceeding two years, without having to specify the quantities and value of the orders in the agreement document. In addition:
 - i) The bidding documents shall indicate the quantities normally required over a similar period and the approximate schedule of delivery, thereby allowing service providers the opportunity to calculate unit costs on the basis of a manufacturing schedule to be determined by them.
 - ii) The 'specific contract' mentioned above may take the form of a Service Order indicating the contract of reference, the place and the time schedule of delivery of the services.
 - d. Framework agreement for Intellectual services is an agreement used to select a panel of consulting firms (ideally 4 for each subject) able to satisfy the necessity of recurrent Intellectual services of the Procuring Entity about a specific subject (as included but not

limited to Organisation of Conferences, International Trades and Standards, Information technology, Energy management and distribution, Environment) and the like. In addition:

- i) The bidding document shall be designed to rank and select the firms based on their financial standing, define technical capacity and previous experience in providing and quickly mobilising the experts and define the unitary price per working day of the experts eventually provided.
- ii) The agreement shall have the form of a commitment by the Contracting Authority to consult such firm when the need arises for the provision of service. The value of the agreement shall be zero and the validity shall be for a period of four years.
- iii) The Procuring Entity shall draft the specific Terms of Reference and consult the selected firms giving them twenty-one (21) calendar days to submit their proposals.
- iv) After selecting the experts based on their Curricula Vitae a 'specific contract' shall be signed for the specific action. Other costs included but not limited to travels, per diem, cost of production of documents, distribution and translations shall be estimated by the Procuring Entity and treated as Incidental in the agreement.

Article 99. Performance-based Contracts

In a performance-based contract, the payments are not made for inputs but for measured outputs that aim at satisfying functional needs in terms of quality, quantity, and reliability. Performancebased contracts may be appropriate for:

- a. rehabilitation of roads and operation and maintenance of the roads by a contractor for specified periods;
- b. the provision of Non-consulting Services to be paid on the basis of outputs; and
- c. operation of a facility to be paid on the basis of functional performance.

Chapter XIX - Contract Securities

Article 100. Form of Securities

1. Securities are submitted in the form of an irrevocable bank / insurance guarantee, or a joint and several guarantees, payable on first demand issued by a reputable bank or a non-bank financial institution, located in an ECOWAS Member State.
2. The securities provided for under this Chapter may be replaced by joint and several guarantors 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 guarantors shall be chosen from approved reputable banks or a non-bank financial institution, located in an ECOWAS Member States.
4. The joint and several guarantees shall be in a format specified by the Public Contracting Officer. The form shall contain an undertaking to pay on first demand, any amount owed by the contractor up to the amount guaranteed.

Article 101. 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 Procuring Entity 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 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.
4. The performance security shall be returned within thirty (30) calendar days 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 102. Retention Guarantee

1. 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 in the contract may be replaced at the provisional acceptance by a joint and several guarantee(s), and shall not exceed ten (10) percent of the total amount of the payments depending on the contract value and risks and shall be indicated in the bidding document. In any case, the retention guarantee shall be entirely returned at the expiry of the guarantee period. This is the period during which the work is accepted and the facility utilized whereby any defects discovered shall be rectified by the contractor at no liability to the Procuring Entity. The duration of the guarantee period shall be provided in the contract.
2. The security may be broken into two securities of equal value: one performance security and one retention security.

Article 103. Security for the repayment of the advance payments.

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.
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.

Article 104. Other Securities.

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/her obligations. The contract shall define the rights of the Procuring Entity in relation to such guarantees.

Chapter XX - Modifications during the Execution of the Contract

Article 105. 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), (c) and (e) 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 can be requested by the contractor, verified by the supervising engineer and approved by the Contracting Authority.
 - 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 procedures as the original 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 revisions 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 XXI - Payments in Public Contracts

Article 106. Advance, 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 107. Advance Payments

1. Advance payments and their terms of payment must be specified in the bidding documents or request for proposals. 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.
2. 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 termination of the contract, the procuring entity has the right, without prejudice to other outstanding payments, to demand immediate refund of outstanding advances.

3. The total amount paid as advance payments under paragraph 2 above 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.
4. In exceptional circumstances, upon request from a service provider, the Contracting Authority may consider a 100% advance payment and this payment shall be fully covered by an advance payment guarantee.

Article 108. Progress Payments

1. Payments for contracts are made through progress payments upon submission of invoices, valuations or variation certificates approved by the supervising engineer, except for contracts of less than three months duration, in which case progress payments are optional.
2. The amount of progress payments to service providers shall not exceed the value of the Goods, Works, or Service including Intellectual Services for which they are made. These payments take into account the deduction to be made in relation to the reimbursement of the advance payment and the retention guarantee, in compliance with Article 102 and Article 107 in 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. 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 Contracting Authority.
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 Contracting Authority for the execution of the contract. There shall be no interest on progress payments.

Article 109. Modalities of Payment

1. Invoices for payment, when received, shall only be accepted if accompanied by a written certificate of acceptance from the User Department to whom the Goods, Works or Services were delivered.
2. The Contracting Authority shall arrange for payments within a period not exceeding thirty (30) calendar days starting from the date of the submission of an invoice as per paragraph 1 above.
3. Payment shall be effected by means of cheque or bank transfer in accordance with the provision of the Financial Regulations.

Article 110. 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 111. 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 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 112. 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 Contracting Authority 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 subcontractor's performance, failing which the Contracting Authority, will arrange for direct payment to the sub-contractor of the amount due.

Chapter XXII - Pledging of the Contract

Article 113. Modalities for Pledging of the Contract

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.

Chapter XXIII - Contract Management

Article 114. 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 in accordance with Article 20 of this Code.

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 provided in the technical specifications for each category of contract.
4. The User Department in collaboration with the Public Contracting Officer shall monitor and report to the Contracting Authority on the execution of the contract.

Chapter XXIV - Termination and Suspension of Contracts

Article 115. Termination

1. A contract may be terminated according to the conditions stipulated below:
 - a. By the Contracting Authority in the following cases:
 - (i) the supplier, contractor or service provider's failure to perform its obligations;
 - (ii) 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,
 - (iii) its death, civil or physical incapacitation, except where the Contracting Authority agrees that the contract be completed by its heirs or successors or any person designated by a court of law;
 - (iv) for reasons duly justified by the Contracting Authority.
 - b. By the supplier, contractor or service provider,
 - (i) 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,
 - (ii) In case of a suspension of the contract decided upon pursuant to Article 116 of this Code.
2. Any contract may be terminated if its execution becomes impossible due to "force majeure".
3. Except in the case of termination declared pursuant to this Article, 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.
4. 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 thereof 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 116. Suspension

1. The Contracting Authority may suspend a contract under circumstances provided under Article 26 and Article 27 in this Code.

2. If for unpredictable reasons there are circumstances that prevent the normal continuation of the contract, the Contracting Authority may suspend the execution of the contract before its term. Such reasons may be physical and natural conditions, political situation or suspension of the membership of a Member State.
3. Where the duration of the suspension exceeds ninety (90) calendar days within the overall execution period of the contract, the supplier, contractor or service provider is entitled to terminate the contract.

Part IV: Provisions Related to Ethics

Article 117. Fraud and Corruption

1. The Sanctions Committee reserves the right to suspend or cancel financing if corrupt practices of any kind are discovered at any stage of the award process or implementation of the contract and if the Contracting Authority is unable to remedy the situation.
2. For the purposes of this provision, the term Fraud and Corruption is defined in Article 1 of this Code.
3. All tender dossiers and contracts for works, supplies and services must include a clause stipulating those tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to fraud or corruption.

Article 118. Conflict of Interest (COI)

1. ECOWAS Institutions shall avoid both personal and organizational conflicts of interest.
2. The ECOWAS Institutions' procurement staff are prohibited from establishing and maintaining relationships of self-interest with any service provider or potential service provider.
3. ECOWAS Institutions shall avoid situations in which service providers have interests that may impair either their objectivity or ability to perform satisfactorily on contracts.
4. The general rule is to strictly avoid any real or apparent conflict of interest in ECOWAS-Service provider relationships.
5. Definitions of Conflict of Interest are elaborated in the Procurement Manual.

Article 119. Unfair Competitive Advantage

1. Unlike suppliers' Conflict of Interest, fairness and transparency in the selection process require that Consultants or their affiliates, competing for a Consulting assignment do not derive a competitive advantage from having provided Intellectual Services related to it.
2. To that end, the Contracting Authority shall make available to all short-listed Consultants, together with the request for proposals document, all information that would give a Consultant a competitive advantage.

Part V: Final Provisions

Article 120. Procurement Manual

The President of the Commission shall issue a Procurement Manual and Standard Bidding Documents in relation to this Code.

Article 121. Amendments

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

Article 122. Transitional Provisions

1. Upon entry into force 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.
2. 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 123. Entry into Force and Publication in the ECOWAS Official Journal

1. This Code shall enter into force on the 1st day of January 2019.
2. This 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.
3. This Code shall also be published in the National Gazette of each Member State within the same time frame.

Article 124. Language

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

ANNEXES

Annex 1 - Thresholds

Annex 2 – Advertisement of procurement opportunities

Annex 1 – Thresholds

Schedule 1: Goods, Works and non-consulting services – Commission

Value in UA	Procurement method	Public Contracting Officer	Evaluation Entity	Review Entity	Contracting Authority
Up to 2,500	Direct purchasing	Head of Procurement	Head of Procurement	DAGS	President of the Commission or by Delegation
From 2,501 up to 30,000	Request for quotation	Head of Procurement	Evaluation Ad hoc Committee	DAGS	President of the Commission or by Delegation
From 30,001 up to 200,000	Local Open bidding Restricted bidding	DAGS	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
From 200,001 Up to 500,000	Regional Open Bidding Restricted bidding	DAGS	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
Over 500,000	International Open bidding	DAGS	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
Any amount except for direct contracting of values above UA 2,500	Direct Contracting	DAGS	Evaluation Committee <i>ad hoc</i>)	RC	President of the Commission or by Delegation

2: Commission

Value in UA	Procurement method	Public Contracting Officer	Evaluation Entity	Review Entity	Contracting Authority
Individual Consultants					
Up to 30,000	Selection of Individual Consultant	Head of Procurement	Evaluation Committee <i>ad hoc</i>	DAGS	President of the Commission or by Delegation
From 30,001 up to 150,000	Selection of Individual Consultant	Head of Procurement	Evaluation Committee <i>ad hoc</i>	Review Committee	President of the Commission or by Delegation
Any amount (up to 150,000)	Direct Contracting	DAGS	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
Consultant Firms					
Up to 300,000	Fixed Budget Selection (FBS) Least Cost Selection (LCS) Consultant Qualification (CQS) Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS)	DAGS	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
Over 300,000	Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS)	DAGS	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation

Schedule Intellectual services

Any amount except for direct contracting of values above UA 2,500	Direct Contracting	DAGS	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
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3: & Non-Consulting Other Institutions

Value in UA	Procurement method	Public Contracting Officer	Evaluation Entity	Review Entity	Contracting Authority
Up to 2,500	Direct purchasing	Head of Procurement/ Head of Administration	Head of Procurement/ Head of Administration	DAF	President of the Commission or by Delegation
From 2,501 up to 30,000	Request for quotation	Head of Procurement/ Head of Administration	Evaluation Ad hoc Committee	DAF	President of the Commission or by Delegation
From 30,001 up to 200,000	Local Open bidding Restricted bidding	DAF	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
From 200,001 Up to 500,000	Regional Open Bidding Restricted bidding	DAF	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
Over 500,000	International Open bidding	DAF	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation

Schedule Goods, Works services

Any amount except for direct contracting of values above UA 2,500	Direct Contracting	DAF	Head of Procurement/ Head of Administration/ Evaluation Committee <i>ad hoc</i>)	RC	President of the Commission or by Delegation
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4: Other Institutions

Value in UA	Procurement method	Public Contracting Officer	Evaluation Entity	Review Entity	Contracting Authority
Individual Consultants					
Up to 30,000	Selection of Individual Consultant	Head of Procurement/ Head of Administration	Evaluation Committee appointed <i>ad hoc</i>	DAF/Head of Institution/ SG	President of the Commission or by Delegation
From 30,001 up to 150,000	Selection of Individual Consultant	DAF	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
Any amount (up to 150,000)	Direct Contracting	DAF	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
Consultant Firms					

Schedule Intellectual services

Up to 300,000	Fixed Budget Selection (FBS) Least Cost Selection (LCS) Consultant Qualification (CQS) Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS)	DAF	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
Over 300,000	Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS)	DAF	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation
Any amount except for direct contracting of values above UA 2,500	Direct Contracting	DAF	Evaluation Committee <i>ad hoc</i>	RC	President of the Commission or by Delegation

5: and non-consulting – Field Agencies

Value in UA	Procurement method	Public Contracting Officer	Evaluation Entity	Review Entity	Contracting Authority
Up to 2,500	Direct purchasing	Officer responsible for Procurement	Officer responsible for Procurement	DAF/HAF	President of the Commission or by Delegation
From 2,501 up to 25,000	Request for quotation	Officer responsible for Procurement	Evaluation Ad hoc Committee	DAF/HAF	President of the Commission or by Delegation
From 25,001 up to 100,000	Local Open bidding Restricted bidding	DAF/HAF	Evaluation Committee appointed <i>ad hoc</i> (Agency)	RC (Commission)	President of the Commission or by Delegation

Schedule Goods, Works services

From 100,001 Up to 500,000	Regional Open Bidding Restricted bidding	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
Over 500,000	International Open bidding	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
Any amount except for direct contracting of values above UA 2,500	Direct Contracting	Officer responsible for Procurement /DAGS	Officer responsible for Procurement/ Evaluation Committee appointed <i>ad hoc</i>	RC (Commission)	President of the Commission or by Delegation

6: – Field Agencies

Value in UA	Procurement method	Public Contracting Officer	Evaluation Entity	Review Entity	Contracting Authority
Individual Consultants					
Up to 30,000	Selection of Individual Consultant	Officer responsible for Procurement	Evaluation Committee appointed <i>ad hoc</i> (Agency)	DAF/HAF	President of the Commission or by Delegation
From 30,001 up to 150,000	Selection of Individual Consultant	DAF/HAF	Evaluation Committee appointed <i>ad hoc</i> (Agency)	RC (Commission)	President of the Commission or by Delegation

Schedule Intellectual services

Any amount	Direct Contracting	DAF/HAF	Evaluation Committee appointed <i>ad hoc</i> (Agency/Commission)	RC (Commission)	President of the Commission or by Delegation
Consultant Firms					
Up to 300,000	Fixed Budget Selection (FBS) Least Cost Selection (LCS) Consultant Qualification (CQS) Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS)	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
Over 300,000	Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS)	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
Any amount except for direct contracting of values above UA 2,500	Direct Contracting	Officer responsible for Procurement /DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation

7: and non-consulting – Offices

Value in UA	Procurement method	Public Contracting Officer	Evaluation Entity	Review Entity	Contracting Authority
Up to 2,500	Direct purchasing	Officer responsible for Procurement	Officer responsible for Procurement	Head of Procurement (Commission)	President of the Commission or by Delegation

Schedule Goods, Works services

From 2,501 up to 25,000	Request for quotation	Officer responsible for Procurement	Evaluation Ad hoc Committee	Head of Procurement (Commission)	President of the Commission or by Delegation
From 25,001 up to 100,000	Local Open bidding Restricted bidding	Head of Procurement (Commission)	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
From 100,001 Up to 500,000	Regional Open Bidding Restricted bidding	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
Over 500,000	International Open bidding	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
Any amount except for direct contracting of values above UA 2,500	Direct Contracting	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation

Schedule 8: Intellectual services – Offices

Value in UA	Procurement method	Public Contracting Officer	Evaluation Entity	Review Entity	Contracting Authority
Individual Consultants					
Up to 25,000	Selection of Individual Consultant	Officer responsible for Procurement	Evaluation Committee appointed <i>ad hoc</i> (Commission)	Head of Procurement (Commission)	President of the Commission or by Delegation
From 25,001 up to 100,000	Selection of Individual Consultant	Head of Procurement (Commission)	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
Any amount	Direct Contracting	Head of Procurement (Commission)	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
Consultant Firms					
Up to 300,000	Fixed Budget Selection (FBS) Least Cost Selection (LCS) Consultant Qualification (CQS) Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS)	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation
Over 300,000	Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS)	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	RC (Commission)	President of the Commission or by Delegation

Any amount except for direct contracting of values above UA 2,500	Direct Contracting	DAGS	Evaluation Committee appointed <i>ad hoc</i> (Commission)	Head of Procurement (Commission) /RC	President of the Commission or by Delegation
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Annex 2 – Advertising of procurement opportunities

Schedule 1 - Advertising arrangements for procurement opportunities of Goods, Works & Non-Consulting services

	Procurement Method	Form of advertising	Notes
1	Request for quotation	No further advertisement required.	Comparison of at least 3 quotations/ Use of preselected list of bidders
2	Local Open bidding Restricted bidding	Publication in one local, nationally distributed newspaper, electronic or printed ECOWAS Website, Beneficiary institution or Agency Website	Simplified solicitation of all qualified suppliers The procurement is open to eligible firms from member countries
3	Regional Open Bidding Restricted bidding	ECOWAS Website, Beneficiary institution or Agency Website Publication in one local, nationally distributed newspaper, electronic or printed Publication in one local, nationally distributed newspaper of each Member State, electronic or printed	The procurement is open to eligible firms from member countries.

4	International Open bidding	ECOWAS Website, Beneficiary institution or Agency Website Publication in one local, nationally distributed newspaper, electronic or printed Publication in one local, nationally distributed newspaper of each Member State, electronic or printed Publication on international tender Websites	The procurement is open to eligible firms from any country*
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Schedule 2 - Advertising arrangements for procurement opportunities of Intellectual Services

	Geography	Selection Method	Form of advertising	Notes
	Individual Consultant			
1	Local	Selection of Individual Consultant	ECOWAS Website, Beneficiary institution or Agency Website Publication in one local, nationally distributed newspaper, electronic or printed	The procurement is open to consultants from any regional member country Alternative: use of existing database, established through competitive selection
2	Regional	Selection of Individual Consultant	ECOWAS Website, Beneficiary institution or Agency Website Publication in one local, nationally distributed newspaper, electronic or printed Publication in one local, nationally distributed newspaper of each Member State, electronic or printed	The procurement is open to consultants from any country Alternative: use of existing database, established through competitive selection

3	International	Selection of Individual Consultant	ECOWAS Website, Beneficiary institution or Agency Website Publication in one local, nationally distributed newspaper, electronic or printed Publication in one local, nationally distributed newspaper of each Member State, electronic or printed Publication on international tender Websites	The procurement is open to consultants from any country Alternative: use of existing database, established through competitive selection
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	Selection Method	Form of advertising	Notes
	Consulting Firms		
4	Fixed Budget Selection (FBS) Least Cost Selection (LCS) Consultant Qualification (CQS) Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS)	ECOWAS Website, Beneficiary institution or Agency Website Publication in one local, nationally distributed newspaper, electronic or printed Publication in one local, nationally distributed newspaper of each Member State, electronic or printed Publication on international tender Websites	The procurement is open to eligible firms from any country*

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