

**ECONOMIC COMMUNITY OF
WEST AFRICAN STATES**



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

ECOWAS PROCUREMENT MANUAL 2021

ECOWAS Community

TABLE OF CONTENTS

1	INTRODUCTION.....	1-16
1.1	PURPOSE AND DEFINITION OF PROCUREMENT.....	1-16
1.2	PURPOSE OF THIS MANUAL.....	1-16
1.3	APPLICATION.....	1-16
1.3.1	<i>Methods to assess alternative procurement arrangements.....</i>	<i>1-17</i>
1.3.2	<i>ECOWAS fiduciary oversight.....</i>	<i>1-17</i>
1.4	REVISIONS.....	1-18
1.5	LEGISLATIVE & REGULATORY FRAMEWORK.....	1-18
1.6	ECOWAS PROCUREMENT PRINCIPLES.....	1-18
1.6.1	<i>Principles.....</i>	<i>1-18</i>
1.6.2	<i>More on the principle of Value for Money.....</i>	<i>1-18</i>
1.6.3	<i>Accessibility.....</i>	<i>1-20</i>
1.6.4	<i>Environmental Responsibility.....</i>	<i>1-20</i>
1.6.5	<i>Gender.....</i>	<i>1-22</i>
1.7	CONTROL MECHANISMS.....	1-23
1.7.1	<i>Legal review.....</i>	<i>1-23</i>
1.7.2	<i>Internal administrative review;.....</i>	<i>1-23</i>
1.8	COMPLAINTS.....	1-23
1.8.1	<i>Who can complain?.....</i>	<i>1-23</i>
1.8.2	<i>Circumstances.....</i>	<i>1-24</i>
1.8.3	<i>When to make a procurement-related complaint?.....</i>	<i>1-25</i>
1.8.4	<i>Notification of Award.....</i>	<i>1-25</i>
1.8.5	<i>Standstill Period.....</i>	<i>1-26</i>
1.8.6	<i>Debriefing by the Public Contracting Officer.....</i>	<i>1-26</i>
1.8.7	<i>What information must be included?.....</i>	<i>1-26</i>
1.8.8	<i>Response to a procurement-related complaint.....</i>	<i>1-27</i>
1.8.9	<i>Content of a response to a procurement-related complaint.....</i>	<i>1-27</i>
1.8.10	<i>Appeal to a Response to a procurement-related complaint.....</i>	<i>1-27</i>
1.8.11	<i>Content of an Appeal to a Response to a procurement-related complaint.....</i>	<i>1-28</i>
1.8.12	<i>Action(s) when procurement-related complaint is upheld.....</i>	<i>1-28</i>
1.9	DISPUTE RESOLUTION.....	1-28
1.9.1	<i>Who can raise a dispute?.....</i>	<i>1-29</i>
1.9.2	<i>Circumstances.....</i>	<i>1-29</i>
1.9.3	<i>When to raise a dispute.....</i>	<i>1-29</i>
1.9.4	<i>Amicable settlement.....</i>	<i>1-29</i>
1.9.5	<i>Mediation.....</i>	<i>1-30</i>
1.9.6	<i>Conciliation.....</i>	<i>1-30</i>
1.9.7	<i>Adjudication.....</i>	<i>1-30</i>
1.9.8	<i>Arbitration.....</i>	<i>1-30</i>
1.9.9	<i>Content of a Statement of Dispute.....</i>	<i>1-31</i>
1.10	SANCTIONS COMMITTEE.....	1-31
1.11	CAPACITY BUILDING AND PROFESSIONALISATION OF PRACTITIONERS.....	1-31
1.12	TECHNOLOGY: E-COMMERCE, USE OF ELECTRONIC SYSTEMS IN THE PROCUREMENT PRACTICES.....	1-32
1.13	LANGUAGE & CURRENCY.....	1-32
2	PROCUREMENT AUTHORITIES.....	2-33
2.1	AUTHORITY AND RESPONSIBILITY.....	2-33
2.1.1	<i>The Contracting Authority.....</i>	<i>2-33</i>
2.1.2	<i>The Public Contracting Officer (PCO),.....</i>	<i>2-33</i>
2.1.3	<i>The Bid Opening Committee.....</i>	<i>2-33</i>
2.1.4	<i>The Evaluation Entity.....</i>	<i>2-33</i>

2.1.5	<i>The Review Entity</i>	2-33
2.1.6	<i>Procuring Entity/ Requisitioner</i>	2-39
2.1.7	<i>ECOWAS Community</i>	2-40
2.1.8	<i>Procurement of Legal Services by ECOWAS Legal Directorate</i>	2-40
2.1.9	<i>Authorized Cooperative Purchasing</i>	2-40
3	ETHICS AND CODE OF CONDUCT	3-40
3.1	BUSINESS ETHICS	3-40
3.1.1	<i>ISM - Principles and Standards of Ethical Supply Management Conduct.....</i>	3-40
3.2	TRANSPARENCY	3-41
3.3	PROTECTING THE INTEGRITY OF THE PROCUREMENT PROCESS.....	3-42
3.4	ACCEPTANCE OF GRATUITIES, BENEFITS, OR EMPLOYMENT	3-42
3.5	FRAUD AND CORRUPTION	3-42
3.6	CONFLICT OF INTEREST.....	3-43
3.7	UNFAIR COMPETITIVE ADVANTAGE.....	3-45
3.8	DISCLOSURE/PROTECTION OF PROPRIETARY AND SOURCE SELECTION INFORMATION	3-45
3.9	EMPLOYMENT AND CLOSE RELATIVES.....	3-46
3.10	SOCIAL RESPONSIBILITY	3-46
3.10.1	<i>Institutional Social Responsibility principles</i>	3-46
3.10.2	<i>Supplier Diversity</i>	3-47
3.10.3	<i>Wages and Benefits, Health and Safety.....</i>	3-48
3.11	VENDOR ELIGIBILITY	3-49
3.12	BACKGROUND INVESTIGATION	3-49
3.13	SUPPLIER RELATIONS	3-49
3.14	BENEFICIARIES' RELATIONS	3-50
4	VENDOR REGISTRATION	4-50
4.1	DEFINITION OF VENDOR.....	4-50
4.2	VENDOR REGISTRATION.....	4-50
4.2.1	<i>Request for Expression of Interest for registration as a vendor</i>	4-50
4.2.2	<i>Vendor registration criteria</i>	4-51
4.2.3	<i>Evaluation of Bids.....</i>	4-51
4.2.4	<i>Vendor registration and approval.....</i>	4-52
4.2.5	<i>Vendor list maintenance</i>	4-52
4.3	SELECTION OF REGISTERED VENDORS	4-52
4.4	REVIEW OF VENDOR LIST	4-52
5	PROCUREMENT PREPARATION	5-53
5.1	DEFINITION OF PROCUREMENT REQUIREMENTS.....	5-53
5.1.1	<i>Definition</i>	5-53
5.1.2	<i>The purpose of requirements definition</i>	5-53
5.1.3	<i>Characteristics of requirements</i>	5-53
5.2	PROCUREMENT STRATEGY	5-54
5.2.1	<i>Best Practices</i>	5-54
5.2.2	<i>Procurement Strategy</i>	5-54
5.2.3	<i>Market Research</i>	5-54
5.3	REQUISITION	5-55
5.4	PROCUREMENT PLANNING.....	5-56
5.4.1	<i>The purpose of the annual procurement plan</i>	5-56
5.4.2	<i>Procurement plan content.....</i>	5-56
5.4.3	<i>Benefits of good procurement planning</i>	5-58
6	COMPETITIVE BIDDING	6-58
6.1	COMPETITION REQUIREMENTS	6-58

6.2	EFFECTIVE COMPETITION	6-58
6.3	COMPETITION THRESHOLDS FOR PROCUREMENTS	6-59
6.4	EXCEPTIONS TO COMPETITION	6-59
6.4.1	<i>Definitions of Direct Contracting</i>	6-59
6.4.2	<i>Sole Source procurement</i>	6-59
6.4.3	<i>Direct contracting/selection criteria</i>	6-60
6.4.4	<i>Market Research for Direct contracting/selection</i>	6-60
6.4.5	<i>Justification Preparation for Direct contracting/selection</i>	6-60
6.5	LAUNCH OF BID PROCESS/ ADVERTISING	6-60
6.5.1	<i>Procurement Notice</i>	6-61
6.5.2	<i>General Procurement Notice</i>	6-61
6.5.3	<i>Specific Procurement Notice for Goods, Works or Non-consulting Services</i>	6-61
6.5.4	<i>Request for Expression of Interest (REOI) for Intellectual Services</i>	6-62
6.6	PREQUALIFICATION (PQ) FOR GOODS, WORKS OR NON-CONSULTING SERVICES	6-62
6.6.1	<i>Definition of PQ</i>	6-62
6.6.2	<i>PQ is recommended when:</i>	6-63
6.6.3	<i>Creation of PQ list</i>	6-63
6.6.4	<i>Approval of PQ list</i>	6-63
6.7	SHORTLISTING (SL) FOR INTELLECTUAL SERVICES	6-64
6.7.1	<i>SL Definition</i>	6-64
6.7.2	<i>Creation of the SL</i>	6-64
6.7.3	<i>Engagement of Short-term consultant</i>	6-65
7	SELECTION METHODS FOR PROCUREMENT OF GOODS, WORKS AND NON-CONSULTING SERVICES	7-65
7.1	INTERNATIONAL COMPETITIVE BIDDING (ICB)	7-65
7.2	LOCAL COMPETITIVE BIDDING (LCB)	7-65
7.3	REGIONAL COMPETITIVE BIDDING	7-66
7.4	BIDDING PRECEDED BY PREQUALIFICATION	7-66
7.5	TWO-STAGE BIDDING	7-66
7.6	DAILY HIRED SERVICES:	7-67
7.7	TENDER DOCUMENTS	7-67
7.7.1	<i>Preparation of Tender Documents</i>	7-67
7.7.2	<i>Contract information</i>	7-78
7.8	BID PROCESS	7-79
7.8.1	<i>Expression of needs/Advertisement</i>	7-79
7.8.2	<i>Preparation of bids</i>	7-79
7.8.3	<i>Submission of bids</i>	7-80
7.8.4	<i>Bid opening session</i>	7-80
7.8.5	<i>Evaluation of bids</i>	7-80
7.9	OTHER METHODS OF PROCUREMENT FOR GOODS, WORKS AND NON-CONSULTING SERVICES	7-85
7.9.1	<i>Restricted Bidding</i>	7-85
7.9.2	<i>Request for Quotations (RFQ)</i>	7-85
7.10	SPECIAL SELECTION ARRANGEMENTS	7-86
7.10.1	<i>Programme contracts</i>	7-86
7.10.2	<i>Program of International Imports</i>	7-86
7.10.3	<i>Commodities</i>	7-86
7.10.4	<i>Community-Driven Development (CDD)</i>	7-86
7.10.5	<i>Force Account</i>	7-87
7.10.6	<i>Commercial practices</i>	7-87
7.10.7	<i>UN Agencies</i>	7-88
7.10.8	<i>Competitive Dialog</i>	7-88
7.10.9	<i>Public Private Partnerships</i>	7-91
7.10.10	<i>Deployment under Emergency Situations</i>	7-93

7.10.11	Leasing	7-93
7.10.12	Electronic Reverse Auction (e-Auction)	7-94
7.10.13	Procurement under Grants	7-94
7.11	PARTNERING	7-94
7.11.1	Benefits to ECOWAS Institutions	7-94
7.11.2	Benefits to the Supplier	7-95
8	PROCUREMENT OF INTELLECTUAL SERVICES	8-95
8.1	QUALITY AND COST BASED SELECTION	8-95
8.1.1	Preparation of the Terms of Reference (TOR)	8-96
8.1.2	Cost estimate and the budget	8-99
8.1.3	Preparation and issuance of the RFP	8-99
8.1.4	Receipt of proposals	8-101
8.1.5	Evaluation of technical proposals	8-101
8.1.6	Public opening of financial proposals	8-102
8.1.7	Evaluation of financial proposal	8-102
8.1.8	Combined evaluation of quality and cost	8-103
8.2	NEGOTIATIONS OF AN INTELLECTUAL SERVICES CONTRACT	8-103
8.2.1	Introduction	8-103
8.2.2	The negotiation process	8-104
8.2.3	Areas of negotiations	8-104
8.2.4	Financial negotiations	8-105
8.2.5	Successful negotiations	8-105
8.2.6	Unsuccessful negotiations	8-105
8.2.7	Proposal evaluation report	8-106
8.3	OTHER METHODS OF SELECTING INTELLECTUAL SERVICES	8-106
8.3.1	Quality Based Selection	8-106
8.3.2	Selection under a Fixed Budget (FBS)	8-107
8.3.3	Least Cost Selection (LCS)	8-108
8.3.4	Selection Based on the Consultants' Qualifications (CQS)	8-109
8.3.5	Non-Governmental Organizations	8-109
8.3.6	Procurement Agents	8-110
8.3.7	Selection of Individual Consultants	8-110
8.3.8	Long-term individual contractors/ Project implementation support personnel	8-110
8.3.9	Direct Selection	8-110
9	PURCHASING	9-111
9.1	DEFINITION	9-111
9.2	SUBMITTING REQUISITIONS	9-111
9.2.1	Initiation of Procurement Actions	9-111
9.2.2	Submission of Requisitions	9-111
9.2.3	Labour Service Requirements and Complex Goods	9-111
9.3	RECEIVING AND PROCESSING REQUISITIONS	9-111
9.3.1	Determination of Status of a Procurement Action	9-112
9.4	PROCUREMENT SERVICE STANDARDS	9-112
9.4.1	Processing Times for Purchase Orders and Solicitations	9-112
9.4.2	Exceptions	9-112
9.5	CHANGES TO PURCHASE ORDERS	9-112
9.5.1	Change Orders	9-112
9.5.2	Administrative Changes	9-112
9.6	PURCHASING CARD (PCARD)	9-113
9.6.1	Definitions	9-113
9.6.2	Authority	9-113
9.6.3	Guidelines	9-113

9.7	DELIVERY TERMS/TITLE/DESTINATION	9-114
9.8	LATE DELIVERIES/EXPEDITING	9-114
9.8.1	POs/Contracts Issued by the PCO	9-115
9.8.2	Delivery.....	9-115
9.8.3	Acceptance	9-115
9.9	RETURNING GOODS TO VENDORS	9-115
9.9.1	Warranties	9-115
9.9.2	Defective Goods and Goods Delivered in Error	9-116
9.9.3	Returning Goods to Vendors	9-116
9.9.4	Goods Ordered in Error	9-116
10	CONTRACTING	10-117
10.1	REVIEW REQUIREMENTS	10-117
10.1.1	Notification process	10-117
10.1.2	Contents of the notice.....	10-117
10.2	STANDSTILL PERIOD	10-118
10.3	DEBRIEFING OF UNSUCCESSFUL CONSULTANTS/BIDDERS	10-118
10.3.1	Content of debriefing letters.....	10-118
10.4	REJECTION OF ALL BIDS/PROPOSAL OR CANCELLATION OF THE PROCUREMENT PROCESS	10-119
10.5	CONTRACT SIGNATURE.....	10-120
10.6	TYPES OF CONTRACTING INSTRUMENTS.....	10-120
10.6.1	Lump-Sum Contracts.....	10-120
10.6.2	Contract based on Unit Prices.....	10-121
10.6.3	Time-based Contracts.....	10-122
10.6.4	Reimbursable-cost Contracts.....	10-123
10.7	SPECIAL TYPES OF CONTRACTUAL ARRANGEMENTS.....	10-124
10.7.1	Framework Agreements (FA).....	10-124
10.7.2	Performance-based Contracts.....	10-126
10.8	CONTRACT CREATION.....	10-127
10.8.1	Introduction.....	10-127
10.8.2	Contents of contract document.....	10-127
10.8.3	Process of contract creation	10-127
11	CONTRACT ADMINISTRATION.....	11-129
11.1	THE FOCUS OF CONTRACT ADMINISTRATION.....	11-129
11.2	CONTRACT ADMINISTRATION FUNCTIONS	11-129
11.2.1	Establish contract management responsibility.....	11-129
11.2.2	Contract start-up.....	11-130
11.3	POST-AWARD ORIENTATION	11-130
11.4	CONTRACT MONITORING	11-131
11.4.1	Contract monitoring of Goods contracts.....	11-131
11.4.2	Contract monitoring of Works contracts.....	11-132
11.4.3	Contract monitoring of Intellectual Services contracts.....	11-132
11.5	CONTRACT CHANGES/MODIFICATIONS	11-133
11.5.1	Modification process	11-133
11.6	CONTRACT COMPLETION/ CLOSEOUT.....	11-134
11.6.1	Contract closeout checklist	11-134
11.6.2	Retention of documents	11-135
11.7	CONTRACT TERMINATION	11-135
11.7.1	Decision	11-135
11.7.2	Grounds for termination	11-135
11.7.3	Steps of termination process	11-136
11.7.4	Records required.....	11-136
11.7.5	Next steps	11-136

11.7.6	Contractor Performance Report	11-136
11.8	PAYMENT TO VENDORS	11-138
12	PROCUREMENT RECORDS AND REPORTS	12-138
12.1	PROCUREMENT RECORDS	12-138
12.2	PROCUREMENT REPORTS	12-139
12.2.1	Procurement implementation reports.....	12-139
12.2.2	Procurement activities reports	12-140
ANNEXES	12-141

Acknowledgements

This manual has been compiled with the kind contribution and collaboration of:

The African Development Bank

Procurement Policy for bank Group Funded Operations, August 2015

Rules and Procedures for Procurement of Goods and Works, 2008 revised July 2012

Rules and Procedures for the Use of Consultants, 2008 revised July 2012

The World Bank

Consulting Services Manual 2006

Bank Policy Procurement in IPF and Other Operational Procurement Matters, November 2017.

Procurement Regulations for IPF Borrowers, July 2016, revised November 2017 and August 2018.

Procurement-related Complaints – How to complain, January 2017.

European Union

Procurement and Grants for European Union external actions (PRAG) – A Practical Guide, January 2016

UNOPS

Procurement Manual Revision 6, 1 June 2017

IFAD

Project Procurement Guidelines, September 2010

IFAD Procurement Handbook, September 2010.

UNCITRAL

Model Law on Public procurement, 2014

NOTES

Note 1: The procurement manual is a printed book as well as an interactive portal. The interactive portal can generate a pdf file, identical to the printed book, save for regular updates

Note 2: The interactive portal contains active links (see next page) to the Code, Institutional portals, templates, external information sites, etc.

Note 3: The procurement manual does not duplicate content from other sources like the procurement Code or Financial Regulations to avoid redundancy and/or contradictions.

Note 3: This manual remains work in progress as the number of links and content in links is without limit.

Note 4: The manual portal will have a window constituting a forum for Q&A, news on updates and added content, discussion groups on salient issues, etc.

Note 5: The ‘work-in-progress’ and ‘Procurement forum window’ will require a permanent staff with the responsibility to manage the procurement manual portal, update and add content, templates, links, etc.

Note 6: Apart from continuous added content (more templates, more information, etc.) the procurement manual will require officialized and published regular updates, e.g., every 6 months or every year.

Acronyms

BDS	Bid Data Sheet
BVM	Best Value for Money
COJ	Court of Justice
CQS	Consultant's Qualification-based Selection
EBID	ECOWAS Bank for Investment and Development
EOI	Expression of Interest
EPP	Environmentally preferred products
FSPE	Full Supplier Performance Evaluation
ICB	International Competitive Bidding
ISM	Institute for Supply Management
LCB	Local Competitive Bidding
ITB	Instructions to Bidders
ITC	Instructions to Consultants
FBS	Fixed Budget-based Selection
FIDIC	Fédération Internationale des Ingénieurs Conseils (International Federation of Consulting Engineers)
GCC	General Conditions of Contract
GIABA	Intergovernmental Action Group Against Money Laundering in West Africa
GPN	General Procurement Notice
LCC	Life Cycle Cost
LCS	Least Cost-based Selection
LOI	Letter of Invitation
LTA	Long-Term Agreements
OAG	Office of the Auditor general
PCO	Public Contracting Officer
PO	Purchase Order
PPP	Public Private Partnership
PRAG	Procurement and Grants (European Union)
QBS	Quality-based Selection
QCBS	Quality and Cost-based Selection
RCB	Regional Competitive Bidding
REOI	Request for Expression of Interest
RFP	Request for Proposal
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SL	Shortlist
SOW	Statement of Works
SPE	Supplier Performance Evaluation
SPN	Specific Procurement Notice
SSPE	Simplified Supplier Performance Evaluation
TCO	Total Cost of Ownership
TOR	Terms of Reference
VfM	Value for Money
WAHO	West African Health Organisation

Glossary (modified in line with the Code March 2019)

“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. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or determination of non-responsibility of a vendor that has the same or similar management, ownership, or principal employees as the vendor that was suspended or deemed non-responsible.

“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**.

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

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

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

“Complaint” means a protest regarding an award process;

“Conditional Responsibility Determination” means a decision by the Public Contracting Officer allowing a Vendor to be eligible to receive ECOWAS contract awards and to bid on ECOWAS solicitations, provided that conditions and obligations prescribed by ECOWAS in an administrative agreement are met.

“Conviction” means a judgement of a criminal offense rendered by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of no contest.

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

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

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

"Defendant" means one of the parties to a contract validly entered into with an ECOWAS Institution in accordance with the Code, that a complaint is made against;

"Dispute" means a disagreement arising from a contract;

"Division in Lots" means to divide the contracts into several lots due to economic, financial or technical reasons. Each lot shall be an independent unit to be awarded separately.

"Direct Contracting" means contracting without competition;

"Eligibility" means whether a natural person or a legal entity can participate in the contracting process with the Community or its Institutions.

"Emergency situations" means circumstances in which there is the need for immediate intervention in the event of natural or man-made disasters such as those associated with climate change, terrorist attacks, war or insurrections declared or not, failure in critical infrastructures, displacement of people, epidemic or pandemic health situation and humanitarian crisis.

"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 the 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 the ECOWAS Procurement Code.

"Exclusion" means a decision by the Contracting Authority to exclude a vendor from receiving ECOWAS contract awards and from bidding on ECOWAS solicitations 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 contracting authorities, the purpose of which is to establish the terms governing follow-up 'specific contracts' which may be awarded during a given period, particularly about 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 Publication of the contract opportunities in Goods, Works and services made at the beginning of every year by the contracting authority based on the approved procurement plan".

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

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

"Institutions of the Community" mean entities established in accordance with Article 6 of the Revised ECOWAS Treaty and they include:

- The ECOWAS Parliament;
- The Community Court of Justice;
- The Commission, its Agencies and Offices;
- The 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;

"Intellectual Services" mean services related to activities of an intellectual and immaterial 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 a process where the procurement is advertised in and beyond the ECOWAS Member States;

"Local Competitive Bidding" means a process where the procurement is advertised and carried out in the country of the Procuring Entity;

"Man-made disaster" means a disastrous event caused directly and principally by one or more identifiable deliberate or negligent human actions.

"Natural disaster" means a disastrous event caused by natural hazards.

"Non-Consulting Services" mean services not requiring an intellectual or creative service from the service provider – *see also Intellectual Services*;

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

Obstructive practice" means:

- i. deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a 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 inspection and audit rights;

"Open tendering" means a process where candidates or bidders are invited through public advertisement.

"Post-Qualification" means a formal procedure whereby bidders are evaluated on resources and capabilities bid on the basis of minimum criteria on experience, resources, capacity and financial standing at the end of the bid evaluation process;

"Pre-qualification (PQ)" means a formal procedure whereby bidders/consultants are invited to submit details of their resources and capabilities which are determined prior to invitation to bid on the basis of minimum criteria on experience, resources, capacity and financial standing;

“Procurement Manual” means the enabling procedures developed by ECOWAS for the implementation of these Regulations;

“Procurement Plan” means a planning document covering any period and usually relating to a project or program with the purpose to (i) ensure the availability of the budget envelope for each procurement action, following its approval and (ii) to provide information to the potential candidates about upcoming opportunities.

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

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

“Project Agreement” means a financing agreement between ECOWAS and any external party responsible for the implementation of a Project; other names in use are “Delegation Agreement”, “Contribution Agreement” and “Grant Agreement”, but all meaning the same thing.

“Probity audits” mean independent reviews of procurements activities to ascertain whether procedures followed are consistent with this Code and in particular with best practice principles of fair competition and transparency;

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

“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 contractors for the supply of goods, the execution of works or services;

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

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

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

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

“Request for Expression for interest (REOI)” means technical request from a procuring entity to consultants specifying the intellectual services to be delivered and indicating the required qualifications and experiences required for shortlisting;

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

“Responsibility Determination” means a decision by ECOWAS that a vendor is eligible to receive ECOWAS contract awards and to bid on ECOWAS solicitations.

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

“Review Entity” means the committee or entity in charge of verifying the conformity and compliance of the recommendation made by the Evaluation Entity and deciding on the need to refer them back or clear the procurement recommendation for contract award and signature.

“Review Committee” means the entity responsible for the final review of procurement processes conducted by the Community above the threshold as stipulated in Annex 1 - Schedules 1 – 8 or any time its intervention is required;

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

“Single-source/sole-source selection” means one where only one source is available (for example, a utility company), or when only one source makes the item that an organization/institution needs – *see also Direct Contracting*.

“Suspension” means an action taken by ECOWAS Institutions to temporarily exclude a vendor from ECOWAS procurement pending clearance.

“Specific Procurement Notice” means the advertisement of procurement opportunities, also referred to as (Notice of) Invitation to bid;

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

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

“Urgency”, means a situation requiring immediate action but which are not caused by external or unforeseen factors and which cannot not trigger the use of procedures applied to **“Emergency”**

“Vendor” means any legal entity, including its affiliates, that directly or indirectly (for example, through an affiliate, prime contractor, or subcontractor) submits offers for or reasonably may be expected to submit offers for an ECOWAS contract or is awarded an ECOWAS contract.

“User Department” means the Department/Directorate/Unit/Division which expressed the need and is the beneficiary of the procured goods, works or services;

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

1 INTRODUCTION

1.1 Purpose and definition of procurement

The goal of ECOWAS-procurement process is to ensure that the best total value is achieved in the procurement of goods, works and services, when supporting the ECOWAS operations and mission. Ensuring the achievement of best total value and the impartial and equitable treatment of bidders requires guiding principles that underlie the Community's procurement process.

1.2 Purpose of this manual

This Manual provides detailed guidance to ECOWAS procurement practitioners, staff, suppliers, consultants and stakeholders on the application of the Procurement Code in compliance with ECOWAS Financial Regulations and other ECOWAS legislative instruments and it provides advice on professional best practices.

This manual is designed to:

- a) provide detailed guidance on the procurement processes;
- b) provide uniform measures for the procurement of goods, works and services;
- c) ensure compliance with the procurement principles in all operations, and consistent with the ECOWAS Procurement Code;
- d) promote the consistent application of the best procurement practices and best international standards
- e) ensure the best-fit-for-purpose to the ECOWAS Community.

It will help to:

- a) remove or minimize the need for making new decisions every time a comparable situation arises;
- b) introduce procedures for all routine procurement activities;
- c) provide a point of reference against which principles and practices can be evaluated; and
- d) serve as a training handbook and provide guidance based on best international practices.

Consistent application of the provisions and procedures of the handbook is essential to adhere to the procurement principles. However, an overly restrictive or rigid interpretation of the Procurement Code can affect efficiency and effectiveness and can lead to failure in achieving ECOWAS objectives. On the other hand, high flexibility in applying the regulations may compromise transparency, integrity and equal opportunity. Excessive weight assigned to price in the selection process may fail to achieve best value for money. In the light of the above, the Procurement Manual's objective is to help practitioners make a balanced and considered judgement when using the Procurement Regulation.

1.3 Application

This manual applies to the scope defined in Article 6 of the Procurement Code (2019).

However, the Procurement Code allows the use of alternative procurement arrangements if agreed with other Partners and without prejudice to the objectives of the Community.

Considering alternative procurement arrangements requires:

- a) A methodology to assess the alternative procurement arrangements that is acceptable to ECOWAS and
- b) A definition of ECOWAS roles and responsibilities to ensure fiduciary oversight when alternative procurement arrangements are in use.

1.3.1 Methods to assess alternative procurement arrangements

The most common methodology is the Methodology for Assessment of Procurement Systems (MAPS) developed by the Organisation for Economic Co-operation and Development OECD in 2010 and widely used by the Multilateral Development Banks and/or adapted by them for the assessment of Alternative Procurement Arrangements (APA), e.g., sovereign, sub-sovereign or institutional. ECOWAS may contextualize the MAP for assessing alternative procurement system.

The MAPS makes use of four pillars:

Pillar I - Legislative and Regulatory Framework

This Pillar covers the legal and regulatory instruments from the highest level (national law, act, regulation, decree, etc.) down to detailed regulation, procedures and bidding documents formally in use.

Pillar II - Institutional Framework and Management Capacity

This Pillar looks at how the procurement system as defined by the legal and regulatory framework in a country is operating in practice through the institutions and management systems that are part of the overall public sector governance in the country.

Pillar III - Procurement Operations and Market Practices

This Pillar looks at the operational effectiveness and efficiency of the procurement system at the level of the implementing entity responsible for issuing individual procurement actions. It looks at the market as one means of judging the quality and effectiveness of the system when putting procurement procedures into practice. This Pillar is distinguished from Pillars I and II in that it is not looking at the legal/regulatory or institutional systems in a country but more at how they operate.

Pillar IV - Integrity and Transparency of the Public Procurement System

This Pillar covers four indicators that are considered necessary to provide for a system that operates with integrity, has appropriate controls that support the implementation of the system in accordance with the legal and regulatory framework and has appropriate measures in place to address the potential for corruption in the system. It also covers important aspects of the procurement system that include stakeholders as part of the control system. This Pillar takes aspects of the procurement system and governance environment and seeks to ensure that they are defined and structured to contribute to integrity and transparency.

1.3.2 ECOWAS fiduciary oversight

Whenever the use of alternative procurement arrangements is accepted by ECOWAS, the Community must be reassured that the proceeds are used only for the intended purposes and in line with the objectives of ECOWAS. While neither the procedures nor Standard Bidding Documents will be used, ECOWAS requires that the procurement is undertaken with respect of the ECOWAS procurement principles: Transparency, Equity/Fairness/equal opportunity, Effectiveness, Economy/Value for money, Efficiency & Proportionality and Integrity.

The Partners using alternative procurement arrangements is responsible for carrying out procurement activities. This includes planning, strategizing, preparing bidding documents and RFP, launching opportunities, evaluating Applications/ Quotations/ Bids/ Proposals, and awarding and managing contracts. The Partners shall retain all Procurement Documents and records of procurements as required in the pertaining Project Agreement and in Chapter 12 of this manual.

ECOWAS will undertake oversight, including prior review above thresholds agreed in the Project Agreement, post review on an annual basis unless otherwise agreed in the Project Agreement,

coordination and implementation support when required, regular monitoring and supervision according to agreed calendars.

1.4 Revisions

This ECOWAS Procurement Manual supersedes the previous ECOWAS Procurement Manual. This Procurement Manual may be updated from time to time to remain relevant to ECOWAS objectives and to remain up to date with the best Public Procurement practices. The Procurement Officers of all the Institutions shall meet annually to review the procurement activity report of the Institutions and advise the Commission Public Contracting Officer on the Community proposal for improvement of the Community's procurement manual. In this regard, the ECOWAS procurement capacity building portal will provide a platform and forum to raise issues, provide suggestions and engage in discourse.

1.5 Legislative & Regulatory framework

The ECOWAS regulatory framework pertaining to this manual are:

- ECOWAS Vision 2050
- ECOWAS procurement Code 2019
- ECOWAS financial regulation 2019

The ECOWAS regulatory framework pertaining to this manual are:

- Standard Bidding Documents

1.6 ECOWAS Procurement Principles

1.6.1 Principles

The goal of ECOWAS procurement process is to ensure that best total value is achieved in the procurement of goods, works and services while at the same time supporting the Community's operations and mission. Ensuring the achievement of best total value and the impartial and equitable treatment of bidders requires guiding principles that underlie the Community's procurement process. These principles, as specified in the Procurement Code are: Transparency, Equity/Fairness/equal opportunity, Effectiveness, Economy/Value for money, Efficiency & Proportionality and Integrity.

These principles are employed globally in all procurements including the development of long-term master agreements. The Community's funds may only be used to purchase goods, works and services for the official use of the Community. The procurement guiding principles represent the strategic elements that guide the Community's activities in procurement and contracting practices. These principles and governing policies will be frequently evaluated and improved.

1.6.2 More on the principle of Value for Money

ECOWAS Institutions base procurement decisions on best value. Value for money (VfM) or Best Value for Money (BVM) is a procurement principle meaning 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, as appropriate. Price alone may not necessarily represent value for money. In the sourcing area, the best value is generally achieved through competition.

ECOWAS Institutions strive to attain the best value for the money they spend. To achieve this goal ECOWAS Institutions, use a Best Value Procurement methodology in their solicitations for complex goods, works and services, those for which it is imperative to evaluate and compare factors other than cost or price. Best Value Procurement allows offerors the flexibility, when selecting their best proposal strategy, to consider trade-offs that may be made between the cost and non-cost evaluation factors.

Best Value Procurement techniques are essential in the acquisition of highly complex service delivery such as travel, childcare services, facilities management, mail and messenger services, IT services, food and conference services and fixed assets management services that involves high-level, scientific, technical, or management skills requiring substantial intellectual and analytical activity to produce demanding, creative, and innovative solutions. Best-value techniques are appropriate to the full spectrum of contract requirements according to the following logic:

- a) For performance requirements demanding high levels of expertise and creativity, the relative importance of quality or of problem-solving approaches will be high compared to cost/price considerations.
- a) For performance requirements that are straightforward and routine, the relative importance of cost/price will be higher.

A best-value award produces the most advantageous acquisition decision through the disciplined application of a full and balanced set of weighted or explicitly rank-ordered evaluation factors to all significant requirements specified in the solicitation. In some cases, price will be the primary criteria, but in more complex procurements several criteria must be developed prior to issuing a solicitation. The extent to which price may be used as a factor in selection depends on the technical complexity of the assignment, the impact of the assignment on the end product, and the comparability of proposals. The more complex the assignment, or the more significant the end product, or the less comparable the proposals, the less influence price shall have on the selection.

For technically complex and/or high-value procurements, Life Cycle Cost (LCC) needs to be a major consideration in procurement decisions. LCC consists of all costs associated with the supply chain. Examples of total process costs that need to be considered include but are not limited to delivery costs, , shipping costs, implementation costs, costs of operating, costs of ongoing service maintenance and updating costs, and disposal costs.

To achieve additional sustainable development objectives Total Cost of Ownership (TCO) needs to be a major consideration in procurement decisions. TCO considers the achievement of external economic, social and environmental factors.

Economic factors could be employment of sub-contracting of local community members of parties, engagement of women-led, youth-led companies or disadvantaged groups, etc. It could also regard setting up local supply chains, manufacture workshops, etc.

Social factors could be skills training programs related to contract execution, setting up social security measures extending to the community, engagement with disadvantaged groups, etc.

Environmental factors could be measures with regard to recycling materials or building components, reduction or rational of use of energy, recycling and/or reduction of use of water, reduction of waste, etc. and with an impact on the immediate environment. More on this concept in paragraph 1.6.4. below.

(the following paragraphs have been relocated here in line with the sequence in the Procurement Code)

1.6.3 Accessibility

ECOWAS is committed to maintaining high standards of physical accessibility and workplace safety for staff, visitors, and contractors within its facilities. ECOWAS wants to ensure that all suppliers of goods, works and services doing business with them have similar programs within their own facilities to maintain high standards of accessibility. Contractors may be required to submit a statement attesting to the level of compliance with ECOWAS workplace accessibility policy and/or the host country's regulations and promulgations on disability within their owned and leased facilities as well as project infrastructure.

All services, supplies, works and grants that relate to goods, services and infrastructures intended for the use of persons, whether external public or staff of the contracting entity, must include in their technical specifications, accessibility requirements for persons with disabilities following a "design-for-all approach" (reference can be made to national or international standards on accessibility), except in duly justified cases or for security reasons.

When reviewing bidding documents for works and/or construction services due consideration must be given to accessibility and use of buildings and equipment for people with non-ambulatory disabilities (wheelchair users), semi-ambulatory disabilities (persons using crutches or canes), sight disabilities (blind people or persons with impaired vision) and hearing disabilities.

1.6.4 Environmental Responsibility

1.6.4.1 General considerations

Promoting an environmentally responsible supply base furthers and aligns ECOWAS Institutions mission and business objectives. ECOWAS Institutions are committed to encouraging their suppliers to promote and enhance environmental responsibility in their conduct of ECOWAS business.

- a) Subject to the principles governing the award of procurement contracts and grants such as equal opportunities and non-discrimination, environmental issues must be considered since the initial stage of design of public procurement procedures and calls for grants.
- b) This might result in more environment-friendly terms of reference/guidelines/technical specifications, increased use of information technology (less paper consumption, use of recyclable or degradable material, etc.) and increased use of "green" sources of energy, provided this does not lead to a reduction or distortion of the competition.

Environmental procurement is only one leg of sustainable procurement comprising social, economic and environmental considerations referred to in Agenda 2030 and Sustainable Development Goals (SDGs). Sustainable Development Goal 12 ensures sustainable consumption and production patterns. Public procurement shall consider:

- a) Sustainable consumption and production are about promoting resource and energy efficiency, sustainable infrastructure, and providing access to basic services, green and decent jobs and a better quality of life for all. Its implementation helps to achieve overall development plans, reduce future economic, environmental and social costs, strengthen economic competitiveness and reduce poverty.
- b) Sustainable consumption and production aim at "doing more and better with less," increasing net welfare gains from economic activities by reducing resource use, degradation and pollution along the whole lifecycle, while increasing quality of life. It involves different stakeholders, including business, consumers, policy makers, researchers, scientists, retailers, media, and development cooperation agencies, among others.
- c) It also requires a systemic approach and cooperation among actors operating in the supply

chain, from producer to final consumer. It involves engaging consumers through awareness-raising and education on sustainable consumption and lifestyles, providing consumers with adequate information through standards and labels and engaging in sustainable public procurement, among others.

ECOWAS environmentally responsible procurement will be reflected in solicitation documentation. Applicable evaluation criteria will be included in the technical evaluation and considered in the cost analysis of all quotations, bids, and proposals received in determining the successful bidders/offers.

1.6.4.2 Principles

- a) There is no “one size fits all” for sustainable or environmental procurement and considerations shall be tailored to individual procurement needs and the ability of the local market to respond.
- b) The intention to adopt sustainable or environmental procurement requirements in the procurement process shall be identified from the onset, i.e., at the procurement planning stage including: requirements definition; sourcing; solicitation; evaluation; contract award; contract management and contract closeout.
- c) The sustainable procurement requirements shall be evidence based, i.e., be based on existing and credible third-party social or environmental certification criteria, or on information collected from stakeholders in industry, civil society and international development agencies.

1.6.4.3 Environmentally Preferred Products (EPP)

To increase the development and awareness of environmental procurement, the acquisition of goods, works and services will ensure that, wherever possible, specifications are written to provide for the expanded use of Environmentally Preferred Products (EPP) such as: durable products, reusable products, energy-efficient products, low-pollution products, products (including those used in services) that contain the maximum level of post-consumer and/or recyclable content, and products that in any other way have a minimal harmful impact on the environment.

Environmentally preferred products (EPP) are less harmful to the environment than the next best alternative having characteristics including, but not limited to the following:

Reconsider needs means to rethink needs and make a distinction between needs and wants and try to look at the requirements from a distance. possible question one may ask are: do I need this, do I need this now, do I need so many and so big, does it have to be so complex, etc.

Refuse consists of refusing unnecessary items like disposable straws, plastic bags, and single-use cutlery.

Reduce means reducing the need, reducing waste and makes efficient use of resources. An EPP would be a product that is more energy-, fuel-, or water-efficient, or one that uses less paper, ink, or other resources. Examples: energy-efficient lighting, photocopiers capable of double-sided photocopying, and Energy Star rated appliances, computers and electronic devices; Reduce criteria include:

- a) EPP produces fewer polluting by-products and/or safety hazards during manufacture, use, or disposal. A non-hazardous product that replaces a hazardous product would be an EPP;
- b) EPP is packed using packaging that has minimal environmental impact.
- c) EPP has a long service life

Reuse: The EPP is reusable or contains reusable parts. These are products such as rechargeable batteries, reusable building partitions, and laser printers with refillable toner cartridges;

Repair, means that a broken or dysfunctional product, equipment or building is being repaired to operate under the same functionality as before the break down.

Restore: means a bit more than repair and may require an overhaul of the equipment or building and it may be put to another use that fit better with the needs of the beneficiaries.

Remake, means upcycling. Where recycling takes consumer products and breaks them down to make other products – upcycling turns low value consumer products into new items that ideally are of higher value or need. It's the deliberate action of seeing a need and filling it not with a new product, but rather a mix of those you have or aren't using.

Recycle: A product will be considered to be an EPP if the product contains post-consumer recycled materials. An example is a paper product made from recycled post-consumer fibre. EPP also requires local facilities exist that are capable of recycling components of the product at the end of its useful life.

Given the environmental and economic importance of infrastructure, environmentally responsible procurement principles shall be applied to ECOWAS construction and renovation projects in the form of construction design processes, tendering, and materials utilized.

It is recognized that cost analysis is required to ensure that a product is made available at competitive prices and that the environmental benefits provided by a product do not undermine its overall performance. Given that many environmentally preferred products and services can produce a variety of tangible benefits, full consideration shall be given to the long-term and complete costs and benefits of environmentally responsible procurement.

1.6.5 Gender

Terms of reference and technical specifications for public procurement and guidelines for grants shall be designed to ensure equal opportunities for men and women. Qualitative selection criteria and grounds for exclusion on gender basis shall be avoided except in duly justified cases. Whenever possible, public procurement shall take the opportunity to promote gender equity in the subject of the contract as well as during the evaluation of bids and proposals.

1.6.5.1 Examples when evaluating a proposal:

- Does the proposal provide gender background information and highlight relevant gender issues?
- Is the project team gender-balanced? Do the team members have an adequate level of gender expertise?
- Does the proposal include sex-disaggregated data and gender indicators?
- Does the proposal measure anticipate impacts on women and men?
- Does the proposal incorporate gender-balanced participation and/or collaboration from recipients and/or beneficiaries?
- Does the proposal include/seek gender expertise in the project team and/or stakeholders?

1.6.5.2 Examples of requirements for the implementation of contracts:

- Gender-balanced composition of the contract team and beneficiaries;
- Balanced presence of women and men in decision-making positions during project implementation;
- Will the project undertake gender-related analysis?
 - mapping of the situation of women and men in the concerned area, in the beginning during and at the end of the project;
 - elaboration of gender-specific objectives during the life of the project;
- Use of sex-disaggregated data and gender indicators as a gender mainstreaming instrument;
- The application of gender-balanced participatory methodologies;
- Preference given to women when hiring staff in male-dominated sector

During contract negotiations significant improvements to project plans can be realised taking into account the above examples. Also throughout the contract implementation phase, gender-balancing learning activities can be incorporated, exceeding upstream agreed indicators.

1.7 Control mechanisms

This Manual has sufficient intrinsic control mechanisms to ensure that the bidding process attains best total value in the procurement of goods, works and services. They include:

1.7.1 Legal review

The Procurement Manual and the Standard Bidding Documents have been reviewed and vetted by the Management of ECOWAS. The Procurement Manual cannot be changed without legal review, among other reviews. By default, the Standard Bidding Documents contain two sections that cannot be changed without legal review, which are the Instructions to Bidders (ITB) and the General Conditions of Contract (GCC).

1.7.2 Internal administrative review;

The internal administrative review is detailed in the Procurement Code Chapter II and responsibilities and in the Delegation of Authority Thresholds in Annex I of the Procurement Code.

1.8 Complaints

Complaint's resolution will be in line with Part I Chapter III (Article 24 and 25) of the Procurement Code.

This procurement guidance offers an overview of the ECOWAS complaints review mechanism. This guidance explains the key concepts and outlines the process for filing and reviewing complaints that arise in connection with contracts where ECOWAS Standard Bidding Documents (SBDs) are used.

There are four essential requirements that must be met by the party who wishes to make a procurement-related complaint (Annex II). These are:

1. Who? The party seeking to make the complaint must be eligible to make the complaint. Under the Procurement Regulations only an 'interested party' is eligible to make the procurement-related complaint.
2. Why? The circumstances giving rise to the complaint must be relevant to the procurement Manual under Art. 1.8.2 below which describes the three (3) relevant circumstances that may give rise to procurement-related complaints.
3. When? Procurement-related complaints must be made in a timely manner. The Procurement Code set the time limits that apply to making this type of complaint.
4. What? The procurement-related complaint must contain all of the required information (content) described in the Procurement Code. This must be provided at the time of making this type of complaint.

1.8.1 Who can complain?

For procurements where SBD are used, only an 'interested party' may make a procurement-related complaint. An 'interested party' means either:

- a) a potential participant in a procurement opportunity, or
- b) an actual participant.

Whether an interested party is a potential or actual participant will depend on the stage that the procurement process has reached when the procurement-related complaint arises and what action, if any, the interested party has taken.

The following table describes examples of “interested party”.

Interested Party	Description
A potential participant	<p>This is a firm/individual that is interested in participating in the procurement opportunity, but has not yet submitted a response to the procurement opportunity.</p> <p>For example: - a potential, Bidder, Proposer or Consultant that is interested in submitting an application, bid or proposal, Prequalification, Initial Selection, Request for Bids/request for proposals process but has not yet done so</p>
An actual participant	<p>This is a firm/individual that has submitted an application/bid/proposal in response to a contract opportunity.</p> <p>For example:</p> <ul style="list-style-type: none"> - a Bidder that has submitted a Bid to Prequalify, be Initially Selected, or - a Bidder, Proposer or Consultant that has submitted a Bid or Proposal

1.8.2 Circumstances

There are three (3) circumstances in which a procurement-related complaint may be made. These are:

1.8.2.1 Challenge Procurement Documents

In this circumstance, the complainant may seek to challenge the terms of the Procurement Documents. This means that the complainant has a concern or issue in relation to, for example, one of the following documents:

- a) prequalification document;
- b) initial Selection document;
- c) request for Bids or Request for Proposals; and /or
- d) an addendum to any of the above documents.

1.8.2.2 Challenging the decision to exclude prior to contract award

In this circumstance, the complainant may seek to challenge the decision to exclude him from a procurement process, prior to the contract award decision being made. Examples include:

- a) not qualifying in a Prequalification;
- b) not being shortlisted;
- c) not being selected in an Initial Selection; and
- d) being eliminated from a multi-stage procurement process.

1.8.2.3 Challenging the decision to award the contract

In this circumstance, the complainant (s) may seek to challenge the decision to award the contract. This procurement-related complaint can only be made after the unsuccessful bidder (s) have received the Notification of the intention to Award the contract to the successful bidder.

1.8.3 When to make a procurement-related complaint?

Procurement-related complaints must be submitted in a ‘timely manner’, depends on the circumstances giving rise to this type of complaint.

Challenge	Complaint deadline
Procurement Documents	The complaint shall be received at least twenty-one (21) calendar days prior to the deadline for submissions to allow the Contracting Authority to respond at least fifteen (15) calendar days prior to the deadline for submissions.
Exclusion prior to contract award	Within fifteen (15) calendar days following the notification sent by the Contracting Authority
Award of contract	Within fifteen (15) calendar days following the notification sent by the Contracting Authority

In relation to a procurement-related complaint challenging the decision to award, there are certain procedures that the complainant should be aware of. These are:

- a) Notification of Award;
- b) Standstill Period;
- c) Debriefing by the Public Contracting Officer.

1.8.4 Notification of Award

Once the Contracting Authority has decided who the contract will be awarded to, it shall promptly and simultaneously provide, by quickest means available, each Bidder/Proposer that submitted a Bid/Proposal (unless a Bidder/Proposer has previously received notification of exclusion from the process) with a written notification to award the contract to the successful Bidder/Proposer. This notification is called Notification of Award. This Notification must include the following information:

- a) the name and address of the successful Bidder/Proposer who will be awarded the contract;
- b) the contract price (or where the successful Bid/Proposal was determined based on rated criteria, the contract price and the total combined score) of the successful Bidder/ Proposer;
- c) the names of all Bidders/Proposers that submitted Bids/Proposals and their prices as read out, and as evaluated;
- d) a statement of the reason(s) why the recipient’s Bid/Proposal was unsuccessful;
- e) instructions on how to request a debriefing and/or submit a procurement-related complaint during the Standstill Period; and
- f) the date the Standstill Period is due to end.

In providing the above information the Contracting Authority must not divulge any other Bidder's/Proposer's confidential or proprietary information such as: cost breakdown, trade secrets, manufacturing processes and techniques, or other confidential business or financial information.

For Intellectual services, following the initialling of the draft negotiated contract by the successful consultant, the Contracting Authority shall promptly and simultaneously provide, to each consultant whose Financial Proposal was opened, the Notification of Award to the successful consultant with whom the Contracting Authority successfully negotiated the contract.

1.8.5 Standstill Period

In order to allow unsuccessful Bidders/Proposers/Consultants time to examine the Notification of Award and assess whether to seek a debriefing, and/or submit a procurement-related complaint, the Procurement Code provides a Standstill Period. The Contracting Authority must not award the contract within the Standstill Period, which lasts fifteen (15) calendar days following the notification of award.

A Standstill Period will not apply in the following situations:

- a) where only one Bid/Proposal was submitted in an open competitive process;
- b) where the Contracting Authority has undertaken direct selection;
- c) for a call-off contract under a Framework Agreement; or
- d) if the procurement is the result of an Emergency Situation that is recognized by the President of the ECOWAS Commission.

1.8.6 Debriefing by the Public Contracting Officer

During the Standstill Period an interested party has seven (7) calendar days (on receipt of the Notification of Award of the contract) to request a debriefing from the Contracting Authority. The Public Contracting Officer will be delegated by the Contracting Authority to provide the debriefing within seven (7) calendar days of receiving the request.

If the contract award is suspended by ECOWAS or if there is any other justifiable reason, the Public Contracting Officer may provide the debriefing later than seven (7) calendar days deadline. If this happens, the Standstill Period is automatically extended to a date that is seven (7) calendar days after the date of the last debrief. Bidders/Proposers/Consultants will be promptly notified, by the quickest means available, of the extended Standstill Period

1.8.7 What information must be included?

In submitting a complaint, the complainant must provide all of the information contained in the following table, as well as any additional information that may be relevant to the Director of Administration and General Services (DAGS), as follows:

- a) the name, contact details, and address of the complainant;
- b) the complainant's interest in the procurement; identification of the complainant as 'Interested Party'
- c) the procurement reference number, country, the Procuring Entity, the Contracting Authority and any other relevant information;
- d) specify any previous communication between the complainant on the matters addressed in the complaint; it is important to alert the Contracting Authority to any previous communication the complainant has had with the Procuring Entity in relation to the matters addressed in the complaint. Include details of any previous communication. This may be an email, letter,

meeting or debriefing. Specify the matters discussed in the communication. Where possible provide a copy of the communication.

- e) the nature of complaint and the perceived adverse impact; this means describing the facts and circumstances leading to the complaint, and the nature of the grievance, problem, concern or adverse impact that has allegedly resulted.
- f) the alleged inconsistency with or violation of the Procurement Document, and/or Procurement Code and the relevant section, paragraph or appendix of that which is alleged to have been violated or with which there is inconsistency.
- g) Optional: the complainant may include any other information it considers relevant.

1.8.8 Response to a procurement-related complaint

In the first instance the Director of Administration and General Services (DAGS) is responsible to respond to complaints within fifteen (15) calendar days of submission of the complaint.

1.8.9 Content of a response to a procurement-related complaint

In addressing a procurement-related complaint, the Director of Administration and General Services will undertake a timely and meaningful review of all relevant documentation as well as the facts and circumstances related to the complaint. The Director of Administration and General Services should provide sufficient information in his/her response to the complainant. Sufficient information includes, as a minimum, the following:

- a) Statement of issue/s: a clear, succinct statement of the issue/s raised by the complainant that needs to be addressed;
- b) Facts and evidence: a clear, succinct statement of the facts and evidence that, in the Director of Administration and General Services' view, are relevant to the resolution of the procurement-related complaint. The facts and evidence should be presented as a narrative and organized around the issue/s;
- c) Decision and basis for the decision: a precise statement explaining the Director of Administration and General Services' decision. This should include the basis for the decision, for example, the Director of Administration and General Services' interpretation of the facts, or citing a specific Procurement Code or provision in an SBD;
- d) Analysis: an explanation of the basis of the decision. This should describe why the facts, circumstances and evidence support the decision. This explanation should identify and address each question that has to be answered in order to arrive at the decision; and
- e) Conclusion: a clear statement of the resolution of the procurement-related complaint and a description of the next steps to be taken, if any.

The requirement that the Director of Administration and General Services provides sufficient information is subject to the Director of Administration and General Services' obligations to maintain the confidentiality of certain information provided to it, and regulated by Procurement Code article 19 (Confidentiality and Communication). This may include preserving the confidentiality and proprietary information of other Bidders/Proposers, including commercial and financial information and trade secrets, as requested by the Bidders/Proposers in their Bids/Proposals.

1.8.10 Appeal to a Response to a procurement-related complaint

If the Director of Administration and General Services (DAGS) does not give notice to the complainant, or if the complainant is dissatisfied with the decision so notified under **Error! R**

reference source not found. of the Procurement Code, the Complainant can appeal to the Contracting Authority.

1.8.11 Content of an Appeal to a Response to a procurement-related complaint

In addressing a procurement-related appeal to a response from the Director of Administration and General Services, the Contracting Authority should provide sufficient information in its response to the complainant following the same sequence of information as stated in paragraph 1.8.9.

1.8.12 Action(s) when procurement-related complaint is upheld

Where a procurement-related complaint is upheld, the Director of Administration and General Services/Contracting Authority will usually take one or more of the following action/s.

Challenge	Optional actions by the Director of Administration and General Services/Contracting Authority, include the following but are not exhaustive:
Procurement Documents	Amendment of the procurement document and/or any other related document Addendum to the procurement document If appropriate, extension of the deadline of submission of bids/proposals to allow interested parties enough time to prepare a response
Exclusion prior to contract award	Modification of the result of the procurement phase concerned Transmission of a revised notification of the evaluation results to all parties and advising them of the next steps
Award of contract	Change of the notification of award Transmission of a revised notification of award to all parties and advising them of the next steps

1.9 Dispute Resolution

Dispute resolution pertains to disagreements and issues during contract execution and will be in line with Part I Chapter IV of the Procurement Code.

Contracts should be clear and the responsibilities and obligations of both contractors/supplier/Consultant and ECOWAS must be clearly defined in order to minimize the possibility of disputes and disagreements. As a good practice, in case of complex contracts for goods and services it is recommended to create a simple and clear Responsibility Matrix that would

constitute an Annex to the contract. However, no matter how well a contract is drafted and its performance managed, disputes can and do arise.

The procedures for dealing with claims, disputes and arbitration are specified in detail in the Standard Bidding Documents, and these procedures and timeframes should be followed carefully. It is particularly important to keep good records of all circumstances that may give rise to claims and/or disputes.

This procurement guidance offers an overview of the ECOWAS dispute resolution mechanism. This guidance explains the key concepts and outlines the process of dispute resolution that arise in connection with awarded contracts where ECOWAS Standard Bidding Documents (SBDs) are used, i.e., after contract award.

There are four essential requirements to a procurement-related dispute (Annex II). These are:

- a) Who? The party raising the dispute must be eligible. Under the Procurement Regulations only an ‘interested party’ is eligible to raise a dispute.
- b) Why? The circumstances giving rise to the dispute must be relevant to the contract.
- c) When? Procurement-related disputes must be raised in a timely manner. The Procurement Code set the time limits that apply to raising a dispute.
- d) What? The procurement-related dispute must contain all of the required information (content) described in the Procurement Code. This must be provided at the time of raising a dispute.

1.9.1 Who can raise a dispute?

For procurements where SBD are used, only an ‘interested party’ may raise a dispute. An ‘interested party’ means an actual contract party.

1.9.2 Circumstances

Disputes during contract execution frequently occur through:

- a) a lack of understanding of the risks entailed in undertaking a contract; this can be by either or both parties to the contract;
- b) a lack of preparation in depth for the contract;
- c) a failure to communicate between the parties;
- d) inaccurate assumptions on what the contract entails;
- e) unexpected events that materially impact upon the ability to complete the contract;
- f) mistakes in supervision by the contracting entity;
- g) changes in needs after work is contracted.

1.9.3 When to raise a dispute

Procurement-related disputes may be raised at any given time during contract execution.

1.9.4 Amicable settlement

Amicable settlement is the first step in a dispute resolution process. All negotiations undertaken to reach amicable settlement are based on openness to compromise since this is often less costly than alternative methods of dispute resolution. ECOWAS must strive to always solve disputes through negotiation.

Upon failure of amicable settlement, a party may notify the other party requesting a settlement through any of the following Dispute Resolution Mechanisms.

1.9.5 Mediation.

Mediation is an Alternative Dispute Resolution method where a neutral and impartial third party, the mediator, facilitates dialogue in a structured multi-stage process to help parties reach a conclusive and mutually satisfactory agreement. A mediator assists the parties in identifying and articulating their own interests, priorities, needs and wishes to each other. Mediation is a “peaceful” dispute resolution tool that is complementary to the existing court system and the practice of arbitration.

1.9.6 Conciliation.

Conciliation is another dispute resolution process that involves building a positive relationship between the parties of dispute, however, it is fundamentally different from mediation and arbitration in several respects. Conciliation is a method employed in civil law countries and is a more common concept than mediation. The “conciliator” is an impartial person that assists the parties by driving their negotiations and directing them towards a satisfactory agreement. It is unlike arbitration in that conciliation is a much less adversarial proceeding; it seeks to identify a right that has been violated and searches to find the optimal solution.

1.9.7 Adjudication

Adjudication is the legal process by which a court judge reviews evidence and arguments, including legal reasoning set forth by opposing parties to come to a decision which determines rights and obligations between the parties involved, usually used to resolve disputes during contract execution in the short term to avoid contract suspension.

1.9.8 Arbitration

Arbitration is a method where the disputing parties involved present their disagreement to one arbitrator or a panel of private, independent and qualified third party “arbitrators.” The arbitrator(s) determine the outcome of the case, which is the main disadvantage, i.e., the potential loss of control over the decision after transfer by the parties of decision-making authority to the arbitrator.

Arbitration shall be conducted as specified in the Contract Document, as follows, either:

- (a) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or,
- (b) in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- (c) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in the Contract Data.

The arbitrators shall have power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Expert, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments.

Arbitration may be commenced prior to or after completion of the object of the contracts. The obligations of the Parties and the Expert shall not be altered by reason of any arbitration being conducted during the progress of the Contracts.

1.9.9 Content of a Statement of Dispute

In raising a dispute, the initiating party may prepare a Statement of Dispute with the information contained in the following table, as well as any additional information that may be relevant as follows:

- a) the name, contact details, and address of the party raising the dispute;
- b) the party's interest in the contract;
- c) the contract reference number, country, the Procuring Entity, the Contracting Authority and any other relevant information;
- d) specify any previous communication between the parties on the matters addressed in the dispute; it is important to alert the Dispute Resolution Committee to any previous communication the party has had with the Contracting Authority and/or Procuring Entity in relation to the matters addressed in the dispute. This may be an email, letter, meeting or debriefing. Specify the matters discussed in the communication. Where possible provide a copy of the communication.
- e) the nature of dispute and the perceived adverse impact; this means describing the facts and circumstances leading to the dispute, and the nature of the grievance, problem, concern or adverse impact that has allegedly resulted.
- h) the alleged inconsistency with or violation of the contract, and/or Procurement Code and the relevant section, paragraph or appendix of that which is alleged to have been violated or with which there is inconsistency.
- f) Optional: the party may include any other information it considers relevant.

1.10 Sanctions Committee

The Contracting Officer refers all procurement violation to the Sanctions Committee. The Sanctions Committee will make the determination whether a vendor is responsible, conditionally responsible, or non-responsible based on all relevant information reasonably available, including any information submitted by the vendor to ECOWAS. This determination is final and without appeal.

1.11 Capacity building and professionalisation of practitioners

The Public Contracting Officer is responsible for designing and delivering capacity building activities as they relate to Procurement across the ECOWAS Community. The training modules may cover an array of subjects, but are not limited to:

- a) Procurement principles
- b) Procurement review and approval process with roles and responsibilities of entities and authorities
- c) Dispute Resolution mechanisms
- d) Procurement planning, monitoring, plan management and learning
- e) Procurement methods for Goods, Works, Services and Intellectual Services
- f) Procurement process of Goods, Works, Services and Intellectual Services
- g) Design of specifications, SOW and TORs
- h) Evaluation of Goods, Works, Services and Intellectual Services
- i) Alternative Procurement Systems assessment methodologies

- j) Contract management
- k) Contract award negotiations

The target audience may differ depending on the capacity building objective and may include:

- a) ECOWAS management, e.g., on procurement principles, concepts and decision-making process
- b) ECOWAS professionals, covering all aspects of procurement
- c) Bidders and contractors, e.g., in bid preparation and contract management
- d) Beneficiaries, e.g., on Best Value for Money evaluation practices.

The World Bank Institute has defined a Capacity Building Results Framework that could be used and applied in any sector and in any environment. The main elements of any such framework applied to ECOWAS would be:

- a) A clearly specified ***development goal*** or set of goals that motivates the capacity development effort
- b) Three (3) ***capacity factors*** that determine the likelihood to achieve the stated development goal(s). The three capacity factors are:
 - a. Conduciveness of the socio-political ECOWAS community
 - b. Efficiency of ECOWAS Treaty, Community Strategic Framework, procurement and related policy instruments
 - c. Effectiveness of the ECOWAS institutional arrangements
- c) A ***change process*** that leads to improvements in the targeted capacity factors at the hands of agents of change empowered through learning
- d) ***Activities and instruments*** designed to achieve the necessary learning outcomes for the agents of change.

1.12 Technology: e-Commerce, Use of Electronic Systems in the Procurement Practices

Electronic commerce with suppliers significantly enables efficiency and reduction in transaction costs. It is the goal of ECOWAS Institutions to have an integrated electronic business solution for the majority of its supply processes:-

Inherent in this principle is an expectation that ECOWAS Institutions suppliers will become capable of conducting business electronically. This system shall feature adequate technical safeguards.

The system extends to the entire supply chain, including procurement plans, advertisements, communications and document exchanges, contracts and complaints.

The system extends to bidders, beneficiaries, contractors, service providers, and the public.

Access to the system shall be in accordance with the delegation of authority matrix published on the ECOWAS portal.

1.13 Language & Currency

The language to be used in the procurement documents and proceedings shall be in line with the provisions of the Procurement Code Article 29.1,2,3,4 and 5.

The currency to be used in the procurement documents and proceedings shall be in line with the provisions of the Procurement Code Article 29.6 and 7.

2 PROCUREMENT AUTHORITIES

2.1 Authority and Responsibility

This chapter identifies the various entities with their respective responsibilities and accountabilities. This manual provides a detailed description of the activities prior to the initiation of the procurement process. *The Procurement Code provides detailed descriptions of the roles and responsibilities of the following entities after the initiation of the procurement process.*

2.1.1 The Contracting Authority

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. The roles and responsibilities are described in detail in Art. 12 of the Procurement Code.

2.1.2 The Public Contracting Officer (PCO),

The Public Contracting Officer is 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. The roles and responsibilities are described in detail on Art. 13 of the Procurement Code.

2.1.3 The Bid Opening Committee

The Contracting Authority shall appoint a bid opening committee that is composed of at least three (3) members including one (1) representative of the Procuring Entity, one (1) representative of the Procurement Unit and one (1) from Finance Directorate. The roles and responsibilities are described in detail in Art. 14 of the Procurement Code.

2.1.4 The Evaluation Entity

The Evaluation Entity is 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 the Procurement Code. The roles and responsibilities are described in detail in Art. 15 of the Procurement Code.

Above predefined thresholds, determined in the Annex I of the Procurement Code, the evaluation is undertaken by an Evaluation Committee, which is an ad hoc committee appointed by the Contracting Authority and of whose roles and responsibilities are described in detail in Art. 16 of the Procurement Code.

2.1.5 The Review Entity

The Reviewing Entity ensures compliance with the procurement Code and procedures.

“**Review Entity**” is the person or Committee in charge of verifying the conformity and compliance of the recommendation made by the Evaluation Entity and deciding on the need to refer them back or clear the procurement recommendation for contract award and signature; The roles and responsibilities are described in detail on Art. 17 of the Procurement Code

Above predefined thresholds, determined in the Annex 1 - Schedules 1 – 8 of the Procurement Code or any time its intervention is required, the procurement review is undertaken by a Review

Committee, whose roles and responsibilities are described in detail in Art. 18 of the Procurement Code.

2.1.5.1 General checklist applicable to all procurement

1. Does the procurement fully respect the procurement principles as follows?

- (i) **Transparency:** This principle requires appropriate review of the procurement activities, supported by appropriate documentation and disclosure. Transparency requires:
 - 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;
 - appropriate reporting of procurement activity; and
 - the use of confidentiality provisions, where justified.
- (ii) **Equity/Fairness/equal opportunity:** This principle refers to:
 - equal opportunity and treatment for bidders and consultants;
 - competitive tendering;
 - equitable distribution of rights and obligations between the Contracting Entity and suppliers, candidates, bidders, consultants and contractors; and
 - credible mechanisms for addressing procurement related complaints and providing recourse.
- (iii) **Effectiveness:** This principle refers to the degree to which ECOWAS' objectives are achieved and the extent to which targeted problems are solved.
- (iv) **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.
- (v) **Efficiency & Proportionality:** Procurement arrangements are generally time-sensitive and strive to avoid delays. The principle of efficiency requires that Procurement Processes are proportional to the value and risks of the underlying project activities.
- (vi) **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.
- (vii) **Gender Equality:** Terms of reference and technical specifications for public procurement shall be designed to ensure equal opportunities for men and women. Gender-based selection criteria shall be avoided except in duly justified cases.
- (viii) **Accessibility for Disabled People:** All services, supplies, works that relate to goods, services and infrastructures intended for the use of persons, whether external public or staff of the contracting entity, must include in their technical specifications accessibility requirements for persons with disabilities following a "design-for-all approach" (reference can be made to national or international standards on accessibility), except in duly justified cases or for security reasons.
- (ix) **Respect for the Environment**

- 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.
 - This might result in more environment-friendly terms of reference/guidelines/technical specifications, increased use of information technology and increased use of “green” sources of energy, provided this does not lead to a reduction or distortion of the competition.
2. Is the procurement activity in the approved procurement plan?
 3. Is the budget for this procurement activity approved?
 4. Is the request for this procurement activity authorised by the Procuring Entity/User Entity?
 5. Has the needs Requirement (ToR / Technical Specifications) been approved by the Authorised staff in the Procuring Entity/User Entity?
 6. Has the correct selection method been appropriately used for this procurement in line with the thresholds laid out in Annex 1 of the Procurement Code?
 7. If applicable, has direct contracting been allowed in the cases in pursuance of Art. 64 as follows:
 - 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, the initial equipment must function properly and, generally, the quantity of the new supplies shall be less than the one already procured and the price reasonable, and in addition, the advantages of going for another brand and source of supply must have been known and that option rejected;
 - b. where the required equipment must have exclusive rights and be supplied by a single supplier called sole source;
 - c. when a single supplier is selected among many suppliers, this is called single source;
 - d. where the company responsible for the design process requires that the essential parts to be purchased come from a particular supplier so as to ensure that the equipment is working properly;
 - e. in exceptional and newly emerging circumstances that could not be anticipated or planned, for example, in response to natural disasters, emergency as defined under 7.10.10 or for special security reasons.
 8. In case of derogation, has the derogation been justified and approved by the Contracting Authority? Possible derogations can relate to one or more following issues:
 - a. Any or several procurement principles;
 - b. Selection method as defined in Annex 1 of the Procurement Code;
 - c. Selection Arrangements;
 - d. Thresholds as defined in Annex 1 of the Procurement Code;
 - e. Scope of application;
 - f. Advertisement content and period;
 - g. Procedure deadlines and time lines;
 - h. Exclusions from Contracting Process;
 - i. Classification or registration of Enterprises;
 - j. Subcontracting;

- k. Procurement Plan;
 - l. Language;
 - m. Currency provisions;
 - n. Submission of bids;
 - o. Extension of deadline for bid submissions;
 - p. Opening of bids;
 - q. Conditions for prequalification;
 - r. Conditions for two-stage bidding;
 - s. Conditions for restricted tendering;
 - t. Conditions for Request for Quotations;
 - u. Shortlisting, publication period, number of firms;
 - v. Use of Standard Bidding Documents;
 - w. Use of Bid Security;
 - x. Abnormally low bids;
 - y. Unsuccessful contracting process.
9. If applicable, has any rejection or objection by the Evaluation Entity be duly substantiated with reference to the dispositions of this Code including suggested corrective measures?
10. If applicable, are contract addenda awarded in compliance with Art. 106 of the Procurement Code as follows:
- 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, the initial equipment must function properly and, generally, the quantity of the new supplies shall be less than the one already procured and the price reasonable, and in addition, the advantages of going for another brand and source of supply must have been known and that option rejected;
 - b. where the required equipment must have exclusive rights and be supplied by a single supplier called sole source;
 - c. when a single supplier is selected among many suppliers, this is called single source;
 - d. where the company responsible for the design process requires that the essential parts to be purchased come from a particular supplier so as to ensure that the equipment is working properly;
 - e. in exceptional and newly emerging circumstances that could not be anticipated or planned, for example, in response to natural disasters, emergency as defined under 7.10.10 of the Procurement Code or for special security reasons.

2.1.5.2 Checklist for Goods, Works and Services

1. Has the Public Contracting Officer used the ECOWAS Standard Bidding Document appropriate for this procurement?
2. Has the need requirement in the Standard Bidding Document is approved by the Procuring Entity?
3. Has the advertisement (if required by Annex 2 of the Procurement Code) been approved by the PCO?
4. Has the advertisement (if required) been published in line with Annex 2 of the Procurement Code?

5. Was the advertisement (if required) in conformity with the requirements of Art. 49 of the Procurement Code, setting out at least 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 languages(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 evaluation criteria;
 - k. the name of the Contracting Authority;
 - 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. the contract payment provisions;
 - p. evidence of the bidders' qualification, technical capability and solvency;
 - q. where applicable, any other conditions as the procuring entity may consider necessary.
6. Was the bid submission in conformity with Article 51 of the Procurement Code, comprising the following:
- a. deposited in a secured tamper-proof bid-box;
 - b. contain a receipt showing the place, date and time the bid was delivered;
 - c. submitted in writing and/or in any other format in the tender documents;
 - d. submitted in the language(s) indicated in the tender document;
 - e. contain all the information related to the bidder;
 - f. contain the administrative documents required;
 - g. contain the bid security;
 - h. the technical and financial offers separately and each signed by an official authorized to bind the bidder to a contract and
 - i. be placed in a sealed envelope?
 - j. Is there a special register recording receipt of bids?
 - k. In case of extension of the deadline of bid submission, has the period not exceeded the original bidding period and with a maximum of fifteen (15) calendar days and has the

decision been published not less than fifteen (15) calendar days ahead of the bid closing date and through the same means as the publication of the SPN?

7. Was the bid opening procedure in conformity with Article 53 of the Procurement Code, compliant with the following requirements:
 - a. Have late bids been rejected?
 - b. Was the bid opening committee composed of at least three members including one representative of the Procuring Entity and one representative the Procurement Unit?
 - c. Did the bid opening take place immediately after the date and time set for bid submission?
 - d. Were envelopes containing the bids opened in the presence of the bidders or their representatives who wished to attend?
 - e. Was the following information read out loud: the name of each bidder, the price of the bid and of alternatives or discounts, if any, the time frame for execution, the required bid security indicated or any other information relevant to the type of selection?
 - f. Was the bid opening report prepared in the format contained in the procurement manual?
 - g. Was the bid opening report sent to all bidders?
8. Has the evaluation process respected the provisions of Articles 82 and 84 of the Procurement Code, comprising the following:
 - a. Has the evaluation been completed within maximum fifteen (15) calendar days?
 - b. If applicable, have clarifications from bidders been conducted with respect of Communication and Confidentiality in line with Article 15 of the Procurement Code?
 - c. Are the evaluation criteria for goods, works and services quantifiable and expressed in monetary terms?
 - d. Are the evaluation criteria weighted in the case of intellectual services?
 - e. Is the detailed evaluation report in conformity with the formats available in the Procurement Manual, including at least:
 - (i) the names of the bidders,
 - (ii) the specific reasons on which its recommendations for the award of each contract are based,
 - (iii) the main conditions of the contract, the contract amount, the implementation period and specific remarks.
9. Was the evaluation conducted in conformity with the evaluation criteria in the bidding document?
10. If applicable, was ECOWAS preference applied in conformity with the requirements in Article 85 of the Procurement Code?

2.1.5.3 Checklist for Intellectual Services

1. Have the Terms of reference been approved by the Authorised staff in the Procuring Entity/User Department?
2. Was the REOI (if required) in conformity with the requirements in the RFP document?
3. Has the REOI (if required) been published in line with Annex 2 of the Procurement Code?
4. Has the period allowed for expression of interest shall not exceeding twenty-one (21) calendar days been respected?

5. Has the shortlist been prepared in line with Article 60 of the Procurement Code as follows:
 - a. Did the shortlisting respect the requirement and the exception for CQS and Direct Selection?
 - b. Did the shortlist contain at least six (6) and not more than eight (8) best qualified candidates?
 - c. Was the shortlist based on the Expression of Interest documents submitted and any other source the Public Contracting Officer and the Procuring Entity may deemed necessary?
6. Has the Public Contracting Officer used the ECOWAS Standard Request for proposals (RFP) appropriate for this procurement?
7. Were the criteria in the RFP exclusively applied to the following:
 - a. The qualifications, experience, reliability, 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.
8. Has the selection process been in line with Art. 62 of the procurement code as follows:
 - a. Did the opening of the technical proposals take place immediately after the deadline for proposals submission and not in public?
 - b. Did the public opening of the financial proposals take place with qualified consultants, the proposals of whom passed the technical evaluation, invited to be present?
9. Is the evaluation report in conformity with the provisions in the procurement manual?

2.1.6 Procuring Entity/ Requisitioner

The Procuring Entity is the institution, agency or field office which expressed the need that has triggered the procurement process. It is the authority that initiates a procurement requisition, i.e., a request for goods, works or services. They have primary responsibility for managing procurement resources and achieving project or program results. In ECOWAS, all expenditures must be made against a valid budget line.

Responsibilities of a Procuring Entity or Requisitioner in a procurement process (some of these can be delegated to other project personnel):

- a) Preparing the procurement plan of the project, ensuring that proposed expenditures are in accordance with the purpose of the project;
- b) Drafting the requirements, definitions, Terms of Reference, Specifications and/or Statements of Works;
- c) Approving requisitions in ECOLink;
- d) Participating in the evaluation of submissions received, if appointed to the evaluation team;
- e) Accepting goods, services or works delivered by suppliers;
- f) Lead contract management duties including supplier performance evaluation. Contract management duties may include further duties if acting as the Employer's Representative within the FIDIC works contracts.

2.1.7 ECOWAS Community

The ECOWAS Community follows the same procurement regulation and procedures. However, because of their distant locations and size, Institutions, Agencies and Offices may require procedures and thresholds that may vary. This has been captured in the Delegation of Authority Thresholds in Annex I.

2.1.8 Procurement of Legal Services by ECOWAS Legal Directorate

The Procurement Division in collaboration with the Legal Directorate of the ECOWAS Commission shall procure the services of outside legal counsel, following laid down procedures in the Procurement Code.

The Legal Directorate shall maintain a list of registered legal experts which shall be established in line with the Framework Agreement procedures as laid down in the Procurement Code.

2.1.9 Authorized Cooperative Purchasing

Two or more Contracting Authorities may participate in, sponsor, conduct, or administer a cooperative purchasing agreement with one or more governments, international organizations, or private corporations (Corporate Procurement) for the procurement of supplies, services, or works. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts.

The respective and mutual Contracting Authorities must approve any cooperative procurement venture in advance of the procurement activity. The terms of the cooperative procurement will be agreed and referenced in a memorandum of understanding (MOU) signed by the respective Contracting Authorities of the parties to the MOU. All cooperative purchasing will be conducted in a manner consistent with these policies unless agreed otherwise in the MOU.

3 Ethics and Code of Conduct

3.1 Business Ethics

ECOWAS procurement activities must be conducted in a manner above reproach, with complete impartiality and with no preferential treatment. Transactions relating to the commitment of Community funds require the highest degree of public trust and an impeccable standard of conduct. In addition, the procurement activities are guided by the Institute for Supply Management's "Principles and Standards of Ethical Supply Management Conduct" as below. The ECOWAS Community will be fair, objective, and business-like in its dealings with the supplier community, ensuring that business decisions are driven by business considerations.

3.1.1 ISM - Principles and Standards of Ethical Supply Management Conduct

1. **Impropriety.** Prevent the intent and appearance of unethical or compromising conduct in relationships, actions and communications.
2. **Conflicts of Interest.** Ensure that any personal, business or other activity does not conflict with the lawful interests of your employer.

3. **Influence.** Avoid behaviours or actions that may negatively influence, or appear to influence, supply management decisions.
4. **Responsibilities to Your Employer.** Uphold fiduciary and other responsibilities using reasonable care and granted authority to deliver value to your employer.
5. **Supplier and Customer Relationships.** Promote positive supplier and customer relationships.
6. **Sustainability and Social Responsibility.** Champion social responsibility and sustainability practices in supply management.
7. **Confidential and Proprietary Information.** Protect confidential and proprietary information.
8. **Reciprocity.** Avoid improper reciprocal agreements.
9. **Applicable Laws, Regulations and Trade Agreements.** Know and obey the letter and spirit of laws, regulations and trade agreements applicable to supply management.
10. **Professional Competence.** Develop skills, expand knowledge and conduct business that demonstrates competence and promotes the supply management profession.

The ECOWAS Staff Rules and Regulations sets forth provisions governing conflicts of interest, external financial and other interests of staff members, outside employment, and related obligations of staff members. The special standards set forth below provide additional guidance to staff involved in the procurement process. Failure to observe these additional regulations or the provisions of the ECOWAS Staff Rules and Regulations constitutes misconduct and may lead to disciplinary action under the Staff Rules and Regulations.

3.1.2 Reporting suspected irregularities

ECOWAS Staff are under a duty to report any suspected misconduct by a colleague, including fraud which shall be reported to the Office of the Auditor General (OAG) and/or the Head of the Institution. ECOWAS Staff reporting in good faith any incident of suspected misconduct (whistle blowing) is entitled to protection by the OAG and/or Management from victimization, in accordance with the policy on protection against victimization for reporting misconduct or co-operating with duly authorised fact-finding activities.

3.2 Transparency

Disclosure of information will be in line with article 30 of the procurement Code and covers:

- a) Annual procurement plans.
- b) General Procurement notices (GPN)
- c) Specific Procurement notices (SPN).
- d) Request for Expression of Interest (REOI)
- e) Request for Initial Selection (RIS),
- f) Notifications for contract awards.
- g) Lodged disputes and complaints.
- h) All decisions of the Dispute Resolution Committee.

3.3 Protecting the Integrity of the Procurement Process

ECOWAS procurement process must allow vendors to compete for ECOWAS business on a fair, equal, and transparent basis. ECOWAS staff associated with the procurement process (herein after referred to as "staff") have a responsibility to protect the integrity of the procurement process and to maintain fairness in ECOWAS treatment of all vendors. This means that:

- a) During the pre-solicitation phase, staff must not allow vendor(s) access to information—whether technical, financial, or of any other nature--concerning a particular acquisition before such information is available to the business community at large;
- b) During the solicitation phase, all suppliers must receive identical information. Any clarifications to the solicitation documents must be provided at approximately the same time, in writing, to all suppliers
- a) It is unethical and may be unlawful for staff to present false competitive information to induce a vendor to meet a non-existent competitive position;
- a) Staff shall treat all vendor proprietary information, including prices, as confidential information; and
- a) Unless an exception to competition has been approved in accordance with the guidelines outlined in Chapter 5, "Solicitation," staff may not write or use an unnecessarily restrictive specification or Statements of Work that would effectively exclude the acceptable products or services of one vendor or increase the prospects of award to one vendor.
- b) During the evaluation, the evaluation criteria specified in the solicitation documents must be followed and must be applied in the same manner to each evaluated offer. Under no circumstances can new or revised evaluation criteria be introduced during the evaluation of offers nor can the method of evaluation be changed from that set out in the solicitation documents.

3.4 Acceptance of Gratuities, Benefits, or Employment

The following provisions apply in addition to the regulations set forth in the Procurement Code and the ECOWAS Staff Rules and Regulations:

Staff shall not solicit or accept, directly or indirectly, any cash, gratuity, gift, gift certificate, favour, entertainment, loan, rebate, hospitality or anything of monetary value from anyone who (1) has or is seeking to obtain ECOWAS business; (2) is a current ECOWAS vendor; or (3) has interests that may be substantially affected by ECOWAS procurement awards.

During the conduct of any ECOWAS procurement activity, staff shall not accept, directly or indirectly, any promise of future employment or favours from, or engage, directly or indirectly, in any discussion of future employment or favours with any officer, employee, representative, agent, or consultant of a competing vendor.

Staff shall have duty to promptly report any cases of irregular practices that include but are not limited to fraud and corruption as defined in ECOWAS Code of Ethics by a colleague, bidder, supplier, contractor or consultant.

3.5 Fraud and Corruption

Fraud and corruption are described in the Procurement Code Part IV Provisions related to Ethics.

ECOWAS requires that its staff uphold integrity when dealing with procurement. Procurement integrity can be defined as the alignment between the ECOWAS mission and mandate and their manifestation through staff activities and commitments. Integrity cannot be defined as the distinction between right or wrong, but rather as the right thing to do in the complex regional environment ECOWAS is operating in.

With regard to procurement, it is critical to evaluate the institutional preoccupation with compliance. Compliance is no more than a minimum standard of institutional performance and is often insufficient response to institutional integrity. Thinking beyond compliance is imperative for proactive management of integrity. Managing compliance may keep ECOWAS out of courts while managing beyond compliance will make ECOWAS win in the court of Public opinion comprising staff, ECOWAS Member States and the market place.

3.6 Conflict of Interest

ECOWAS Institutions will seek to minimize both personal and organizational conflicts of interest.

The ECOWAS Institutions procurement staff is prohibited from establishing and maintaining relationships of self-interest with any suppliers or potential suppliers.

ECOWAS Institutions will avoid situations in which a supplier has an unfair competitive advantage or has interests that may impair either the supplier's objectivity in dealing with the ECOWAS Institutions or the suppliers' ability to perform satisfactorily on ECOWAS Institutions' contracts.

The general rule is to strictly avoid any real or apparent conflict of interest in ECOWAS vendor relationships.

A real or apparent conflict of interest involving staff means:

- a) Staff having a financial interest in (1) offeror(s) responding to an ECOWAS solicitation or (2) vendors receiving an ECOWAS contract award are prohibited from any involvement in the procurement process. The same restriction applies to staff whose close relatives (See Annex I) have a financial interest in offeror(s) responding to an ECOWAS solicitation. Financial interest means anything of monetary value including, but not limited to:
 - (i) An interest in a business consisting of any stock, stock option, or similar ownership interest in such business, but excluding any interest arising solely by reason of investment in such business by a mutual, pension, or other institutional investment fund over which the staff member does not exercise control; or
 - (ii) Receipt of, or the right or expectation to receive, any income in one or more of the following forms: a consulting fee, honoraria, salary, allowance, forbearance, forgiveness, interest in real or personal property, dividend, rent, capital gain, or royalty derived from the licensing of technology or other processes or products.
- b) Staff having personal or professional interests with direct or indirect influence in (1) an offeror responding to an ECOWAS solicitation or (2) vendors receiving an ECOWAS contract award are prohibited from any involvement in the procurement process. Personal or professional interests include but are not limited to:
 - (i) Any organization or enterprise over which the staff member, alone or together with a close relative, exercises an interest; or
 - (ii) Any executive position or membership on the offeror's or vendor's board regardless of compensation; or
 - (iii) Any position that includes responsibilities for a significant segment of the offeror's or vendor's operation or management of a business; or
 - (iv) Any organization or enterprise that employs a staff member's close relative.
- c) Staff who discover that they have a real or apparent conflict of interest with respect to a vendor relationship or any procurement matter have a duty to disclose this to the Public Contracting Officer

and to their manager and to disqualify themselves from any involvement in the selection process or management of those vendor contracts.

d) Former ECOWAS staff, regardless of the type of appointment they held, are ineligible to be ECOWAS vendors and/or receive ECOWAS contract awards, whether as sole proprietors or as independent contractors, for a period of 12 months from the termination date of their ECOWAS appointment. This limitation also applies to entities in which a former ECOWAS staff member is an owner, principal, director, or officer or holds a financial interest and to entities with which close relatives have such connections.

A real or apparent conflict of interest involving Bidders exists if the Bidder:

- a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
- b) receives or has received any direct or indirect subsidy from another Bidder; or
- c) has the same legal representative as another Bidder; or
- d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Purchaser regarding this Bidding process; or
- e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or
- f) or any of its affiliates has been hired (or is proposed to be hired) by the Purchaser or Purchaser for the Contract implementation; or
- g) would be providing goods, works, or non-consulting services resulting from or directly related to Intellectual services for the preparation or implementation of the project the Bidder is bidding for, that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
- h) has a close business or family relationship with a professional staff of the Purchaser (or of the project implementing agency) who: (i) are directly or indirectly involved in the preparation of the bidding document or specifications of the Contract, and/or the Bid evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to ECOWAS throughout the Bidding process and execution of the Contract.

A real or apparent conflict of interest among suppliers means:

- a) For Goods, Works, and Non-consulting Services, a firm shall be considered to have a conflict of interest if the firm:
 - (i) is providing Goods, Works, or Non-consulting Services resulting from, or directly related to, Intellectual Services that it provided for the preparation or implementation of a project, or where such services were provided by an affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (Consultants, contractors, or suppliers), which together are performing the contractor's obligations under a turnkey or design and built contract;
 - (ii) including its personnel, has a close business or family relationship with a professional staff of the ECOWAS Community, or of the project implementing agency, or of a recipient of a part of the ECOWAS financing, or any other party representing or acting on behalf of ECOWAS who:
 - is directly or indirectly involved in the preparation of the Procurement Documents or contract specifications, and/or the evaluation process of such contract;

- would be involved in the execution or supervision of such contract, unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract; or
- does not comply with any other conflict of interest situation as specified in the ECOWAS Standard Procurement Documents relevant to the specific procurement process.

b) Intellectual Services

(i) The Contracting Authority requires that Consultants:

- provide professional, objective and impartial advice;
- at all times hold the ECOWAS interest paramount, without any consideration of future work; and
- in providing advice they avoid conflicts with other assignments and their own corporate interests.

(ii) Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interests of ECOWAS. Without limitation on the generality of the foregoing,

3.7 Unfair competitive advantage

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. 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.

For example, an unfair competitive advantage might occur via:

- **Insider knowledge** due to the insider information or market intelligence that a market participant may have gained from working in or close to the Procuring Entity. **Remedy:** The Procuring Entity should disclose this insider information or market intelligence to eliminate the possible unfair competitive advantage of any competitor.
- **Existing alliances** due to existing strategic alliances with the Procuring Entity and which is not available to others, the scope of these strategic alliances can constitute an unfair competitive advantage for one or more competitors. **Remedy:** disclosing the content and scope of these strategic alliances eliminate the possible unfair competitive advantage of any competitor.
- **Access to lists** of customers, suppliers, or business support creates another unfair competitive advantage because it is not available to all competitors. **Remedy:** disclosing these lists eliminate the possible unfair competitive advantage of any competitor.

3.8 Disclosure/Protection of Proprietary and Source Selection Information

During the solicitation process, ECOWAS staff outside of the Public Contracting Officer may not communicate directly with prospective offerors/bidders regarding the solicitation. All communications related to the solicitation are directed through the Public Contracting Officer.

All proprietary and source-selection information must be protected from unauthorized disclosure. Accordingly, staff shall not disclose such information as defined below, directly or indirectly, to any person other than a person authorized to receive such information:

- a) Proprietary information, including information contained in an offer or otherwise submitted to ECOWAS by a prospective contractor in response to a particular ECOWAS procurement or in an unsolicited proposal.
- b) Source selection information, including data stored in electronic, magnetic, audio, or video formats, which is prepared or developed for use by ECOWAS to conduct a particular procurement and the disclosure of which to a competing contractor would jeopardize the integrity or the successful completion of the procurement. Source selection information includes:
 - (i) Technical and financial proposals
 - (ii) Bid prices submitted in response to an ECOWAS solicitation for sealed bids, or lists of those bid prices prior to public bid opening
 - (iii) Proposed costs or prices submitted in response to an ECOWAS solicitation (for other than sealed bids), or lists of those proposed costs or prices
 - (iv) Source selection plans
 - (v) Technical/operational evaluations
 - (vi) Cost or price evaluations
 - (vii) Competitive range determinations that identify proposals with a reasonable chance of being selected for contract award
 - (viii) Rankings of bids, proposals, or competitors,
 - (ix) Reports and evaluations of source selection panels, boards, or advisory councils; and
 - (x) The contract, including all annexes.

3.9 Employment and Close Relatives

ECOWAS Institutions policies restrict it from contracting with its current staff and their close relatives. Former ECOWAS Staff may be contracted under the provision of Article 3.6(d) of this manual. However, an exception may be granted only by the Contracting Authority with guidance from the PCO.

3.10 Social Responsibility

3.10.1 Institutional Social Responsibility principles

ECOWAS is committed to maintaining its standing as a responsible organization and understands that socially responsible behaviour is good for business. This principle of responsible institutional culture enhances the trust factor in key business relationships and endeavour to integrate socially responsible suppliers into their supply chain. The World Business Council for Sustainable Development (WBCSD) defines Corporate Social Responsibility as “the commitment of business to contribute to sustainable economic development, working with employees, their families and the local communities” One could translate Corporate Social Responsibility (CSR developed for the private sector) into Institutional Social Responsibility (ISR) for the public sector.

In terms of procurement, at the core of the ISR debate is the idea that institutions should transition from a state of compliance to a mode of engagement, transition from procurement transactions between two adversary parties to a strategic development mode between partners. Toward this end, ECOWAS procurement policy encourages supplier diversity, fair wages and benefits, appropriate health and safety practices, and workplace accessibility (equipment and facilities).

ECOWAS policy on socially responsible procurement will be reflected in solicitations for the provision of labour services as determined to be appropriate by the PCO. If appropriate, applicable evaluation criteria will be included in the technical evaluation and considered in the cost analysis of all quotations, bids, and proposals received in determining the successful bidders/offers.

Contractors may be required to submit a statement attesting to the level of compliance with the host country's regulations and promulgations and/or ECOWAS social responsibility policy within their owned and leased facilities as well as project infrastructures.

ISR can be broken down into at least three types of responsibility: economic, legal and ethical. CSR for the private sector adds a fourth discretionary responsibility in terms of philanthropic activities or contributions that are aimed at giving back to society, which cannot be applied to public entities.

- a) The first category is economic in nature, entailing for example spending public funds for the intended purposes; creating jobs and fair pay for workers; discovering new resources; promoting technological advancement, innovation, and the creation of new products and services.
- b) The legal responsibility is the second part of the definition and entails expectations of legal compliance and playing by the "rules of the game." From this perspective, society expects public institutions to fulfil its public mission within the confines of legal and regulatory frameworks, e.g., procurement. Moreover, regulations are reactive in nature, leaving little opportunity for proactivity and for the transition from a state of compliance to a mode of engagement.
- c) Ethical responsibility overcomes the limitation of law by creating an ethics ethos that institutions can live by. It invites development as being moral, and doing what is right, just, and fair. Therefore, ethical responsibility encompasses activities that are not necessarily codified into law, but nevertheless are expected of institutions by societal members such as respecting people, avoiding social harm, and preventing social injury.

3.10.2 Supplier Diversity

ECOWAS procurement practices will strive to provide increasing access to women-owned, youth-owned and disabled-owned business enterprises (WYDBE) in the member states and increase their participation in prime contracting (first-tier vendors) and subcontracting (second-tier vendors).

ECOWAS procurement practices will provide opportunities for access and growth to WYDBEs with an emphasis on measurable results and continuous improvement.

To achieve this objective the Public Contracting officer of the Commission will create a **Supplier Diversity Facility** to which the Procurement Units in each Procuring Entity shall subscribe, contribute and provide information and learning. This Supplier Diversity Facility will be portal to:

- a) Identify WYDBEs in the market area and establish a WYDBE database;
- b) Assist WYDBEs in identifying procurement opportunities with ECOWAS;
- c) Assist WYDBEs to learn about opportunities to work with other ECOWAS vendors;
- d) Work with ECOWAS clients to make supplier diversity a work program objective; and
- e) Maintain records and report on WYDBEs growth objectives.

Supplier diversity shall cover social, economic and environmental considerations with social attention during sourcing; solicitation; contract award; contract management and contract closeout.

3.10.3 Wages and Benefits, Health and Safety

3.10.3.1 General provisions

As part of ECOWAS solicitations and contracts for labour services, they will specify measures to be implemented to address contractors' service employees' wages and their health and welfare fringe benefits and will also specify criteria that address the need for contractors to provide their service employees with safe working conditions and fair and equitable work practices. The primary objectives of these practices are as follows:

- a) To ensure that service employees engaged in the performance of work under ECOWAS service contracts or subcontracts receive appropriate wages and health and welfare fringe benefits for the respective job classifications within the geographic areas where the services are carried out;
- b) To remedy situations where contractors bidding on labour-intensive contracts use wage and benefit reductions as a means of competing for service contracts;
- c) To ensure that service employees engaged in the performance of work under ECOWAS service contracts or subcontracts are provided with safe working conditions and managed under fair and equitable work practices.

To achieve these objectives, ECOWAS Procuring Entities carry out the following:

- a) Implement and monitor guidelines based upon existing industry and governmental benchmarks and indices for identifying job classification, wage rates, and welfare fringe benefits;
- b) To establish benchmarks for standardizing the appropriate levels of wages and health and welfare benefits for various job classifications; and
- c) Incorporate into and implements under all service contracts auditing procedures that validate the contractors' execution of the requisite compensation/benefits for service employees;
- d) Conduct training with designated ECOWAS staff on procedures for monitoring all aspects of service employee compensation; and
- e) Conduct quality assurance procedures in conjunction with designated Project Managers (PMs) to ensure the continual implementation of these objectives.

Unless specifically exempted, contractors and subcontractors performing labour service contracts for ECOWAS valued in excess of UA15,000 will be subject to the standards specified above. The applicable terms and conditions will be incorporated in all solicitations and contracts for labour services, as determined by the PCO.

3.10.3.2 Exemptions

Although the criteria for safe, fair, and equitable work practices still apply, the following categories of workers are exempted from the use of specified wage/benefit determination requirements:

- a) Certain classifications of employees: executive, administrative, and professional positions, and certain computer-related professional positions. Professional positions are narrowly defined as those that fit the traditional professions, such as doctors, accountants, lawyers, and teachers. Exempt computer professionals generally include engineers and programmers who perform design services and other original non-repetitive tasks;

- b) Employment contracts for direct services to ECOWAS (as covered by ECOWAS HR policy); and
- c) Transportation contracts governed by published tariff rates.

3.11 Vendor Eligibility

ECOWAS Institutions' Policies, Standards and Procedures for determining whether a vendor is excluded, either permanently or for a specific period of time, from receiving the Contract awards from ECOWAS Institutions are found in Part I Chapter IV (Article 27 & 28) and Chapter V (Article 30, 31 & 32) of the Procurement Code and further detailed in Annex B of this Manual.

3.12 Background Investigation

In the interest of ensuring a safe work environment, it is ECOWAS Institutions policy that for all contracts under which contractor(s) are required to provide labour on-site at ECOWAS Institutions premises, the contract will include an article requiring the contractor(s) to perform a background investigation on all of their employees who will be assigned to work at ECOWAS Institutions' site, and/or for those contractor employees who require an ECOWAS Security Pass for access to the Institutions' premises.

At a minimum, the contractor(s) shall keep a record that its employees and its subcontractors' employees assigned to work on ECOWAS Institutions' premises

- a) have not been convicted of a crime during the last seven (7) years;
- b) have a valid work permit; and
- c) have current and valid licenses necessary to perform the work.

3.13 Supplier Relations

Suppliers are essential and valued business partners of ECOWAS Institutions, which are committed to treating them in a fair, objective and business-like manner. Relations between ECOWAS Institutions and their suppliers will be mutually beneficial and will be based upon sound business practices, respect and trust, with both parties working toward a common goal.

Within the relationship, both parties are expected to act ethically, keep commitments, ensure the delivery of high-quality goods, works and services and focus on continuous improvement of products, services, processes cost and prices. ECOWAS Institutions will manage their relationships with suppliers based on the potential impact their performance could have on ECOWAS Institutions operational and financial position.

ECOWAS Institutions are committed to having a world-class supply base. Therefore, the PCOs will continuously measure, analyse and enhance supplier performance relative to contractual requirements and the best practices of world-class procurement organizations.

Supplier relations and integrity are core concepts of supplier relations events like pre-bid meetings, supplier information conferences, open-house days, etc. It is considered of paramount importance to maintain an open and transparent working environment with the ECOWAS supplier base.

The PCOs will seek out methods to optimize institutions' supplier base in line with the specific characteristics of the market, the goods, works or services being supplied and the goals of ECOWAS Institutions. In many cases, optimizing the supply base will include efforts to innovate, to reduce costs (including transaction costs) and to improve quality and performance.

The PCOs also understand that a diverse supplier base is important from both performance and business standpoints. Therefore, through promotion, outreach efforts and other means, the PCOs will

strive, as a strategic business initiative, to establish and maintain a strong, competitive supplier base that reflects the diversity of the supplier community.

3.14 Beneficiaries' relations

Beneficiaries are essential and valued business partners of ECOWAS Institutions, as beneficiaries are the custodians for achieving best Value for Money.

4 VENDOR REGISTRATION

4.1 Definition of Vendor

For ECOWAS Institutions, a vendor is defined either as a Business, Non-For-Profit Entity or a Sole Proprietor/Independent Contractor.

A Business is an organization that has been incorporated, or registered as a company (corporation, company/limited, partnership) that has been established to offer goods works or services for profit.

Organizations registered as "not-for-profit" (i.e., universities, hospitals) are **not** considered businesses.

State-Owned Enterprises (SOE) or institutions and not-for-profit organizations (such as NGOs, and universities) are accepted as businesses if they operate as commercial entities that meet the following requirements:

- a) legally and financially autonomous;
- b) operating under commercial law; and
- c) not under supervision by the agency contracting them.

A Sole Proprietor/Independent contractor is a person engaged in a business as either as a 'self-employed individual' (an individual in business for himself or herself and is self-employed), or as a 'sole proprietor' (an individual in business for himself or herself and who is the only owner of the unincorporated trade or business).

In tendering processes, the targeted vendors are preferably uniform and not mixed, i.e., targeted are all are businesses, all Non-For-Profit or all individuals. If the shortlist or list of bidders for one reason or another is mixed, the selection should normally be made without taking price into account, for instance using QBS or CQS.

4.2 Vendor Registration

4.2.1 Request for Expression of Interest for registration as a vendor

At regular intervals but not less than once a year, ECOWAS shall publish a notice to invite eligible bidders with organisational, technical and financial capacities to express their interest in registration on the list of Contractors / Service Providers / Consultants. The notice of Expression of Interests shall give a minimum of four (4) weeks' notice. Vendors will only be able to complete the registration when responding to all pre-set qualification criteria in the registration portal.

ECOWAS Institutions' Vendor Registration form is available at <http://www.ecowas.int> for vendors to complete.

4.2.2 Vendor registration criteria

Vendors wishing to register must demonstrate their eligibility and capability by providing the following information.

4.2.2.1 Organizational Details (pass/fail criteria)

- a) Headquarters Address
- b) Legal Status/Memorandum and Articles of Association
- c) The National/Tax Identification Number;
- d) Social Security Identification Number;
- e) The Company Registration or equivalent in the country of incorporation and in the country/countries of operation
- f) Declaration of non-debarment using the ECOWAS format
- g) Litigation history

4.2.3 Evaluation of Bids

The evaluation will be based on the criteria mentioned above and following the guidelines below:

4.2.3.1 Vendor Review Guidelines

Vendor Bids are reviewed using the following guidelines:

- a) Non-For-Profit Entities and Sole Proprietors/Independent Contractors/businesses must be able to demonstrate their legal status.
- b) The business enterprise must currently be incorporated, or registered as a company (corporation, limited, partnership) and identify details of the company's ownership to allow assessment of eligibility in general and eligibility for bidders' preference in line with article 69 of the Procurement Code.
- c) The Bidder shall provide accurate information about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of court/arbitral awards against the vendor may result in rejecting the vendor.
- d) The Vendor shall be categorised according to financial capacity taking into account criteria like: annual turnover, annual profit and available assets over the last three years.
- e) Vendors must be up to date with their tax obligations and social security contributions.
- f) It must be noted the vendor need not demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means to register, but this may be required in any specific bidding process and related to the value of the contract.
- g) The Vendor shall be categorised according to technical capacity taking into account criteria like: numbers and type of staff with total years of experience and years of experience specific to the sector or sub-sector, number and types of equipment, size and type of plant, years of experience per sector and/or sub-sector, the historical geographical coverage. The vendor will need to provide client certificates for claimed experiences as per model in the guidelines.

Consistent with ECOWAS Institutions' policy on anti-money laundering/combating the financing of terrorists, companies listed on the UN Security Council Sanctions List and/or member states' anti-money laundering and terrorist sanctions list are ineligible to be ECOWAS Institutions vendors and to receive ECOWAS Institutions contract awards. Companies listed on the ECOWAS Listing of Ineligible Firms are also ineligible to be ECOWAS Institutions vendors and/or receive ECOWAS Institutions contract awards.

An eligible vendor currently must not be debarred from contracting with ECOWAS Institutions, any ECOWAS member state, or projects funded by the Community or other international agencies, including cross-debarment by the Multilateral Development Banks.

The Heads of Procurement in the ECOWAS Institutions will work closely with clients and with the PCOs, the Legal Directorate and other appropriate ECOWAS Institutions staff on issues related to vendor fraud, corruption and/or ethical issues (See Annex B, "ECOWAS Vendor Eligibility Policy").

4.2.4 Vendor registration and approval

Once registration is completed, the registered vendors will be listed on the Vendor Registration List and receive a Vendor Registration Certificate.

Once a vendor registration is approved by the respective Contracting Authorities, the approved vendor will be listed on the Approved Vendor List and will receive a Vendor Approval Certificate.

The Vendor Approval Certificate remains valid until the 30 June of the calendar year following the approval.

Both the Vendor Registration List and the Approved Vendor List will be hosted by the ECOWAS Commission website and will be updated regularly.

4.2.5 Vendor list maintenance

Registered as well as Approved Vendors will be expected to maintain their Vendor Registration file and advise ECOWAS Institutions of any significant business changes.

Nevertheless, approved vendors may be asked to submit updated and/or provide additional information that may be used in determining the vendor's ability to participate in specific requests for proposals for major procurements, where additional qualification criteria, specific to the requirement, have been determined

4.3 Selection of registered vendors

Registration leads to the establishment of a list of several Service Providers and Consultants which can be invited for bids or proposals for purchase of goods, works or services. Vendors do not need to be registered in order to be eligible to participate in bidding opportunities. However, if a recommended vendor is not registered, the Public Contracting Officer will invite the vendor to register on the designated ECOWAS website. A vendor must be an "Approved Vendor" in order to receive a contract award. Neither registration nor approval of registration lead to any vendor entitlement.

Although requisitioners may recommend a preferred vendor, the Public Contracting Officer will make the determination of the vendors qualification based on the vendor review guidelines. The final selection will follow the applicable Procurement Code for award of contract. Contracting Authorities will approve vendor registrations for vendors that have been selected to provide goods or services as a result of either a competitive process or sole source contract award.

In addition, Contracting Authorities may decide to undertake a review of the Registered Vendor List in order to approve vendors either with or without a specific profile.

4.4 Review of Vendor List

The Public Contracting Officers will review from time to time the, the current approved vendor list based on the analysis of the procurement activity reports and vendor evaluation reports in order to ensure an optimal base of suppliers annually.

5 PROCUREMENT PREPARATION

5.1 Definition of Procurement Requirements

5.1.1 Definition

Requirement's definition is a systematic method of defining the procurement requirements to allow preparation of a comprehensive Requisition (paragraph 5.3)

While requirements definition is the first step of a procurement activity, it is often done in parallel with sourcing and market research as the information from the different sources' feeds into one another.

The Procuring Entity is responsible for defining the requirements; however, the Procurement Officer shall evaluate the requirements, provide advice and may identify issues from a procurement viewpoint, e.g., unjustified branding, targeted specification, unrealistic timelines.

Where appropriate, the Procurement Officer shall advise on how to increase Value for Money, greening procurement and/or sustainability considerations: refuse, reduce, reuse, repair, restore, remake, recycle.

This may include reducing quantities, considering less obvious alternatives, redesigning certain environmental and social aspects, etc. These alternative solutions can require balancing the strategy and ambition of the Procurement Entity against the level of market maturity.

5.1.2 The purpose of requirements definition

The purpose of the requirements definition is to identify the precise needs of the Procurement Entity, this may include a round of negotiations to tune down 'wants' to genuine 'needs' and to determine the best solution to meet those needs.

Early during the requirements definition, the Procurement Entity shall determine the extent of best value for Money, environmental and/or sustainable objectives it wants to pursue.

The requirements definition sets the objective of the procurement action and helps good judgement during the evaluation process. This objective shall translate in clear technical, financial, commercial, legal, corporate, social and environmental factors in the solicitation documents and contracts.

5.1.3 Characteristics of requirements

All requirements' definitions must specify the exact needs without over- or under-specification. Over-specification may increase prices and/or decrease the number of offers and /or result in the underuse of the acquired product. Under-specification may lead to underachieving the procurement objective, frustrating users, higher wear and tear and premature replacement of the product.

Requirement's definitions must start with an analysis of purpose, performance requirements, characteristics, objectives, and/or expected output, depending on the nature of the product. This includes information from the market.

Requirements could also include key performance indicators (KPIs) to be monitored during contract management stage (see paragraph 11.2.1 of Contract management). KPIs can express and measure performance against agreed targets, particularly recommended for complex contracts of goods and services.

KPIs can be expressed in (fractions of) time, quantities, quality standards, innovative resourcefulness, communication, etc. KPIs shall be SMART: Specific, Measurable, Achievable, Relevant and Time-based)

5.2 Procurement Strategy

5.2.1 Best Practices

ECOWAS Institutions procurement staff will strive to meet their goals by adopting proven procurement tools and techniques. The POs have adopted continuous improvement as a strategic business imperative and are committed to continually analysing and improving their procurement practices to enhance their competitiveness, efficiency and effectiveness. ECOWAS Institutions procurement staff will use a variety of means, including benchmarking and other market research and participation in professional organizations, to ensure that the best business practices are being used in ECOWAS Institutions' procurement operations.

5.2.2 Procurement Strategy

Early, detailed, cross-functional strategic planning is an essential component in meeting procurement goals. Cross-functional involvement ensures a more holistic view of the purchase and enables the Procurement Officers to better meet ECOWAS Institutions' procurement goals.

Procurement Strategy involves, but not limited to, the following tasks.

- a) Developing a strategy how procurement will translate needs into goods works and services;
- b) Teaming with User Departments to forecast procurement requirements;
- c) Maintaining an optimal base of qualified vendors;
- d) Analysing the operating environment;
- e) Scheduling and distributing work;
- f) Coordinating/facilitating the sourcing/acquisition of goods, works, and services needed by the ECOWAS Institutions;
- g) Evaluating vendor performance; and
- h) Refining and updating these procedures as changes in ECOWAS Institutions' requirements, technology, and the marketplace dictate.
- i) Risk management of the procurement activities.
- j) Using professional judgment by balancing compliance and objectives
- k) Justification of procurement arrangements based on the analysis of needs, market, risks and operating context.

5.2.3 Market Research

ECOWAS Institutions rely on market research conducted by the Procurement Unit as a best-practice procurement tool in order to enhance strategic thinking, research, analysis, and decision-making and to sharpen its competitive advantages.

Market research is the process of collecting and analyzing information about industry sector capabilities and overall market supply. It helps to identify goods, services, works and suppliers; assists in the development of technical specifications, TORs, SOWs, design documents, Employer's Requirements for design and build and TORs for consultant services for works; and allows the collection of product and pricing information on available technology. Market research is an essential exercise in the quest to satisfy the organization's needs, and is the first step in any successful sourcing process, particularly if the good, service or work has not been procured previously.

5.2.3.1 Market research areas

The research areas will include, but will not be limited to:

- a) current and projected availability of products or services;
- b) the extent of competition in the market;
- c) the range of product or service performance characteristics;
- d) future industry, technology, and macroeconomic trends;
- e) price trends and current market prices;
- f) supply-base assessment; and
- g) types of available distribution and management systems.

5.2.3.2 Sources of Market research

Market research can be done through external and/or internal sources. Market research should not rely solely on any one of these sources; several sources must be used in conjunction before deciding on the method of solicitation and type of competition. The outcome of the market research, i.e., a list of suitable suppliers identified, must be documented in the procurement case file.

The following sources are valuable sources of information in the search for potential suppliers:

- a) Vendor list;
- b) Suppliers who had prior contracts with ECOWAS;
- c) Previous short lists within the same field;
- d) Consultation with colleagues;
- e) Communities of Practice (COP) and other mailing lists.
- f) Commercial/specialized journals and sector magazines;
- g) Chambers of commerce, United Nations missions, trade delegations, embassies;
- h) Professional organisations, institutes and associations;
- i) Beneficiary governments, User Departments, clients, funding sources;
- j) Business seminars, supplier catalogues, professional journals, trade publications.
- k) United Nations Global Marketplace (UNGM) www.ungm.org ;
- l) United Nations Development Business Magazine, www.devbusiness.com
- m) The Global Compact participants list;
- n) Local corporate social responsibility networks;
- o) Local NGOs with a focus on governance and/or fraud & corruption;

Furthermore, care should be taken to ensure that small- and medium-sized enterprises (SMEs), not-for-profit and/or minority-owned businesses are included in the market research, as these are often well positioned to reach the most vulnerable sectors of the population. Due consideration should be given to communication channels in local language(s) to reach this specific audience.

In addition, the market research should include, but not be limited to, availability of EPPs, their cost, their practical implications and the supplier's sustainability practices. It is important to periodically reassess the market for EPPs and services since those products and services are rapidly evolving in certain geographical areas and industries.

5.3 Requisition

A requisition is a written or computerized request from the Procuring Entity to the Public Contracting Officer for the fulfilment or procurement of goods, services or works, combining needs requirements, market research and procurement strategy. It is mandatory to initiate all procurement activities through an approved requisition in ECOLink.

A requisition must at a minimum include:

- a) A unique identification number and reference to the pertaining annual procurement plan package
- b) A detailed description of the goods works or services being sought; this includes Statement of Works or Specifications for Goods and Non-Consulting services, Terms of Reference for Intellectual services.
- c) Justification of the purchase
- d) Confirmation of funds availability for the requested purchase,
- e) In the case of a requisition in respect of construction works, it shall include a contingency sum in the budget
- f) Quantity to be procured;
- g) Required delivery date or start-up/completion date;
- h) Delivery location or location of works/services to be performed;
- i) Estimated price;
- j) Any additional information (e.g., standardization, preferred method of shipment or INCOTERM).
- k) Association with other ECOWAS Institutions projects or procurements;

5.4 Procurement planning

Early forecasting is a key component of proper procurement planning. It can be a valuable mechanism for bringing the supply and demand for goods into convergence and for managing delivery and supply and associated costs. Effective communication throughout the procurement process is essential to successful forecasting. Therefore, the POs and clients will work together to forecast future demand to the best of the organizations' ability and will communicate this information throughout the supply chain to optimize performance. Forecasts for core goods and services - those critical to ECOWAS Institutions' business success - will receive priority focus. Refer to Article 36 & 37 of the Procurement Code.

The Public Contracting Officer will keep lists of unit rates of commonly procured goods, works and services. These lists will be kept up to date and will be reviewed at least once a year. The information will be sourced from the member countries' markets and will be disaggregated by at least country, sector, procurement category and volume.

5.4.1 The purpose of the annual procurement plan

- a) Constitute a strategic procurement activity planning and management 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 through publication.
- d) Constitute a procurement monitoring tool for management
- e) Constitute a time management tool for procurement practitioners in case of delays

5.4.2 Procurement plan content

All Procuring Entities/ Procurement Officer shall prepare an annual procurement plan which shall be submitted for approval along the following lines:

- a) Identifying the goods, works or services required;
- b) Taking into consideration appropriate market and statistical surveys and on this basis preparing an analysis of the cost implications of the proposed procurement;

- c) Identifying the procurement packages taking into consideration best value for money, geography & logistics, market maturity,
- d) Aggregating its requirement whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- d) Integrating its procurement expenditure into its yearly budget;
- e) Prescribing the method for effecting the procurement, subject to the necessary approval under these Regulations.
- f) Procurement plans contain critical path linkages whenever applicable and across procurement categories.
- g) Procurement plans contain rational and adequate allocation of human resources to undertake the activities, considering phasing of activities and avoiding activity congestion.
- h) Procurement plans contain all procurement packages for at least one year with the following data for goods, works and services package:
 - Source of Funds
 - Procurement category
 - Pre-qualification/Post-qualification
 - Estimated value of each package
 - Procurement or selection method, including approval dates and authorities for non-regular procurement methods
 - Public Contracting Officer
 - Awarding Entity
 - Reviewing Entity
 - Contracting authority
 - Requisition received
 - Bidding document approved
 - Bidding launched/ advertised
 - Bid closing date
 - Bid opening date
 - Contract award date
 - Contract approval date
 - Contract awarded
 - Contract signed
 - Contract start date
 - Contract completion date
- h) Each package provides the planned data as well as actual data according to implementation to allow monitoring, mitigation of major deviations, aggregate analysis and learning
- i) Annual procurement plans and procurement plan updates will be published in line with the provisions specified in the ECOWAS Procurement Code.

5.4.3 Benefits of good procurement planning

- a) Better requirements definition, increasing the probability of receiving strong offers, facilitating evaluation, leading to better alignment to the needs of clients and easier contract management;
- b) Improving sourcing, ensuring qualified and an adequate number of suppliers, increasing competition and obtaining stronger bids at better prices;
- c) Better critical path design and management;
- d) Less waste of resources on last minute actions;
- e) Early identification and management of risks;
- f) Reduction of delays and lead times due to the ability to perform in advance and proactively conduct a number of procurement tasks;
- g) Better planning, monitoring and mitigation management of procurement activities;
- h) Identification of peak periods allowing human resources planning well ahead of time.
- i) Early consideration of logistics for the procurement of goods and equipment;
- j) Systematic inclusion of sustainability considerations into procurement activities, usually requiring more upstream time.
- k) Achieving development objectives through a structured methodology.

6 COMPETITIVE BIDDING

6.1 Competition Requirements

To ensure that ECOWAS Institutions attain best total value, all contracts for goods, works and services are awarded in line with paragraph 6.2. below. Disaggregating procurements in order to circumvent competitive requirements is prohibited. Exceptions to competition must be approved by the Contracting Authority and must be stated in the Annual Procurement Plan. If a requirement is less than the thresholds prescribed herein, and the Procurement Division/Unit believes that competition will result in best value or lower cost, the Procurement Division/Unit is encouraged to conduct a competitive solicitation process. Whenever possible, competitive bidding shall be used in the procurement process as a way of ensuring best total value.

All competition is achieved using email, or written solicitation. When conducting a solicitation, an approved procurement template, contained in this manual, shall be used. To achieve adequate competition, bids or proposals shall be invited in sufficient numbers to ensure response from at least three (3) responsible suppliers from the approved Vendor List each of whom can satisfy the solicitation requirements independently.

6.2 Effective competition

By fostering effective competition among suppliers, ECOWAS applies the principles of fairness, integrity and transparency to achieve best value for money.

Effective competition is achieved under the following conditions:

- a) Sufficient number of independent prospective contractors;
- b) Prospective contractors that act independently of each other;
- c) Competition for the same business opportunity under the same conditions;
- d) Response to the procurement opportunity by a sufficient number of offers.

Effective competition underpins best value for money; in order to maintain effective competition, best value for money must be implemented progressively and in accordance with the right of access to the vendors from member countries with economies in transition.

ECOWAS procurement contracts shall be awarded on the basis of effective competition unless are justified in accordance with paragraph 6.4. To that end the competitive process shall include:

- a) Procurement planning for identifying appropriate procurement strategy and methodology;
- b) Market research for identifying potential suppliers and if applicable assessing the readiness of the market in terms of sustainability;
- c) Competition on as wide a geographic basis as is practicable and suited to market circumstances. Every effort must be made to ensure competition and not to place restrictions on vendor eligibility unless explicitly mentioned in the legal agreement with the partner.;
- d) Consideration of prudent commercial practices.

Effective competition is concerned with ‘right time, right quality’ and ‘right price’, meaning:

- a) Adequate notification must be given to the vendor community to ensure that there is sufficient time to participate in the procurement processes;
- b) There shall be no restriction of competition through over-specification, e.g., inclusion of unjustified or unrealistic requirements in specifications and/or terms of reference (TOR)/statement of work (SOW), or under-specification, e.g., omission of essential information in the specifications and/or TOR/SOW;
- c) Economies of scale, i.e., quantity discounts, fewer resources invested and reduced administrative costs, can be achieved when procurement volumes for identical or similar requirements are consolidated in a single tender. The same may be achieved through the use of framework agreements (FAs);

6.3 Competition Thresholds for Procurements

The different thresholds for the Commission, other ECOWAS Institutions and the Agencies and Offices are set out in Annex 1 of the Procurement Code.

6.4 Exceptions to Competition

This section provides procedures for preparing and approving a justification for a non-competitive procurement selection, called Direct Contracting or and Direct Selection. Although it is ECOWAS’ policy to procure goods or services through a competitive process to the maximum extent possible, instances arise when a non-competitive procurement selection is justified. In these instances, the Procurement Officer may recommend a non-competitive procurement selection by submitting a Direct contracting, justification. In all cases, requests must be fully justified and documented by the requisitioner and approved by the Contracting Authority.

6.4.1 Definitions of Direct Contracting

Direct Contracting (for goods, works and service contracts) and Direct Selection (for Intellectual Service contracts) in both cases means contracting without competition. When the contract is sourced from a single available source, it is called Sole Source procurement.

6.4.2 Sole Source procurement

This procurement may be approved when any of the following criteria is met:

- a) When the required equipment or service is proprietary and obtainable from only one source; for instance, when
- b) purchasing additional licenses for a certain technology platform (e.g., the Google Search engine) previously selected

- c) In case of research or creative work that due to its special nature can only be performed by a specific university, institute or research centre.
- d) When the Public Contracting Officer finds other reasons to be acceptable and approved by the Contracting Authority

6.4.3 Direct contracting/selection criteria

Extension of an existing contract is not considered direct contracting. Direct contracting/selection procurements may be approved when the criteria are met of article 52 or 64 of the Procurement Code.

In all cases of Direct contracting/selection the Contracting Authority need to be assured that:

- (a) The prices are reasonable and consistent with market prices (price verification)
- (b) The procurement packages are not split to avoid competition
- (c) No advantage can be gained from competition

6.4.4 Market Research for Direct contracting/selection

Before preparing the justification, the Procurement Officer will conduct market research to identify possible sources for the goods, works or services required. The result of the market research shall be documented and submitted with the justification.

Paragraph 5.2.3 provides a market research methodology for this purpose.

6.4.5 Justification Preparation for Direct contracting/selection

All justifications will include the following information:

- a) A description of the goods, works or services required to meet ECOWAS Institutions' needs (including estimated value);
- b) A rationale for the use of non-competitive procurement, referring to the relevant criteria in art. 6.4.3;
- c) A demonstration that the proposed contractor meets ECOWAS Institutions' needs;
- d) Any patent rights, copyrights or other proprietary information that may preclude competition in this instance;
- e) The results of any market research;
- f) A determination that includes documented evidence or benchmarks that the anticipated price is fair and reasonable; and
- g) The User Department or budget holder's written concurrence with the recommended Direct contracting.

6.5 Launch of bid process/ advertising

To maximize competition, timely notification to vendors of opportunities to submit bids/proposals is essential. The Procurement Officer, in consultation with the User Department, develops a solicitation methodology consistent with the need for adequate competition. ECOWAS Institutions procurements are open to competition from vendors in all countries, subject to the competitors being eligible and legally able to conduct business in the country of performance/delivery.

In all Institutions, Agencies and Field Offices, advertisements will be carried out in accordance with Annex 2 of the Procurement Code. If it is determined that this standard advertising method is either insufficient or ineffective, on the recommendation of the Public Contracting Officer it may be

augmented by placing specific newspaper or other traditional forms of advertisement in locations where suppliers are being targeted.

Timely notification of bidding opportunities is essential in competitive bidding.

6.5.1 Procurement Notice

Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices (SPN) in line with the provisions specified in the ECOWAS Procurement Code. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.

6.5.2 General Procurement Notice

The Procuring Entity is required to prepare a General Procurement Notice and arrange for its publication in line with the provisions specified in the ECOWAS Procurement Code.

The General Procurement Notice (GPN) contains advance information on the major procurement packages being considered or approved for funding by the ECOWAS Institution. The General Procurement Notice (GPN) shall contain the following information:

- a) The name, address and contacts of the ECOWAS Procuring Entity responsible for procurement;
- b) Description, amount and purpose of the institution's program of activity;
- c) The scope of procurement reflected in the Procurement Plan,
- d) The address of a widely used electronic portal with free national and international access or website where the subsequent Specific Procurement Notices (SPN) or a Request for Expression of Interest (REOI) will be posted.

The related prequalification or bidding documents, as the case may be, shall not be released to the public earlier than the date of publication of the General Procurement Notice.

6.5.3 Specific Procurement Notice for Goods, Works or Non-consulting Services

A Specific Procurement Notice (SPN), for each of the major procurement packages for Goods, Works or Non-consulting Services in the procurement plan shall also be issued. SPNs are issued either as a public Invitation for Prequalification, or in the absence of pre-qualification, as an Invitation to Bid (ITB). It is recommended in practice that the invitation also be incorporated in the front of the prequalification or tender documents as appropriate for reference purposes. SPNs shall provide adequate notification of specific contract opportunities or Invitation to Bid by an ECOWAS Institution regardless of what procurement method is used.

If there has been prequalification, the ECOWAS Institution sends the Invitation to Bid and tendering documents only to the pre-qualified potential bidders, with notification of their successful prequalification. No additional notices or any advertising for tendering are required or shall be issued under these circumstances.

The SPN contains among others information concerning:

- 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 evaluation criteria;
- k) the name of the Contracting Authority
- 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) evidence of the bidders' qualification, technical capability and solvency;
- p) where applicable, any other conditions as the procuring entity may consider necessary like the minimum qualifications that bidders must meet. An invitation for prequalification includes similar information including the place and deadline for submission of the Bid to pre-qualify.

6.5.4 Request for Expression of Interest (REOI) for Intellectual Services

Bidding period: ***21 calendar days***

A Request for Expression of Interest (REOI) for each of the major procurement packages for Intellectual Services in the procurement plan shall also be issued. REOI shall provide adequate notification to allow interested consultants or consulting firms to respond.

Late submission of an expression of interest (EOI) is not a cause for its rejection as the shortlist can comprise firms selected on the basis of Procuring Entities' previous experience and/or received unsolicited EOI from valid candidates and/or other sources.

The REOI contains among others information concerning:

- a) ECOWAS unique REOI reference;
- b) Country(ies) in which the contract(s) will be executed;
- c) the object of the contract, the nature of the service, delivery period
- d) the source of financing;
- e) the bid languages(s);
- f) Scope of work;
- g) the place where the TOR may be inspected;
- h) the qualification criteria;
- i) the name of the Contracting Authority
- j) the place, date and time limit for the receipt of EOI;
- k) The contract type;
- l) where applicable, any other conditions as the procuring entity may consider necessary.

6.6 Prequalification (PQ) for Goods, Works or Non-consulting Services

Bidding period: ***30 calendar days***

6.6.1 Definition of PQ

Prequalification is a process used to screen potential offerors for Goods, Works or Non-consulting Services in order to ensure, in advance of competition, that solicitations are extended only to those

companies that have the financial capacity and technical capability to deliver on the requirements. Requests for PQ information are intended to obtain sufficient organizational, capacity, performance, and financial data to determine a firm's qualifications to perform the intended contract.

The prequalification review is undertaken in line with the thresholds in Annex 1 of the Procurement Code. PQ is created for one specific procurement package and does not constitute a roster giving a prequalified access to other procurement packages. All firms successfully prequalified are invited to respond to the solicitation.

6.6.2 PQ is recommended when:

- a) Complex or specialized goods or services (e.g., mine clearance services or equipment) are being procured;
- b) A high degree of risk is involved in the procurement (e.g., security and safety equipment and services);
- c) The high costs of preparing detailed bids could discourage competition (such as custom-designed equipment, design and build projects or specialised services);
- d) The goods or services are critical project inputs (i.e., late delivery or the delivery of a wrong product or service would have costly implications);
- e) The requirement is for construction works with complex technical components for which the supplier needs
- f) to have minimum technical capability and capacity to complete the works to the required quality standard.

6.6.3 Creation of PQ list

The objective of establishing a PQ list of suppliers is to safeguard cost effective competition between qualified suppliers. The following principles shall be used for the PQ list selection:

- a) Entities included in the short list shall, to the extent possible, represent a fair share of potential markets and equitable geographic distribution. Due consideration is to be given to the inclusion of suppliers from ECOWAS member countries;
- b) All suppliers meeting the PQ criteria shall be qualified without ranking; there is no minimum or maximum number of PQ suppliers.
- c) If suppliers must meet specific requirements for the procurement activity in question (e.g., specific product requirements such as ISO certification/ quality standards, representation of supplier in the recipient country and/or client specific requirements as per the project agreement with the client) only suppliers that meet these requirements shall be selected for the short list.
- d) As a general rule, the supplier's technical and financial capacity shall be proportionate to and/or appropriate vis-à-vis the estimated size, scope and value of the contract;
- e) The capacity of the suppliers must be taken into account. Particularly, if multiple tenders are undertaken simultaneously or a possibility exists of awarding multiple contracts to the same suppliers within the timeframe required for execution of the contracts. This is particularly critical for effective delivery of infrastructure works. Cash flow and resource management issues by the contractor can have severe impact on both the quality and timeliness of infrastructure works. As such specific capacity and technical criteria could be assessed;

6.6.4 Approval of PQ list

At the end of the Prequalification process, the Public Contracting Officer shall inform all Bidders of the results of the Prequalification. The invitation to submit a Bid to a prequalified Bidder shall include the names of all prequalified Bidders.

6.7 Shortlisting (SL) for Intellectual Services

6.7.1 SL Definition

Shortlisting is a process following the publication of the Request for Expression of Interest, used to screen potential Consulting firms/individual Consultants for Intellectual Services in order to ensure that Request for Proposals (RFP) are extended only to those companies that have the financial and technical capability to deliver on the requirements. The SL review is undertaken in line with the thresholds in Annex 1 of the Procurement Code. SL is created for one specific procurement package and does not constitute a roster giving a access to other procurement packages.

6.7.2 Creation of the SL

The criteria to be used for short listing need to be published in the REOI and may normally include: core business and years in business, relevant experience, technical and managerial capability, performance and financial data. Key personnel are not evaluated at this stage.

During evaluation the firms/individual consultants will be ranked according to the set criteria and the best ranked firms/individual consultants only will be invited to present proposals.

The following principles shall be used for short list selection:

- a) Shortlisting criteria may be based on scores and/or on qualitative assessment (Strong and weak points)
- b) Entities included in the short list shall, to the extent possible, represent a fair share of potential markets and equitable geographic distribution. Due consideration is to be given to the inclusion of suppliers from ECOWAS member countries.
- c) ECOWAS is under no obligation to invite all companies having expressed interest through a REOI. The Shortlist shall include not fewer than six (6) and not more than eight (8) eligible firms. A smaller number of firms may be accepted by the Contracting Authority when not enough qualified firms could be identified or the size of the contract or the nature of the assignment does not justify wider competition. Where firms are added outside the REOI, the evaluation team shall assess these firms against the same criteria as stated in the REOI.
- d) As a general rule, the supplier's technical and financial capacity shall be proportionate to and/or appropriate vis-à-vis the estimated size, scope and value of the contract. Particularly, if multiple tenders are undertaken simultaneously or a possibility exists of awarding multiple contracts to the same suppliers within the timeframe required for execution of the contracts. This is particularly critical for effective delivery of infrastructure works. Cash flow and resource management issues by the contractor can have severe impact on both the quality and timeliness of infrastructure works. As such specific capacity and technical criteria could be assessed.
- e) The short list shall comprise consultants of the same category, similar capacity, and business objectives. Consequently, the short list shall normally be composed of firms of similar experience or of not-for-profit organizations (NGOs, Universities, Specialized Agencies, etc.) acting in the same field of expertise. On the other hand, if the short list includes private consulting firms and NGOs and/or Universities and/or Specialized Agencies, selection shall be based on QBS, CQS or FBS because the cost structures of these entities are different, and therefore cost cannot be a selection criterion.
- f) The short list shall not include Individual Consultants.

6.7.3 Engagement of Short-term consultant

This is a Consultant recruited for activities for a period not exceeding thirty (30) calendar days with a maximum daily remuneration of \$400/day. The method of recruitment process shall be as follows:

- ✓ Request from User Department approved by the President of the Commission (for the Commission) or the Head of Institution (in the case of other Institutions).
- ✓ Submission of at least three (3) CVs by the User Department to the Commissioner General Administration and Conference (for the Commission), or the Head of Institution (for other Institutions).
- ✓ Evaluation of the CVs by the Directorate of Administration and General Services (for the Commission) or the relevant Directorate/Unit (for other Institutions) and the User Department.
- ✓ Engagement Letter signed by the Contracting Authority

7 Selection Methods for procurement of Goods, Works and non-consulting Services

7.1 International Competitive Bidding (ICB)

Bidding period: Minimum of 45 calendar days

Bid validity: 90 to 120 calendar days

The objective of International Competitive Bidding (ICB) is to provide all eligible prospective bidders with timely and adequate notification of an equal opportunity to bid for the required goods and works. Advertisement shall be in accordance to the Annex 2 of the Procurement Code.

7.2 Local Competitive Bidding (LCB)

Bidding period: Minimum 30 calendar days

Bid validity: 60-90 calendar days

Local Competitive Bidding (LCB) is the competitive bidding procedure normally used for public procurement in the country of the ECOWAS Institution and may be the most appropriate way of procuring goods or works which, by their nature or scope, are unlikely to attract foreign competition. To be acceptable for use in ECOWAS and Development Partners-financed procurement, these procedures shall be reviewed as necessary to assure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of these Guidelines. LCB may be the most appropriate method of procurement where foreign bidders are not expected to be interested because

- a) the contract values are small,
- b) works are scattered geographically or spread over time,
- c) works are labour intensive, or
- d) the goods or works are available locally at prices below the international or regional market.

LCB procedures may also be used where the advantages of ICB are clearly outweighed by the administrative or financial burden involved.

In all circumstances, the bidding documents shall provide clear instructions on how bids shall be submitted, how prices shall be offered, and the place and time for submission of bids. Adequate response time for preparation and submission of bids shall be provided. The procedures shall provide for adequate competition in order to ensure reasonable prices, and methods used in the evaluation of bids and the award of contracts shall be objective and made known to all bidders in the bidding documents and not be applied arbitrarily. The procedures shall also include public opening of bids, publication of results of evaluation and of the award of contract and provisions for bidders to protest.

Advertising will be in accordance with Annex 2 of the Procurement Code. Bidding documents may be only in a national language of the ECOWAS Institutions country, and in the currency of the hosting country of the ECOWAS.

LCB is open to eligible firms from member countries.

7.3 Regional Competitive Bidding

Bidding period: ***Minimum 45 calendar days***

Bid validity: ***90 to 120 calendar days***

Regional Competitive Bidding (RCB) is the competitive bidding procedure normally used for public procurement in the country of the ECOWAS Institution and may be the most appropriate way of procuring goods or works which, by their nature or scope, are unlikely to attract foreign competition. To be acceptable for use in ECOWAS and Development Partners-financed procurement, these procedures shall be reviewed and modified as necessary to assure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of these Guidelines. LCB may be the most appropriate method of procurement where foreign bidders are not expected to be interested because (a) the contract values are small, (b) works are scattered geographically or spread over time, (c) works are labour intensive, or (d) the goods or works are available locally at prices below the international or regional market. LCB procedures may also be used where the advantages of ICB are clearly outweighed by the administrative or financial burden involved.

Advertising must be published into the fifteen (15) members states and in the ECOWAS Website. Bidding documents shall be written in the three languages of ECOWAS, and they can submit their offer in their local currency.

7.4 Bidding preceded by prequalification

Bidding period: ***30 calendar days***

Prequalification shall be in line with Part I Section III of the procurement Code. Bidding preceded by prequalification follows the same sequence of activities as ICB described under paragraph 7.1 with the exception of the post-qualification activity under paragraph 7.8.5.5

7.5 Two-stage bidding

Stage 1

Bidding period: ***30 calendar days***

Stage 2

Bidding period: ***Minimum 30 calendar days***

Bid validity: ***Minimum 60 calendar days***

Two-stage bidding shall be in line with Part I Section IV of the procurement Code.

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.

The objective of this procedure is comparable to the competitive dialogue under 7.10, but while Competitive Dialogue looks at resolving complex problems through synergies between bidders and purchasers, Two-Stage bidding seeks to resolve the complexity of projects by breaking up the process in stages and going step by step.

7.6 Daily Hired Services:

If required, an office may use personnel to assist them executing of a specific task with a daily remuneration of fifty (\$50) US Dollars. The maximum duration of this service is thirty (30) days renewable.

7.7 Tender documents

The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods and works to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data (including of geological and environmental nature); list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities.

The basis for bid evaluation and selection shall be clearly outlined in the instructions to bidders and/or the specifications. If a fee is charged for the bidding documents, it shall be reasonable and reflect only the cost of their printing and delivery to prospective bidders and shall not be so high as to discourage qualified bidders.

The Public Contracting Officer may use an electronic system to distribute bidding documents if approved by the Contracting Authority. If bidding documents are distributed electronically, the electronic system shall be secure to avoid modifications to the bidding documents and shall not restrict the access of bidders to the bidding documents. Bidding documents must be provided in print form to bidders who request them. A master copy of electronic documents shall be retained in print form, suitably authenticated by signature, stamp or another instrument.

7.7.1 Preparation of Tender Documents

Bidding documents shall be so worded as to permit and encourage international competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications. Drawings shall be consistent with the text of the specifications, and an order of precedence between the two shall be specified.

7.7.1.1 *Technical specifications in bidding document*

The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or otherwise evaluated. If bids based on

alternative designs, materials, completion schedules, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

All prospective bidders shall be provided the same information and shall be assured of equal opportunities to obtain additional information on a timely basis.

General policy for description of procurement requirements

Standardised features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, works or services to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the pre-qualification documents or bidding documents.

Due regard shall be had for the use of standardised trade terms, where available, in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings and in formulating other relevant aspects of the pre-qualification or bidding documents.

Writing technical specifications

Writing technical specifications shall be done as follows:

- a) Use the active rather than the passive language when stating a requirement in order to be more direct and concise.
- b) Avoid words that are vague or inexact. Rather than using routine words, search for accurate, descriptive words.
- c) Eliminate repetition. Use simple, short and concise sentences so that a minimum of punctuation is needed. Make a conscious effort to break up long sentences.
- d) Limit each paragraph to a single idea. State the idea at the beginning. Add other sentences only as necessary to develop and support the original idea.
- e) Use adjectives sparingly since they often soften nouns and make their meaning vague. For example, adjectives such as 'successful', 'substantial' and 'adequate' used to describe expected performance tend to decrease rather than increase the supplier's obligations.
- f) Use the same words, phrases and descriptive labels throughout the text to express the same meaning; creativity comes after clarity to avoid misinterpretation.
- g) Use mandatory language: use the word 'shall' to express a binding provision. Use the permissive terms 'should' and 'may' to express a declaration of purpose or other non-mandatory provisions. Use 'will' in cases where future action is required.
- h) Avoid using words and phrases that obscure meaning. Do not use 'and/or' in the specifications; use 'or' to indicate an alternative and use 'and' to indicate additive requirements.
- i) Use only abbreviations and acronyms that are commonly used or those that you will use several times per page. Identify the abbreviation or acronym the first time it is used. For complicated solicitations, it may be helpful to develop, and include in the bidding documents, a list of definitions.

Technical specifications for procurement of goods

Technical specifications for procurement of goods shall contain amongst others the following elements and descriptions of requirements:

- a) Listing of the goods to be procured, including the required performance characteristics, quantity, delivery times and incidental services (e.g., operating or descriptive manuals, training of procuring organisation's personnel, installation, supplier's on-site personnel required, after sale service);
- b) Required availability of spare parts and service during life of goods;
- c) Descriptive literature or samples to be provided with the bid;
- d) Description of any required performance or quality guarantee;

- e) Technical configurations;
- f) Inspection and quality testing to be conducted, including pre-shipment testing and inspection;
- g) Environmental impact and safety standards to be met by the goods;
- h) Criteria and performance tests or inspections for final acceptance.

Technical specifications for procurement of works

Technical specifications for procurement of works shall contain amongst others the following elements and descriptions of requirements:

- a) General description of the scope and purpose of the works;
- b) Precise description of scope of work to be carried out, i.e., elements such as design, works, erection, any manufacturing, installation of equipment, etc.;
- c) Physical nature and conditions of works site;
- d) Detailed listing of any equipment and components to be supplied;
- e) Detailed design and drawings of work to be performed, to the extent those are to be supplied by the procuring organisation under the contracting arrangement in question;
- f) Description of the works in terms of design details and/or performance characteristics, including specific technical descriptions and standards as to items such as plumbing, and electrical installations;
- g) Environmental impact and safety standards to be met;
- h) Description of performance and quality guarantees required;
- i) Inspection and testing to be conducted at various stages of works;
- j) Completion tests;
- k) Technical documentation. drawings, operating manuals to be provided by contractors;
- l) Type and quantity of training and supervision to be provided by contractors;
- m) Inspection and performance tests to be passed for acceptance;
- n) Schedule for starting and completion of works time.

Technical specifications for procurement of services other than intellectual services

Technical specifications for procurement of services other than consultants' services shall contain amongst others the following elements and descriptions of requirements:

- a) General description of the scope and purpose of the service;
- b) Description of the service to be supplied and the tasks to be performed by the supplier, as much as possible as performance requirements;
- c) Conditions under which the service is to be performed;
- d) Descriptive literature or samples to be provided with the bid;
- e) Inspection and quality testing to be conducted;
- f) Criteria and methods by which the procuring organisation intends to judge the performed services;
- g) Description of performance and quality guarantees required;
- h) Type and quantity of training and supervision to be provided by supplier.

7.7.1.2 Bidder qualifications

Bidder qualifications can be undertaken during the pre-qualification stage (paragraph 6.6 of the Procurement Manual), during the first stage of two stage bidding or during post-qualification of all other selection methods. Irrespective of the stage bidder qualification is a key procurement activity managing risk and fiduciary control.

This is a non-exhaustive list of bidder qualification criteria.

Financial Capacity (allowing financial categorisation):

- a) Audited or non-audited financial statements for the past three (3) years
- b) Certified copies of social security contributions
- c) Copies of tax returns for the past three (3) years
- d) Bank statement of bank balance or credit lines

Technical Qualification (allowing technical categorisation)

- a) Number and qualifications of technical and managerial staff
- b) List and types of equipment and materials available
- c) References of major contracts performed in the past three (3) years.
- d) Experience in the identified field(s), number and volume of all contracts per field
- e) Experience in the ECOWAS sub-region, number and volume of all contracts

Special attention is required to design qualification criteria tailored to the targeted market. Qualification criteria should not be set too high by excluding valid market operators and missing the opportunity to strengthen the local market. Qualification criteria should not be set too low in order to avoid the risk of underperforming contractors and suppliers.

7.7.1.3 Use of Standards

Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. As far as possible, the Bidding Document shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship shall comply. Where such international standards are unavailable or are inappropriate, national standards may be specified. In all cases, the bidding documents shall state that equipment, material, or workmanship meeting other standards, with demonstrated equivalence, will also be accepted.

7.7.1.4 Use of Brand names

Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” shall be added after such reference. The specification shall permit the acceptance of offers for goods, which have similar characteristics and which provide performance with demonstrated equivalence to those specified.

7.7.1.5 INCOTERMS

International Commercial Terms (Incoterms) are internationally recognized standard terms defining the obligations of both the buyer and seller during the transportation of goods. Incoterms were established by the International Chamber of Commerce (ICC): the clear definition of trade terms reduces the risk of misunderstanding; their interpretation is widely accepted and the ICC offers an arbitration service.

The scope of Incoterms is limited to matters relating to the obligations of the parties to the contract of sale related to the delivery of goods sold. Incoterms do not specify the transfer of property. They specify where the seller delivers the goods, costs that are paid by the seller, and the point from which the seller passes the risk to the buyer. Procurement officials may request suppliers to quote supply under more than one Incoterm, e.g., when considering whether to contract freight through the supplier or independently.

Incoterms 2020 shall govern shipment terms of ECOWAS contracts provided that this requirement is stipulated in the general terms and conditions of contract. Reference to an appropriate Incoterm shall be made in all contracts requiring shipment. The Incoterm must always refer to a named place

(city, country, etc.) e.g., 'CPT Dushanbe, Tajikistan'. For further information, consult the ICC website at www.iccwbo.org.

Frequently used shipping documents:

1. The Bill of Lading (B/L) (for sea shipment), or the waybill (for other modes of transport) is the contract of carriage between the shipper and the carrier, indicating how goods are being shipped and when they will arrive. The B/L is evidence that the carrier has received the goods for shipment, and is evidence that the goods were shipped as stated. It also possesses the unique characteristic of documenting ownership to the specified goods (a document of title). As standard practice, there are three original B/L; one is used by the consignee to clear the goods. It is important that ECOWAS retains the remaining two original copies;
2. Commercial and pro forma invoices describe the goods and indicate their value;
3. Gift certificate replaces the commercial invoice and the certificate of origin in the case of in-kind donations. A commercial invoice, pro forma invoice or gift certificate proves the value of the goods.
4. Packing lists are descriptions of content, total number of packing units, markings, weight and volume of each;
5. Certificates of origin indicate the country of origin or manufacture of the goods and are always issued by a local chamber of commerce. A certificate of origin is usually required for importation, for determining eligibility and the margin of preference and is also used for statistical purposes;

Additional documents required when using a freight forwarder:

1. Forwarder's certificate of receipt is a proof that the supplier has handed over goods to the freight forwarder;
2. A freight invoice from a carrier indicates shipping details and charges;
3. A number of certificates attesting quality may be required. These certificates are usually provided by the supplier;
4. The supplier or the freight forwarder (depending on who is organizing the transport) is responsible for consolidating all the required shipping documents and shall be instructed to courier one original set of documents to the consignee and the remaining two sets to the ECOWAS Institution. The Public Contracting Officer must check that all information is correct and identical in all documents. Further, ECOWAS must ensure that the documents have been received by the consignee.

The following are frequently used terms in shipping documents:

1. Consignee: The receiver of the goods, usually, but not necessarily, an ECOWAS Institution. The consignee may be, but is not necessarily, identical to the delivery address. The consignee shall always receive a copy of the shipping documents;
2. The consignee may take care of customs clearance and other government formalities upon the request of procurement officials in question; however, this may also be handled by a notify party. Consignee details, such as address, country, name, phone/fax, email, and contact person should be included in the PO and in the labelling of the packages;
3. Notify party: May be engaged by procurement officials (or the consignee) in order to arrange customs clearance of goods and other government formalities. In such case, shipping documents are also to be forwarded to the notify party;
4. Delivery address/final destination: The address of the User Department where the goods are to be physically delivered.

7.7.1.6 Pricing

Bids for goods shall make use of the latest edition of INCOTERMS and most commonly shall be invited on the basis of CIP (Place of destination) for all goods manufactured abroad, including those previously imported, and EXW plus cost of inland transportation and insurance to the place of destination for goods manufactured or assembled in the country of the User Entity. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source according to articles 23 & 24 of the Procurement Code. Where installation, commissioning, or other similar services are required to be performed by the bidder, as in the case of “supply and installation” contracts, the bidder shall be required to quote for these services, in addition.

However, bidding documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount in the currency of the contract or in a freely convertible currency to enable prompt replacement of lost or damaged goods. For works, a contractor’s All Risk form of policy usually shall be specified. For large projects with several contractors on a site, a “wrap-up” or total project insurance arrangement may be obtained by the Contracting Authority, acquired as a non-consulting service.

In case the Contracting Authority wishes to reserve transportation and insurance for the import of goods to national companies or other designated or preferred sources, bidders shall be asked to quote FCA (named place) or CPT (named place of destination) prices in addition to the CIP (place of destination) price specified above. Selection of the Bid shall be on the basis of the CIP (place of destination) price, but the Contracting Authority may sign the contract on FCA or CPT terms and make its own arrangement for transportation and/or insurance. Under such circumstances, the contract shall be limited to the FCA or CPT cost.

In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Unless otherwise specified in the bidding documents, the turnkey price shall include all duties, taxes, and other levies.

Bidders for works contracts shall be required to quote unit prices or lump sum prices for the performance of the works, and such prices shall include all duties, taxes, and other levies. Bidders shall be allowed to obtain all inputs from any eligible source so that they may offer their most competitive bids.

These INCOTERMS are indicative and the appropriate INCOTERM shall be specified in each Bidding Document.

7.7.1.7 Price adjustment

Bidding documents shall state that bid prices either will be fixed or subject to price adjustments to reflect any changes in major cost components of the contract, such as labour, equipment, materials, and fuel. Price adjustment provisions are not necessary in simple contracts involving delivery of goods or completion of works within eighteen (18) months but shall be included in contracts which extend beyond eighteen (18) months. However, in some cases it may be preferable to obtain firm prices for some types of equipment regardless of the delivery time.

Prices may be adjusted by the use of a prescribed formula, which breaks down the total price into elements that are adjusted by price indices specified for each component and element or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the supplier or contractor. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.

The use of the formula method of price adjustment is preferable to documentary evidence. The method to be used, the formula (if applicable) and the source of data shall be clearly defined in the bidding documents. The formulae for price adjustment shall be of the following general type:

$$P_n = a + b L_n / L_o + c E_n / E_o + d M_n / M_o + \dots$$

where:

“ P_n ” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “ n ”, this period being a month unless otherwise stated in the Contract Data;

“ a ” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“ b ”, “ c ”, “ d ”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“ L_n ”, “ E_n ”, “ M_n ”, ... are the current cost indices or reference prices for period “ n ”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

“ L_o ”, “ E_o ”, “ M_o ”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the Table of Adjustment Data shall be used. If their source is in doubt, it shall be determined by the supervising entity. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table).

If the currency in which the Contract price is expressed is different from the currency of the country of origin of the indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall be: Z_0 / Z_1 , where,

Z_0 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price on the Base date, and

Z_1 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price on the Date of Adjustment.

7.7.1.8 Currency provisions

Bidding documents shall state the currency or currencies in which bidders are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the contract price will be paid.

These provisions are intended to (a) ensure that bidders have the opportunity to minimize any exchange risk with regard to the currency of bid and of payment, and hence may offer their best prices; (b) give bidders in countries with weak currencies the option to use a stronger currency and thus provide a firmer basis for their bid price; and (c) ensure fairness and transparency in the evaluation process.

Bidding documents shall state that the bidder may express the bid price in any currency. If the bidder

wishes to express the bid price as a sum of amounts in different foreign currencies, they may do so, provided the price includes no more than three foreign currencies. Furthermore, the Contracting Authority may require bidders to state the portion of the bid price representing local costs incurred in the currency of the country/ies of the User Entity/ies.

In bidding documents for works, the Contracting Authority may require bidders to state the bid price entirely in the local currency, along with the requirements for payments in up to three foreign currencies of their choice for expected inputs from outside the User Entity/ies' country/ies, expressed as a percentage of the bid price, together with the exchange rates used in such calculations.

The bid price is the sum of all payments in various currencies required by the bidder. For the purpose of comparing prices, bid prices shall be converted to Unit of Account or as specified in the Bidding Document. The Public Contracting Officer shall make this conversion by using the selling (exchange) rates for those currencies quoted by the ECOWAS Bank for Investment and Development or any other official source (such as a Member Country Central Bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance, such source and date to be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity.

Payment of the contract price shall be made in the currency or currencies in which the bid price is expressed in the bid of the successful bidder.

When the bid price is required to be stated in the local currency but the bidder has requested payment in foreign currencies expressed as a percentage of the bid price, the exchange rates to be used for purposes of payments shall be those specified by the bidder in the bid, so as to ensure that the value of the foreign currency portions of the bid is maintained without any loss or gain.

7.7.1.9 *Payment arrangements*

Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and works

(a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the Supplier has complied with all its obligations under the contract. The use of Letters of Credit (LC) is encouraged for contract values over UA 200,000 so as to assure prompt payment to the supplier. In major contracts for equipment and plant, provision shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.

(b) Contracts for works shall provide in appropriate cases for mobilization advances, advances on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract.

Any advance payment for mobilization and similar expenses, made upon signature of a contract for goods or works, shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other advances to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. The bidding documents shall specify the arrangements for any security required for advance payments.

Bidding documents shall specify the payment method and terms offered, whether alternative payment methods and terms will be allowed and, if so, how the terms will affect bid evaluation.

7.7.1.10 *Alternative bids*

The bidding documents shall clearly indicate when bidders are allowed to submit alternative bids, how alternative bids shall be submitted, how bid prices shall be offered and the basis on which

alternative bids shall be evaluated.

7.7.1.11 Performance Security

Bidding documents for works shall require security in an amount sufficient to protect ECOWAS in case of breach of contract by the Contractor. This security shall be provided in an appropriate form and amount, as specified in the bidding document. The amount of the security depends on the type of security and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period. Normally, the amount for bank guarantees shall not exceed ten percent (10%) of the contract price unless the commercial practice for the industry recommends a different percentage. The value of the performance security may be increased in exceptional circumstances e.g. in heavily front-loaded contracts but shall never exceed twenty percent (20%).

Alternatively, contracts may provide for a percentage of each periodic payment to be held as retention money until final inspection. Contractors may be allowed to replace retention money with an equivalent security after provisional inspection.

In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a guarantee to protect against non-performance of the contract. Such security in an appropriate amount may also cover warranty obligations or, alternatively, a percentage of the payments may be held as retention money to cover warranty obligations, and any installation or commissioning requirements. The security or retention money shall be reasonable in amount.

Performance securities shall be in an appropriate form as specified in the request for bids/request for proposals document. Bidders/Proposers shall be allowed to submit a performance security directly issued by the reputable bank or financial institution (insurance, bonding or surety company), of their choice, located in any eligible country. However, if the performance security is issued by a financial institution that is located outside the Procuring or User Entity's country, and it is not enforceable, the financial institution shall have a correspondent financial institution located in the Procuring or User Entity's country, to make it enforceable.

7.7.1.12 Liquidated Damages and Bonus Clauses

Time for contract completion/ delivery period shall be specified. Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works or failure of the goods or works to meet performance requirements would result in extra cost, or loss of revenue or loss of other benefits to the Contracting Authorities. Liquidated damages shall never exceed 10% of the contract value. Provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the Contracting Authorities.

7.7.1.13 Force Majeure

The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

7.7.1.14 Applicable Law and Settlement of Disputes

The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes in line with articles 18 through 22 and articles 96 through 98 of the Procurement Code. In addition, international commercial arbitration may have practical advantages over other methods for the settlement of disputes in contracts for the procurement of goods and works.

In case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

7.7.1.15 Use of Standard Bidding Documents

The Public Contracting Officer shall use the appropriate Standard Bidding Documents (SBDs) attached to this manual with minimum changes, as necessary to address project-specific conditions. Any such changes shall be introduced only through bid or contract data sheets, or through special conditions of contract, and not by introducing changes in the standard wording of the SBDs. Where no relevant standard bidding documents have been issued, the Public Contracting Officer shall use other internationally recognized standard conditions of contract and contract forms acceptable to the Contracting Authority.

7.7.1.16 Bid validity

Bidders shall be required to submit bids valid for a period specified in the bidding documents, which shall be sufficient to enable the Contracting Authority to complete the comparison and evaluation of bids, contract award and signature.

7.7.1.17 Bid security

The Public Contracting Officer may include in the bidding documents a condition that bids must be accompanied by a bid security issued by an AA-rated reputable bank, or a non-bank financial institution (such as an insurance, or bonding or surety company), located in an ECOWAS Member State.—This guarantee is mandatory for procurement for values indicated in Article 69 of the Procurement Code.

Bidders shall be required to submit bids valid for a period specified in the bidding document which shall be sufficient to enable the Contracting Authority to complete the evaluation of bids and obtained all the necessary approvals so that the contract can be awarded within the validity period. If the period of the bid security submitted does not exceed the bid validity period by at least four (4) weeks, it shall be rejected.

The bid security shall be in the amount and the form specified in the bidding document.

The submission of bid security after bids are opened will be rejected. If bidders withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding document, the bid security will be forfeited.

Failure to submit bids securities in the prescribed format is considered as a major deviation and sufficient grounds for rejection of bids. If the form of the bid security is in a different format from that prescribed in the bidding document, the bid shall be rejected. Similarly, if the amount of the bid security submitted is less than the amount stated in the bid, it shall be rejected.

Bid securities shall be released to unsuccessful bidders once the contract has been signed with the winning bidder.

If a Bid Security is not required by the Bidding Document and

- (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid; or
- (b) if the successful Bidder fails to sign the Contract or furnish a performance security in;

the ECOWAS Sanctions Committee may, if provided for in the BDS, declare the Bidder ineligible to be awarded a contract by ECOWAS for a period of time as stated in the BDS.

7.7.1.18 Insurance

Contractors doing business with ECOWAS Institutions in providing goods, works or services must have and maintain acceptable insurance coverage. If the goods, works or services are being procured through an ECOWAS Institution's purchase order, the supplier must carry the minimum insurance coverage that is typical for the industry and stipulated in the purchase order terms and conditions. If the goods, works or services are being procured through use of an ECOWAS Institutions contract with special terms and conditions, the supplier must comply with the insurance coverage stipulated in the contract. The types of insurance and amount of coverage required will be specified in the contract.

7.7.1.19 Preference

Citizens of ECOWAS and legal persons incorporated in ECOWAS Member States may enjoy a preference in public contracting proceedings in accordance with Article 85 of the Procurement Code.

Below is a summary of the eligibility criteria for natural and legal persons as well as Joint Ventures. Bidders/Proposers need to fulfil all applicable criteria and provide evidence together with the bid, quotation or proposal:

	Natural persons	Legal persons	Joint Ventures
Residence/ incorporation	Member State citizen	Incorporated in a Member State	Domestic content delivered by a Member State citizen
Tax situation	Tax resident in a Member State	Tax resident in a Member State	
Capital		≥ 51% of authorised capital owned by Member State citizens	
Board of Directors		Board of Directors controlled by Member State citizens	
Profits	≤ 30% of the profits or benefits for non-Member State nationals		
Content of a works contract	≥ 50% of inputs are community sourced		≥ 50% of total inputs are community sourced
Content of a works contract	≥ 70% of site staff are Member State citizens		≥ 70% of site staff are Member State citizens
Content of a goods contract	≥ 50% of goods are made in a Member State		≥ 50% of all goods are made in a Member State
Content of a services & Intellectual services contract	≥ 50% of services are provided by Member State citizens		
Subcontracts	≤ 20% of the contract value subcontracted to non-Member State suppliers, providers or contractors		

Preference for Regionally Manufactured Goods and Services

Where regional preference is granted to goods manufactured in Member States, responsive bids are classified in one of the following two groups:

- a) Group A, which includes bids offering goods, which the respective bidders must have established, to be eligible for regional preference; and
- b) Group B, which includes all other bids.

In order to determine the most responsive bid of each group, all evaluated bids in each group shall first be compared among themselves. The most responsive bids shall then be compared across both Groups and if, as a result of this comparison, a bid from Group A is the most responsive bid, it shall be selected for the award.

If, as a result of the comparison above, the most responsive bid is a bid from Group B, all Group B bids shall be further compared with the most responsive bid from Group A, after adding to the evaluated bid price offered in each Group B bid, for the purpose of this further comparison only, an amount equal to:

- a) the difference between the import duty applicable to such goods, when they originate in countries not parties to the preferential tariff arrangement, and that which is applicable to those goods when they originate from countries that are parties to the agreement; or
- b) 15% of the CIF or CIP bid price of such goods if the difference indicated under a) above exceeds 15% of such price.

If the most responsive bid from Group A, in such further comparison is the lowest, it shall be selected for the award. If not, the most responsive bid from Group B shall be selected.

Preference for Regional Contractors

Where regional preference is granted to contractors' bids, responsive bids are classified in one of the following two groups:

Group A, which includes bids submitted by contractors, which have established to be eligible for regional preference; and

Group B, which includes all other bids.

In order to determine the most responsive bid, all evaluated bids in each group shall first be compared among themselves. Such most responsive bid shall then be compared with each other, and if, as a result of this comparison, a bid from Group A is the lowest, it shall be selected for the award.

If as a result of the comparison above, the most responsive bid is a bid from Group B, for the purpose of this further comparison only, an amount equal to 10 % of the bid price will be added to bids received from contractors in Group B.

If the most responsive bid from Group A, in such further comparison is the lowest, it shall be selected for the award. If not, the most responsive bid from Group B, as determined from the comparison shall be selected.

7.7.2 Contract information

The bidding document shall contain the proposed contract including contract conditions. The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Contracting Authority and of the supplier or contractor, and the functions and authority of the engineer, architect, or construction manager, if one is employed by the Contracting Authority, in the supervision and administration of the contract. In addition to the General Conditions of Contract (GCC), Special Conditions of Contract (SCC) particular to the specific goods or works to be procured and the location of the project shall be included. The conditions of contract shall provide a balanced allocation of risks and liabilities.

7.7.2.1 Goods contracts

The applicable version of Incoterms shall be used in the contract for Goods. Normally, an ‘all risk’ type of insurance policy shall be specified. For Goods contracts, the indemnity payable under transportation insurance shall be at least one hundred and ten percent (110%) of the CIP price of the Goods to be imported in the currency of the payment or in a freely convertible currency to enable prompt replacement of lost or damaged Goods.

7.7.2.2 Works contracts

For work contracts the insurance requirements will be according to the International federation of Consulting Engineers (FIDIC) and shall cover at least:

- The Works, Plant, Materials and Contractor’s Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit.
- Each Party’s liability for any loss, damage, death or bodily injury to any physical property or any person.
- The liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor’s Personnel.

7.8 Bid process

7.8.1 Expression of needs/Advertisement

Reference Article 6.5 of this Manual.

7.8.2 Preparation of bids

The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract and a minimum of six (6) weeks from the date of the invitation to bid or the date of availability of bidding documents, whichever is later as to accord prospective bidders sufficient time to prepare and to submit their bids in line with international best practices as provided in this Manual. Where large works or complex items of equipment are involved, this period can be extended to twelve (12) weeks to enable prospective bidders to conduct investigations before submitting their bids. Communication with bidders seeking clarifications will be in line with Article 19 of the Procurement Code.

7.8.2.1 Pre-bid/Proposal visit and/or Conference

The Public Contracting Officer shall provide reasonable access to project sites for visits by prospective bidders.

Where large works or complex items of equipment are involved, the Public Contracting Officer may hold a preliminary conference for procuring goods, works and services, consultants, or construction, depending on the complexity of the requirement. The conference is an open forum at which questions and comments from potential offerors are entertained. Minutes of the conference shall be provided to all prospective bidders (in hard copy or sent electronically).

7.8.2.2 *Modifications to Bidding Documents*

On occasion it may become necessary to modify a solicitation document. Shall a modification be necessary, a written notification (Amendment) detailing the modification, clarification, or change will be provided to all bidders/offerors of record. Modifications or changes to a solicitation may, at the discretion of the PCO, result in postponing of the bid submission date to be communicated to all bidders who bought the bidding document and published in the same places as the original SPN.

7.8.3 Submission of bids

Unless not authorised by the instructions in the solicitation documents, bidders shall be permitted to submit bids by mail or by hand. The electronic systems permitting bidders to submit bids are allowed provided the Contracting Authority is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of bids submitted, uses an electronic signature system or equivalent to keep bidders bound to their bids, and only allows bids to be opened with due simultaneous electronic authorization of the bidder and the PCO. In this case, bidders shall continue to have the option to submit their bids in hard copy. The deadline and place for receipt of bids shall be specified in the invitation to bid.

Upon receipt, bids are date- stamped and secured. Bids that are received after the bid closing will not be opened and will be returned to the bidder after bid opening session.

7.8.4 Bid opening session

Bids are opened by the Bid Opening Committee, established in line with article 14 of the Procurement Code, on the time and date specified in the Bidding Document. Public Bid Openings are held for solicitations by open competitive bidding and are open to all interested parties. At these openings, the name of each bidder and the total value of each bid, including any requested or alternative bids, are read aloud and recorded, and a list of all attendees is recorded and kept on file. During the bid opening session, no bids will be rejected unless bids that are delivered after the closing deadline.

7.8.5 Evaluation of bids

The evaluation of bids is conducted in accordance with Chapter XV of the Procurement Code.

7.8.5.1 *Evaluation responsibilities*

Evaluation is undertaken by the Evaluation Entity established per article 15 of the procurement Code. 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. Above the thresholds indicated in Annex 1 - Schedules 1 – 8, the Contracting Authority will entrust the evaluation to an Evaluation Committee created in line with article 16 of the procurement Code.- In addition to the user directorate and the directorate in charge of procurement, the evaluation committee shall also comprise finance directorate.

7.8.5.2 *Responsiveness of bids*

In a first instance, the bids are reviewed for completeness, and responsiveness to the solicitation documents

The Evaluation Entity shall ascertain whether the bids (a) meet the eligibility requirements as specified in article 9 of the Procurement Code, (b) have been properly signed, (c) are accompanied by the required securities as specified in Chapter XIX of the Procurement Code, (d) are substantially responsive to the bidding documents, and (e) are otherwise generally in order. If a bid is not

substantially responsive, that is, it contains material omissions, deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further.

The bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened

Only bids conforming to these review criteria are considered in the bid comparative evaluation process.

Here is a sample checklist for substantial responsiveness:

- a) Headquarters Address
- b) Legal Status/Memorandum and Articles of Association
- c) The National/Tax Identification Number (Tax Clearance Certificate);
- d) Social Security Identification Number (Social Security Certificate);
- e) Bid Security
- f) Non-Bankruptcy Document
- g) The Company Registration or equivalent in the country of incorporation and in the country/countries of operation
- h) Declaration of non-debarment using the ECOWAS format
- i) Litigation history

Note: Refer to Bid Evaluation Guide

7.8.5.3 Comparison of bids

The purpose of bid comparative evaluation is to determine the cost of each bid in a manner that permits a comparison on the basis of their evaluated cost. Subject to post-qualification paragraph, the bid with the lowest evaluated cost or with the Best Value for Money, whichever applies, shall be selected for award.

The bid price read out at the bid opening shall be adjusted to correct any arithmetical errors. Also, for the purpose of evaluation, adjustments shall be made for any quantifiable nonmaterial deviations or reservations. Price adjustment provisions applying to the period of implementation of the contract shall not be considered in the evaluation.

The evaluation and comparison of bids for goods shall be on CIP (place of destination) prices for the supply of imported goods and EXW prices, plus cost of inland transportation and insurance to the place of destination, for goods manufactured within the Procuring or User Entity's country.

Bidding documents shall also specify the relevant factors in addition to price to be considered in bid evaluation for the purpose of determining Best Value for Money. For goods and equipment, other factors may be taken into consideration including, among others, payment schedule, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, safety, and environmental benefits. The factors other than price to be used for determining the lowest evaluated bid shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the bidding documents.

Under works and turnkey contracts, contractors are responsible for all duties, taxes, and other levies, and bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Bid evaluation for works shall be strictly in monetary terms. If time is a critical factor, the value of early completion may be considered according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance.

7.8.5.4 Possible deviations

Material deviations, reservations or omissions

ECOWAS must maintain fairness and transparency and ensure that offers are rejected only and whenever deviation to the requirements is material. In some cases, a substantially compliant offer could contain non-material deviations, which will render it non-compliant. However, in order to achieve value for money, it is important not to disqualify offers solely for non-material (minor) deviation(s).

The following definitions apply:

- (a) “Deviation” is a departure from the requirements specified in the bidding document;
- (b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding document; and
- (c) “Omission” is the failure to submit part or all of the information or documentation required in the bidding document.

A material deviation, reservation or omission is one that:

- a) Would affect in any substantial way the scope, quality, or performance of the goods and related services specified in the contract;
- b) Would limit in any substantial way, by contradicting the bidding documents, ECOWAS rights or the bidder’s obligations under the contract;
- c) If rectified would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

To this end, the evaluation team must have a clear understanding of what represents a material deviation. During evaluation of the offers, consistency must be applied when determining whether a deviation is material. The evaluation report must identify any deviations encountered during each step of the evaluation process.

Minor informalities or irregularities in bids

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements that can be corrected or waived without being prejudicial to other bidders. In such cases, the defect or variation is immaterial when the effect on price, quality, or delivery is negligible when contrasted with the total cost or scope of the goods, services or works being acquired. The evaluation team shall either waive or give the bidder an opportunity to correct any deficiency resulting from a minor informality or irregularity in a bid, whichever is to the advantage of ECOWAS.

Examples of minor informalities or irregularities include failure of a bidder to:

- a) Return the number of copies of signed bids required by the solicitation documents;
- b) Furnish required information concerning the number of its employees;
- c) Acknowledge receipt of an amendment to an invitation for bids, but only if:
 - (i) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation and the bidder submitted a bid on the item;
 - (ii) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon.

Apparent clerical mistakes

After the opening of bids, the evaluation team shall examine all bids for mistakes. The procurement official may correct any apparent clerical mistake before award, given that they first obtain a verification of the bid intended from the bidder. Examples of apparent mistakes include:

- a) Obvious errors in totalling price: The unit prices will prevail, when errors in totalling have been made;

- b) Obvious discrepancy between the amounts in figures and in words, the amount in words will prevail;
- c) Obvious misplacement of a decimal point;
- d) Obviously incorrect discounts (e.g., 1 percent, 10 days; 2 percent, 20 days; 5 percent, 30 days);
- e) Obvious reversal of the price Free of Board (FOB) destination and price FOB origin;
- f) Obvious mistake in designation of unit.

The Evaluation Entity shall correct arithmetical errors on the following basis:

- a) if there is a discrepancy between the unit price and the line-item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line-item total shall be corrected, unless in the opinion of the Contracting Authority there is an obvious misplacement of the decimal point in the unit price, in which case the line-item total as quoted shall govern and the unit price shall be corrected;
- b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above;
- d) If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items.
- e) An item not listed in the Price Schedule shall be assumed to be not included in the Bid, and provided that the Bid is substantially responsive, the average or highest price (as specified in the BDS) of the item quoted by substantially responsive Bidders will be added to the Bid price and the equivalent total cost of the Bid so determined will be used for price comparison. If the price of the item or component cannot be derived from the price of other substantially responsive Bids, the Contracting Authority shall use its best estimate.

If the Evaluation Entity believes a mistake has been made, and if the bidder formally and in good faith confirms the error, the matter shall be processed in accordance with the following procedures before final evaluation and award take place.

Correction of the bid shall be effected by attaching the bidder's verification to the original bid and a copy of the verification to the duplicate bid. Correction must not be made on the face of the bid but must be reflected in the award document.

Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bidder's verification. As above, the correction must be reflected in the award document.

Apparent errors in price

ECOWAS is not responsible for errors in price made by bidders. However, ECOWAS shall verify prices in cases where it believes there is an error (e.g., a specific item price very high or very low). The supplier shall then be informed that revision of the original price is prohibited, and that non-compliance shall result in rejection of the offer. If the supplier confirms that the original price is correct, the evaluation can proceed. Should the supplier acknowledge that the price is incorrect, the offer must be rejected in order to adhere to the principle of fair and equal treatment of all suppliers. The communication with the supplier must be in writing and kept on file for the record in order to facilitate audits.

Abnormally low bids/proposals

An abnormally low bid/proposal is one where the bid/proposal price in relation to the scope, methodology, technical solution and requirements, appears so unreasonably low that it raises concerns to the evaluation team in regards to the bidder's ability to perform the contract successfully.

If and when an abnormally low bid/proposal is identified, the procurement official shall seek written clarifications from the bidder, including detailed price analysis for its bid/proposal prices in correlation with the scope, proposed methodology, schedule, and allocation of risks and responsibilities.

After the evaluation of the information and detailed price analyses presented by the bidder, the Evaluation Entity may:

- a) accept the bid/proposal;
- b) if appropriate, require that the amount of the performance security be increased at the expense of the bidder to a level sufficient to protect ECOWAS against financial loss in the event of default of the successful bidder under the contract; or
- c) reject the bid/proposal.

Refer to World Bank Link on Guide to the identification and treatment of abnormally low Bid and Proposal (July 2015).

Missing documents

Only historical or original versions of those documents that have already been provided, with the exception of those documents that must be supplied in original form by the bid receipt deadline, e.g., bid securities, may be submitted by bidders at evaluation stage.

7.8.5.5 Qualification

If bidders have not been prequalified, the Evaluation Entity shall determine whether the bidder whose bid has been determined to offer the lowest evaluated cost or Best Value for Money has the capability and resources to effectively carry out the contract as offered in the bid, i.e., undertake post-qualification. 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 Evaluation Entity shall make a similar determination for the next-lowest evaluated bidder.

7.8.5.6 Extension of Validity of Bids

The Evaluation Entity shall complete evaluation of bids and award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing from all bidders before the expiration date. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals and award the contract. In the case of fixed price contracts, requests for second and subsequent extensions will be permissible only if the request for extension provides for an appropriate adjustment mechanism of the quoted price to reflect changes in the cost of inputs for the contract over the period of extension. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the quoted (base) price or other conditions of their bid. Bidders shall have the right to refuse to grant such an extension. If the bidding documents require a bid security, bidders may exercise their right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.

7.8.5.7 Bid clarifications

The Public Contracting Officer may ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders' responses shall be made in writing, in hard copy or by an electronic system satisfactory to the Contracting Authority.

7.8.5.8 Bid evaluation report

The Public Contracting Officer shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of the contract. This report shall be sent to the Review Entity for clearance.

7.8.5.9 Contract award clearance by the Review Entity

The Review Entity activities are described in paragraph 10.1 of this Manual.

7.9 Other methods of procurement for goods, works and non-consulting services

7.9.1 Restricted Bidding

Bidding period: 30 to 60 calendar days

Bid validity: 60 to 120 calendar days

Restricted bidding shall be in line with Part I Section V of the procurement Code.

In the event of a valid reason for not holding an open competition, a Restricted competition may be held. Restricted competition allows only selected vendors to participate in a solicitation.

Restricted international, /regional or local competition is restricted to a short list of suppliers selected in a non-discriminatory manner from rosters, pre-qualifications, expressions of interest, market research, etc. Restricted international, /regional or local competition must be included in the procurement plan or, alternatively, the Public Contracting Officer must obtain prior written permission from the Contracting Authority.

Valid reasons for limited international and national/regional competition are:

- a) The project agreement requires the use of restricted competition tenders, including when done to support the principles of national capacity and sustainability based on certain business characteristics (i.e., local small or medium business as defined by the local or regional context, or local minority or traditionally-disadvantaged business);
- b) An open tender could have negative security implications;
- c) The subject/matter of the tender is otherwise sensitive and cannot be advertised;
- d) A short list of vendors to be invited to bid has been created further to an EOI or a pre-qualification process and this has been identified as the most suitable procurement strategy;
- e) Other reasons acceptable to the Contracting Authority.

7.9.2 Request for Quotations (RFQ)

Bidding period: 30 calendar days

Bid validity: 60 calendar days

Request for Quotations shall be in line with Part I Section VI of the procurement Code.

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 these Regulations, 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 these Regulations.

7.10 Special Selection Arrangements

7.10.1 Programme contracts.

Program contracting are investment operations funded by the Community through special arrangements within the framework of a program, where the total commitment, corresponding to the total estimated cost, is left open and is matched by grants made available yearly to cover each segment of the contract to be executed. The contract is concluded for a period of more than one year and is executed in annual segments which content is determined each year after the corresponding budget is voted.

7.10.2 Program of International Imports

Where a program of imports is specified in the procurement plan, the RFQ selection method with simplified advertising and currency provisions may be used for large-value contracts. SPNs 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 external website.

The period allowed for submission of Bids may be reduced to 20 Business Days from the date of publication of the SPN. Bidding and payment may be limited to one currency widely used in international trade.

When the private sector entity handles the procurement of imports, Commercial Practices, specified in Paragraph 7.10.6 may be applied.

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 RFQ selection methods may not be subject to price verification, but only verification of quality and quantity. However, imports procured using less competitive methods than the RFQ method may additionally be subjected to price verification. Physical inspection services may also be included.

7.10.3 Commodities

Procurement of commodities refers to procuring items such as: grain, animal feed, cooking oil, fertilizer, or metals either from international or local markets. 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.

A framework arrangement may be established and a list of Bidders drawn up to whom periodic invitations to Bid are issued. Bidders may be invited to quote prices linked to the market price at the time of, or prior to, the shipments. Bid validities shall be as short as possible. 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. Standard contract conditions and forms consistent with market practices shall be used.

7.10.4 Community-Driven Development (CDD)

CDD projects generally envisage a large number of small-value contracts for Goods, Non-consulting and/or Intellectual Services, and a large number of small Works scattered in remote areas. Commonly used procurement procedures include RFQ; local competitive bidding inviting prospective Bidders

for Goods and Works located in and around the local community; direct contracting for small-value Goods, Works, and Non-consulting Services; and the use of community labour and resources.

The proposed arrangements and the project activities to be carried out by community participation are outlined in the Legal Agreement and Procurement Plan. 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.

7.10.5 Force Account

Force Account, which refers to works such as construction and installation of equipment and Non-consulting Services carried out by a Public Entity (government of sub sovereign authority) using its own personnel and equipment, may be the only practical method of procurement under specific circumstances. A government-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.

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 or User Entity than by a contractor;
- e) as a matter of the national law or official regulations in such areas as: national security, specialized Non-consulting Services such as aerial surveys and mapping can be carried out only by specialized branches of the government; 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.

7.10.6 Commercial practices

Commercial Practices refers to the use of well-established procurement arrangements used by the private sector (normally entities not subject to the country's public procurement law), for the procurement of Goods, Works, or Non-consulting Services. Commercial practices may also be used for a program of imports undertaken by private sector entities (as specified in Paragraph 6.50). ECOWAS Procurement Principles are the standard for determining the acceptability of Commercial Practices.

All Commercial Practices documentation and contracts shall be cleared by the Director Legal Affairs prior to award and signature.

7.10.7 UN Agencies

Awarding 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. The use of UN Agencies must be specified in the Procurement Plan. 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.

When entering into a contract with a UN Agency, an ECOWAS standard form of agreement between the Contracting Authority and the UN Agency or a case-specific template that shall be cleared by the Director Legal Affairs. In circumstances in which any ECOWAS Contracting Authority and a UN Agency have an established FA, any other Contracting Authority may take advantage of the FA when entering into a contract with the UN Agency.

7.10.8 Competitive Dialog

The competitive Dialog selection mode shall be in line with Part I Section VII of the Procurement Code.

7.10.8.1 Purpose

Each Competitive Dialogue needs to be carefully designed to maximize the effectiveness of the procedure. This may result in variations to the generic procedures described below. Competitive Dialogue uses a dedicated RFP template provided under the link at the end of this chapter.

7.10.8.2 Requirements

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 Project Procurement Plan. It may only be used for complex or innovative procurement. Competitive Dialogue may be appropriate:

- a) where a number of solutions to satisfy the requirements may be possible, and
- b) where the detailed technical and commercial arrangements required to support those solutions require discussion and development between the parties; and
- c) due to the nature and complexity of the procurement, the Procuring Entity is not objectively able to:
 - (i) adequately define the technical or performance specifications and scope to satisfy its requirements; and/or
 - (ii) fully specify the legal and/or financial arrangements of the procurement.

In Competitive Dialogue, the Public Contracting Officer enters into dialogue with Initially Selected firms/joint ventures, with the aim of better identifying and defining the means best suited to satisfy the user requirements before inviting the firms to submit their final Proposals.

7.10.8.3 Undertaking a Competitive Dialogue

To secure full transparency and accountability the Public Contracting Officer shall identify an independent Probity Assurance Provider (Probity Auditor) acceptable to the Contracting Authority. The Probity Auditor shall be appointed at the beginning of the procurement and audit the process until the award of contract.

The Probity Auditor shall provide independent scrutiny of the procurement process, the procurement decision making process and the dialogue phase with each Proposer. Following the decision to award the contract, and before the Notice of Award of contract is transmitted, the Probity Auditor shall provide a probity report. The report shall be provided to the Contracting Authority.

The Competitive Dialogue procurement process normally includes several phases:

Phase 1: Initial Selection

Step 1: Prepare the Initial Selection Document (ISD), using the applicable Standard Initial Selection Document, provided under the Competitive Dialogue link;

Step 2: Request for Initial Selection (RIS): prepare the RIS inviting proposals for initial selection, using the applicable template for such notices. When the initial selection document is ready for distribution, publish the RIS in accordance with article 6.5.3, giving sufficient time for Proposers to obtain the initial selection document and prepare and submit their proposals.

Step 3: Clarifications and addenda: respond to any request for clarifications from prospective Proposers in writing and forward a copy of the response to all prospective Proposers. Any amendment to the initial selection document deemed necessary as a result of additional/modified information or clarifications shall be communicated in writing to all prospective Proposers.

Step 4: Initial Selection Proposal submission and opening: proposals are to be submitted by the deadline; however, the Public Contracting Officer may accept proposals received after the deadline, unless otherwise specified in the initial selection document. The Public Contracting Officer prepares a record of the opening of proposals and distributes a copy of the record to all Proposers;

Step 5: Evaluation of Initial Selection Bids to identify the firms/joint ventures to be Initially Selected and invited to participate in the dialogue phase of the process. Proposers are assessed against qualifying criteria. All Proposers that meet the qualifying criteria are ranked based on an assessment against rated criteria. The highest ranked Proposers, to be invited to participate in the next stage of the procurement, are selected in accordance with the procedures specified in the Initial Selection Document. The list of Initially Selected firms/joint ventures shall include a sufficient number, normally not less than three (3) and not exceeding six (6) (i.e., a range of 3 to 6). Normally this will be a sufficient number to ensure adequate competition throughout the dialogue process.

Step 6: Communication of Initial Selection results: communicate the results of the Initial Selection process to all Proposers.

Phase 2: Request for Interim Proposals and Dialogue

Step 1: Issue request for proposals document in accordance with the ECOWAS Standard Procurement Document to the Initially Selected firms/joint ventures (Proposers). Normally a one-envelope process is used at this Phase. Clarifications and addenda may be made in accordance with the requirements of article 7.8.5.7.

Step 2: Proposers submit Interim Proposals which provide solutions to the problem definition or statement of need or business requirements as defined in the request for proposals document. Interim Proposals are opened at a public opening.

Step 3: The Evaluation Entity makes an initial assessment of the Interim Proposals against the evaluation criteria described in the request for proposals document.

Step 4: Parties enter into dialogue. This involves the Evaluation Entity holding separate, confidential bilateral dialogue meetings (rounds) with each Proposer to discuss all aspects of its Proposal. The dialogue meeting may focus on the solution, the commercial deal, the legal aspects and such other features considered relevant.

The rounds of bilateral dialogue meetings can be repeated until the Evaluation Entity is satisfied that discussions have been exhausted. The Evaluation Entity should indicate in the request for proposals document the number of rounds of dialogue planned to take place.

A progressive elimination of Proposers may take place on the basis of the review of the initial solutions, and by applying the criteria and methodology specified in the request for proposals document.

Step 5: The Evaluation Entity may test the readiness of Proposers to submit compliant Final Proposals by requesting and assessing a 'Draft Final Proposal'. This is an initial version of the final Proposal. Once the Evaluation Entity is satisfied that at least one compliant final Proposal will be received, dialogue can be closed. Dialogue should continue if further work is required to produce at least one compliant final Proposal.

Step 6: Formal closure of the dialogue phase. The Evaluation Entity declares that the dialogue is closed. No further discussions are allowed after this closure.

The Evaluation Entity refines the problem definition or statement of need or business requirements and prepares addenda to the request for proposals document to convert it into the Phase 3 request for proposals document.

Phase 3: Request for Final Proposals

Step 1: Issue updated request for proposals document to the Proposers (that have not been eliminated in Phase 2), in accordance with the Standard RFP. A two-envelope process is normally used at this Phase.

Step 2: Receipt and public opening of Final Proposals. Only the technical Proposals are opened at this time. Financial Proposals remain sealed.

Step 3: The Evaluation Entity evaluates technical Proposals against the evaluation criteria described in the RFP document. There should be no need to seek clarification with a Proposer. The dialogue phase has closed and no further discussions are allowed.

Step 4: The Evaluation Entity opens the financial Proposals in the presence of the Probity Auditor. This is not normally done in public. The Evaluation Entity evaluates financial Proposals against the evaluation criteria described in the request for proposals document.

Step 5: Once evaluation is completed, the Evaluation Entity selects the Most Advantageous Proposal for contract award according to the criteria specified in the request for proposals document.

Step 6: Once the Most Advantageous Proposal has been selected, the Evaluation Entity and the selected Proposer will finalize details of the solution. This process only allows for clarification and confirmation and does not permit any material deviation from the final Proposal that formed the basis of the Evaluation Entity's decision to select.

Step 7: At this step in the process the Probity Auditor shall prepare a probity report. The report will be provided to the Contracting Authority and a copy sent to the Evaluation Entity. To ensure transparency and accountability the Probity Auditor's report shall be sent to all Proposers, who were involved in the dialogue stages, (after excluding all confidential information), and published on the ECOWAS website. This shall be done at the same time as transmission of the Notice of Award of contract.

Step 8 Notification of Award and Standstill Period: The Evaluation Entity transmits its Notice of Award of Contract to the Proposers. This initiates the Standstill Period. Where applicable, the Evaluation Entity provides debriefs and manages any complaints received that relate to the decision to award the contract.

Step 9: The Evaluation Entity shall publish the Contract Award Notice following expiry of the Standstill Period.

7.10.8.4 Dialogue Procedures and Considerations

The dialogue consists of confidential clarification meetings with the Initially Selected Proposers to discuss all aspects of the Proposal submitted including the details of the solution, the commercial deal, price, the legal aspects and such other features the Evaluation Entity considers relevant. The procedures and considerations include:

- a. The invitation to participate in the dialogue phase restates the needs and requirements, describes the dialogue process, and sets out the award criteria for the final Proposal;
- b. The objective of the dialogue meetings is for the Evaluation Entity to engage in a clarification process with each Proposer to identify appropriate technical aspects and/or commercial terms and conditions. The outcome of the dialogue meetings may be incorporated in addenda to the request for proposals document to be issued for the final submission;
- c. Interim Proposals: to confirm and test each Proposer's understanding of the Evaluation Entity's problem definition or statement of need or business requirements (as defined in the request for proposals document), and to fine-tune the Proposal or Phase 3 request for proposals document;
- d. The number of meetings with each Proposer is determined by the Evaluation Entity on the basis of its need to clarify information included in each Proposal. The Evaluation Entity shall determine whether or not further meetings are necessary with a Proposer and communicate this decision to the Proposer;
- e. The Evaluation Entity shall not provide information in a discriminatory manner which may give some Proposers an advantage over others;
- f. Proposers shall identify and agree with the Evaluation Entity which part/s of their Proposal are specific to them and have to be treated as commercially confidential;
- g. The Evaluation Entity shall not disclose to other Proposers the solutions proposed or any commercially confidential information communicated by a Proposer in its Proposal and as disclosed during the dialogue phase without that Proposer's prior written consent;
- h. The Evaluation Entity shall not use a Proposer's commercially confidential information to enhance other Proposals;
- i. The dialogue meetings shall be attended by a Probity Auditor selected by the Contracting Authority to ensure that a competitive process takes place and that no undue advantage is given to any of the firms/joint-ventures as result of these meetings; and
- j. The Evaluation Entity shall prepare confidential minutes of the dialogue meetings it has with each Proposer which shall be communicated to the respective Proposer as part of the invitation to submit final Proposals.

7.10.9 Public Private Partnerships

7.10.9.1 Requirements

In a PPP arrangement, the Evaluation Entity undertakes the following project phases:

- a) project assessment;
- b) project structuring;
- c) selection of the private partner.

The Evaluation Entity shall demonstrate that there is adequate institutional capacity to prepare, structure, procure and manage the PPP project.

7.10.9.2 Project Assessment: Business Case and Feasibility Requirements

Identification

The proposed PPP component of the project should have been identified as a priority public investment project and/or derived from an approved national infrastructure plan/sector program.

Feasibility Considerations

The Procuring Entity shall have conducted suitable economic and financial analysis to confirm:

- a) whether the underlying project is adequately justified, on the basis of a sound and quantified economic analysis the project presents best VfM, i.e., is cost-benefit justified, and the approach to delivering the benefits, considering the relevant technical, legal, financial and environmental constraints, irrespective of implementation as a PPP or through another public sector procurement;
- b) whether the project's overall revenue requirements are within the capacity of users, the public authority, or both, to pay for the infrastructure service;
- c) that the project risks were identified and assessed and that mitigation measures were considered, and that the residual fiscal risk will not jeopardize fiscal sustainability;
- d) that the chosen PPP scheme (i.e., risk-allocation matrix, pay and performance mechanism) 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.

The Procuring Entity shall ensure the information above is available to enable an independent review and third-party assurance of the inputs, assumptions and results.

7.10.9.3 Project structuring: PPP Structure Requirements

Output Specification

The Procuring Entity shall ensure that output requirements are included and the output specifications include:

- a) clear performance targets and output requirements that are SMART (Specific, Measurable, Achievable, Realistic, and Time bound);
- b) how performance will be monitored, including roles for the government's contract management team, the private partner, external monitors, regulators, and users; and
- c) the consequences for failure to reach the required performance targets, clearly specified and enforceable.

Risk Allocation

Based on the contractual provisions, a risk matrix shall be presented by Procuring Entity to the Evaluation Entity, exhaustively listing project risks and their appropriate allocation to the contractual parties or to third parties are made efficiently.

Performance Payment Mechanism

The Evaluation Entity shall develop a payment and performance mechanism that sets out the principle of performance-based payments upon meeting the provision of contractual assets and service at the agreed service level and service schedule.

7.10.9.4 Selection of the Private Partner

Open competition is the default procurement approach. Exceptionally, the Evaluation Entity may agree to a non-competitive selection process.

7.10.9.5 Unsolicited Proposals

In all instances of unsolicited proposals, the process to assess and determine the best fit-for-purpose and VfM approach to awarding a contract initiated by an unsolicited proposal shall be clearly defined by the Procuring Entity.

When an unsolicited proposal is subjected to a competitive selection process, the Evaluation Entity grants no advantage to the firm that submitted the unsolicited proposal to participate in the process.

7.10.10 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 article 122 of the Financial Regulations or amounts not exceeding an initial value of UA 2 Million, without prior review by the President.
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 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 Contracting Authority is required to submit to the President a report on all acquisitions effected under this exceptional authority, at the close of business of each week or each day if required. All cases exceeding the regular procurement authority shall be presented to the Office of the Auditor General 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 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.

7.10.11 Leasing

Leasing may be appropriate when there are economic and/or operational benefits (e.g., lower financing costs, tax benefits, assets used for a temporary period, reducing risks of obsolescence). The use of leasing must be specified in the Procurement Plan. Appropriate risk mitigation measures shall be agreed as leasing contracts shall not affect the long-term perspective and sustainability.

A leasing contract issued by the leasing company shall be used and shall be cleared by the Director Legal Affairs prior to award and signature.

7.10.12 Electronic Reverse Auction (e-Auction)

An electronic reverse auction (e-Auction) is a scheduled online event in which prequalified/registered firms Bid against each other on their price.

The e-Auction is a particular Invitation to Bid or an RFQs and shall start within a reasonable time after firms that have been prequalified/registered and have met the minimum qualification criteria receive information on:

- a) the automated evaluation method that will be used to rank Bidders during the e-Auction; and
- b) any other relevant information on how the e-Auction is to be conducted, including clear instructions on how to access and participate in the auction.

Firms then place offers to provide the Goods or Non-consulting Services; at the end of the auction, the firm with the lowest Bid price is considered for award.

E-Auctioning may be used when the requirements are unambiguously specified and there is adequate competition among firms.

7.10.13 Procurement under Grants

Bidding period: *not applicable*

Bid validity: *not applicable*

Under the implementation of grants by ECOWAS Grantees contracts may be awarded to consultants financed by the Grant. In this case the procurement will be undertaken by the Grantee using the regulations and procedures of the Grantee, while the Grantee is free to use any of the ECOWAS regulations, procedures outlined in this manual or any ECOWAS Standard Bidding Document.

7.11 Partnering

Bidding period: *not applicable*

Bid validity: *not applicable*

Strategic partnering is a procurement methodology that may be used for contracting when collaborative relationships will provide the best value in longer-term strategic contracts. Partnering is a managerial approach used by two or more organizations to achieve specific business objectives by maximizing the effectiveness of each party's resources. It is also a way of managing the client/supplier relationship proactively. The partnering agreement shall be such that it has mandatory review intervals within the procurement process which will allow for the appropriateness of the relationship to be evaluated.

The partnering approach is based on the following:

- a) Shared mutual objectives and compatible benefits;
- b) Agreed methods for problem resolution;
- c) Risks shared according to who can best manage them; and
- d) An active search for continuous measurable improvements.

For strategic partnering to work there must be mutual benefits for both client and supplier. Well-run partnering agreements provide these benefits:

7.11.1 Benefits to ECOWAS Institutions

- a) Eliminate waste and duplication at the interface between supplier and client;
- b) Improve quality and delivery;
- c) Shorten lead times;
- d) Enable cost to be designed-out;

- e) Improve security of supply; and
- f) Improve best value and total process costs on a continuous basis.

7.11.2 Benefits to the Supplier

- a) Offer a market advantage;
- b) Improve technological capability;
- c) Improve financial stability and ability to plan resources over a longer period;
- d) Ensure prompt payment; and
- e) Provide opportunities to improve management capability.

These benefits normally outweigh the risks of over-dependency, "cosiness" and less frequent competition. The requirement to obtain goods, works and services by competition means that a partnering relationship must be:

- a) tested competitively;
- b) established based on clearly defined needs and objectives over a specified period of time;
- c) fitted, from the outset, with appropriate safeguards for genuine competition in the future; and
- d) capable of demonstrating continued best value throughout the contract period

Strategic partnering is likely to provide best value when the requirements are likely to develop and evolve; and/or the supply market is not mature and/or fully competitive. In these cases, partnering will be the most effective way to achieve the fundamental aims of the ECOWAS Institutions' procurement policy.

The partnering approach follows the Competitive Dialog selection method, reference paragraph 7.10.8 of this Manual.

Recording the basis for the decision made will provide a clear audit trail to justify the decision to take the partnering approach.

8 Procurement of Intellectual services

The term "Intellectual services" is used to draw a distinction: It designates intellectual services provided under contract by a firm or individual consultant.

Where the activity is a standard bidding process for the recruitment of a consulting firm or individual consultant, the process will be managed by Directorate of Administration and General Services/Procurement Division and the Evaluation Committee where necessary.

With regards to the recruitment of a contract staff, such staff shall be recruited in accordance with the provisions of ECOWAS Staff Rules and Regulations.

The most commonly selection methods shall include the following steps and may differ for some of the selection methods, specified in below paragraphs. The default Selection method is Quality and Cost Based Selection.

8.1 Quality and Cost Based selection

QCBS is the default selection mode for Intellectual services. QCBS uses a competitive process among short-listed firms under which the selection of the successful firm considers the quality of the proposal the cost of the services. The request for proposals document shall specify the minimum score for the technical proposals. The relative weight to be given to the quality and cost depends on the nature of the assignment. Among the Proposals that are responsive to the requirements of the request for

proposals document and are technically qualified, the proposal with the highest combined (quality and cost) score is considered the most advantageous proposal.

QCBS is appropriate when:

- a)* the type of service required is common and not too complex;
- b)* the scope of work of the assignment can be precisely defined and the TOR are clear and well specified;
- c)* the Contracting Authority and the consultants can estimate with reasonable precision the staff time, the assignment duration, and the other inputs and costs required of the consultants;
- d)* the risk of undesired downstream impacts is quantifiable and manageable; and
- e)* the capacity-building program is not too ambitious and easy to estimate in duration and staff time effort.

QCBS is appropriate for the following type of assignments:

- a)* Feasibility studies and designs wherein the project is simple and well defined, known technical solutions are being considered, and the evaluation of the impacts from the services or from design mistakes are not substantial and not difficult to estimate
- b)* Preparation of bidding documents and detailed designs
- c)* Supervision of the construction of works and installation of equipment
- d)* Technical, financial, or administrative services of a noncomplex nature
- e)* Procurement and inspection services

Usually, QCBS contract negotiations are easier because of the limited scope for financial negotiations. The main disadvantage of QCBS is its numeric rigidity. Negotiations on the proposed remuneration rates for staff-months and for reimbursable expenses is not permitted, except in special circumstances, like for example, personnel rates offered are much higher than typically charged rates by consultants for similar contracts.

There is an acknowledged risk in using QCBS for complex or specialized assignments in which the scope of work is not precisely defined and staff-months are difficult to estimate. Because price is a factor of selection under QCBS, competitors may propose more-conventional approaches and tested methodologies to keep the cost of their services low. This may ultimately affect the quality of the project, especially if the downstream impacts are complex, large, or unknown. In this case it may be more appropriate to use QBS or CQS.

8.1.1 Preparation of the Terms of Reference (TOR)

The Procuring Entity shall be responsible for preparing TOR. TOR shall be prepared by a person(s) or a firm specialized in the area of the assignment. The scope of TOR shall be commensurate with the available budget.

The Terms of Reference are intended to provide proposers (individual consultants and consulting firms) at the early stages of the selection process instructions and advice on the nature of the tender they will need submit and serve as the contractor's mandate during the implementation of projects. In other words, TOR are almost a condition to start any selection process for intellectual services. The careful preparation of TOR is extremely important for the ultimate success of the project. It is the best guarantee of relevance the design of the project, the work is carried out on schedule and use economic resources.

TOR drafting is usually required for:

- pre-feasibility studies, feasibility and design studies;
- appraisal / quality support missions;

- implementation contracts;
- monitoring and review missions / contracts;
- evaluation studies;
- other technical advisory / support work required by the Contracting Authority;
- audits (accounts, program, procurement)

The exact content of the TOR may vary, depending on:

- the scope of the project;
- the assignment in question;
- the stage of the project;
- the donors' requirements, if applicable.

TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals.

TOR should provide a clear description of:

- the background of the project and/or TOR
- the rationale for undertaking an assignment, study or task;
- the objective of the assignment;
- Issues (if any) to be studied
- the scope of the assignment;
- work plan (activities), including timing and duration;
- the required inputs (services and surveys necessary to carry out the assignment)
- the expected outputs (for example, reports, data, maps, surveys)
- the expected outcomes / Deliverables.
- the anticipated resource requirements, particularly in terms of personnel;
- the reporting responsibilities and requirements;
- the Procuring Entity's responsibilities, inputs and availability of counterparts.

TOR serve as:

- a selection tool;
- a negotiation tool between the successful Proposer and the Evaluation Entity;
- a communication tool between the Consultant and the Procuring Entity;
- a tool for following up and monitoring the contract during project implementation;
- a project evaluation tool – TOR are a key contractual document against which the performance of service providers (consultants) can be judged

However, TOR should not be too detailed and inflexible, so that competing consultants may propose their own methodology and deployment of human resources. If transfer of knowledge or training is an objective, it shall be specifically outlined along with details of number of staff to be trained to enable consultants to estimate the required resources.

Firms shall be requested to comment on the TOR in their proposals. Both the consultants' and the Procuring Entity's responsibilities shall be clearly defined in the TOR.

The Terms of Reference are included in the RFP. They become an annex of the contract awarded following an RFP.

This is an Indicative Checklist for TOR:

1. Background information

- Does the information in this sector provide you with an adequate understanding of the current environment?
- Who are the partner institutions and beneficiaries which have an interest in the project?
- What are the key problems to be addressed by the project /assignment?

- What progress has been made or actions undertaken, if any, to date to try to improve the situation?
- Other related projects and donor activities?
- Project-related data, e.g., geographical data target groups, category of services to be rendered

2. Description of the General and Specific objectives:

- Does this section clearly and logically define?
 - the overall project objectives and how they will contribute to achieving program objectives?
 - the purpose of the service / assignment and how it can contribute to improving the current situation?

3. Results to be achieved by the Consultant

- Does this section contain quantified objectives?
- If so, is there a clear linkage between targets set and the quantification of objectives?
- What will be produced as a result of the tasks / activities undertaken by the Consultant?
- Can these outputs be verified and measured?

3. Methodology: is detailed information provided with respect to:

- the methodology to be used and tasks to be undertaken?
- the responsibilities for the contract performance, finances, expenditures and reports and the method of co-operation between the contracting authority and contractor?
- the time schedule needed to implement the project?
- the duration of the assignment?
- the place(s) where the services are to be delivered?

4. Expertise required

- Does this section provide adequately detailed information with respect to?
 - Profile of the consultants:
 - the technical expertise required of key personnel?
 - the minimum years of experience required for each?
 - other qualifications (i.e., advanced university degree, languages, writing, analytical and inter-personal skills, etc.)?
 - Inputs by the consultants:
 - a clear specification of the work days required to complete
 - the activities.

5. Reporting requirements

- Are all required reports specified, such as: inception report, progress reports, and final report?
- Other documents as may be required by the project (feasibility study, terms of reference, etc.).

6. Work plan and timetable

- Does this section provide adequately detailed information with regard to?
 - a clearly set out and detailed list of tasks to be undertaken in order to reach the objectives of the project, and / or
 - consultant's job description?
- These should be listed in order of importance or in chronological order. If appropriate, the time schedule for completion of the various activities should be stipulated here.

7. Services rendered by the Procuring Entity: Does this section provide information on:

- Facilities to be provided for the project:
 - If facilities are to be provided by the consultant, are these clearly defined and specified?
 - Contribution of the recipient institution (i.e., office space, telephones, support staff, etc.)?
- Equipment:
 - Information about equipment to be purchased (only if strictly necessary for the project)
- Incidental expenditure:
 - Are incidental expenditures clearly specified?

8.1.2 Cost estimate and the budget

The Procuring Entity will prepare the cost estimate (including cost of developing technical specifications / Terms of Reference) based on the assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used) and (b) reimbursables, and further divided into foreign and local costs. The cost of staff time shall be estimated on a realistic basis for international and national personnel. Early preparation of a well-balanced cost estimate is essential to secure realistic budgetary resources well-ahead of time.

8.1.3 Preparation and issuance of the RFP

8.1.3.1 *The RFP shall include:*

- a) a Letter of Invitation (LOI),
- b) Information to Consultants (ITC),
- c).. Technical Proposal Standard Form
- d) . Financial Proposal Standard Form
- e).. TOR, and
- f) ..the form of contract.

The Public Contracting Officer shall use the applicable standard RFPs with additions and changes, necessary to address project-specific conditions. Any such changes shall be entered only in the RFP data sheet. The Public Contracting Officer may use an electronic system to distribute the RFP acceptable to the Contracting Authority. If the RFP is distributed electronically, the electronic system shall be secure to avoid modifications to the RFP and shall not restrict the access of short-listed consultants to the RFP.

8.1.3.2 *Letter of Invitation (LOI)*

The LOI shall state the intention of the Contracting Authority to enter into a contract for the provision of Intellectual services, the source of funds, the details of the client and the date, time, and address for submission of proposals.

8.1.3.3 *Information to Consultants (ITC),*

The ITC shall contain all information to allow consultants to prepare proposals by providing as much transparency as possible to the selection procedure by providing information on the evaluation process, the evaluation criteria and factors and their respective weights and the minimum passing quality score. The ITC shall indicate either an estimate of total staff input or the total budget, but not both. Consultants, however, shall propose detailed staff time to carry out the assignment and offer the corresponding cost in their proposals. The ITC shall specify the proposal validity period, which shall be adequate for the evaluation of proposals, decision on award and finalization of contract negotiations.

8.1.3.4 Technical Proposal Standard Form

The Technical Proposal Standard Form provide guidance to the shortlisted Consultants for the preparation of their Technical Proposals. It comprises:

- TECH-1 Technical Proposal Submission Form
- TECH-2 Consultant's Organization and Experience
 - A Consultant's Organization
 - B Consultant's Experience
- TECH-3 Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be Provided by the Client
 - A On the Terms of Reference
 - B On the Counterpart Staff and Facilities
- TECH-4 Description of the Approach, Methodology and Work Plan for Performing the Assignment
- TECH-5 Team Composition, Task Assignments, and Summary of CV Information
- TECH-6 Curriculum Vitae (CV) for Proposed Professional Experts
- TECH-7 Personnel Schedule
- TECH-8 Work Schedule

8.1.3.5 Financial Proposal Standard Form

The Financial Proposal Standard Form provide guidance to the shortlisted Consultants for the preparation of their Financial Proposals. It comprises:

- FIN-1 Financial Proposal Submission Form
- FIN-2 Summary of Costs
- FIN-3 Breakdown of Costs by Activity
- FIN-4 Breakdown of Remuneration
- FIN-5 Reimbursable expenses

8.1.3.6 Terms of Reference (TOR)

Refer to paragraph 8.1.1 of this Manual.

8.1.3.7 Form of contract.

The Public Contracting Officer shall use the appropriate Standard Form of Contract to address specific country and project issues. Any changes shall be introduced only in the Contract Data Sheets (CDS) and Special Conditions of Contract (SCC) and not by changes in the General Conditions of Contract (GCC) included in the Standard Form of Contract. These forms of contract cover the majority of Intellectual services. When these forms are not appropriate (for example, for pre-shipment inspection, procurement services, training of students in universities, advertising activities in privatization, or twinning) the Public Contracting Officer shall use other contract forms acceptable to the Contracting Authority.

8.1.4 Receipt of proposals

The Public Contracting Officer shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks or more than eight weeks (for highly complex and or innovative services). During this interval, the firms may request clarifications about the information provided in the RFP. The Public Contracting Officer shall provide these clarifications in writing and copy them to all firms on the short list. If needed, the Public Contracting Officer may extend the deadline for submission of proposals.

The technical and financial proposals shall be submitted at the same time in two separate sealed envelopes. No amendments to proposal are accepted after the deadline. The technical envelopes shall be opened immediately after the closing time for submission of proposals by an official committee chaired by the PCO. The financial proposals shall remain sealed and shall be deposited with a reputable independent authority until opened publicly. Any proposal received after the closing time shall be returned unopened.

The Public Contracting Officer may use electronic systems permitting consultants to submit proposals by electronic means acceptable to the Contracting Authority, including that the system is secure, maintains the confidentiality and authenticity of proposals submitted, uses an electronic signature system or equivalent to keep consultants bound to their proposals, and only allows proposals to be opened with due simultaneous electronic authorization of the consultant and the Contracting Authority. However, consultants shall continue to have the option to submit their proposals in hard copy.

8.1.5 Evaluation of technical proposals

The evaluation will be carried out by the Evaluation Entity in line with the provisions of the Procurement Code and its Annex 1 – Thresholds.

The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded. Financial proposals shall be opened publicly thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

The Evaluation Entity shall evaluate each technical proposal (using an evaluation committee ad hoc), taking into account: (a) the consultant's experience for the assignment, (b) the quality of the methodology, (c) the qualifications of the key personnel, (d) transfer of knowledge, if required in the TOR, and (e) the participation of ECOWAS member country personnel among key personnel. Each criterion shall be marked on a scale of 1 to 100. Then the marks shall be weighted to become scores.

The following weights are indicative. The actual percentage figures to be used shall fit the specific assignment and shall be within the ranges indicated below. The proposed weights shall be disclosed in the RFP.

Criteria	Rating
Consultant's specific experience:	0 to 10 points
Methodology, Work Plan & Organization of Staffing	20 to 50 points
Key personnel	30 to 60 points
Transfer of knowledge	0 to 10 points
Participation of regional member country staff	0 to 10 points
Total	100 points

The Public Contracting Officer may divide these criteria into sub-criteria, but the number of sub-criteria shall be kept to the essential.

The weight of experience can be low since this criterion has already been considered when short-listing the consultant on qualification.

More weight shall be given to the methodology in case of complex assignments.

Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The Evaluation Entity shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consulting firm and the individual proposed. The individuals shall be rated in the following three sub-criteria:

- a) general qualifications: general education and training, length of experience, positions held, time with the consulting firm as staff, experience in ECOWAS member countries, and so forth;
- b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and
- c) experience in the ECOWAS region: knowledge of the local language, culture, administrative system, government organization, and so forth.

The Evaluation Entity shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it fails to achieve a minimum technical score specified in the RFP.

At the end of the process, the Public Contracting Officer shall prepare a Technical Evaluation Report of the “quality” of the proposals and submit it to the Contracting Authority for approval. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals.

All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

8.1.6 Public opening of financial proposals

The Public Contracting Officer shall inform the technical score of each consultant to all consultants who have submitted proposals and shall notify those consultants whose proposals did not meet the minimum qualifying mark that their financial proposals will be returned unopened after the signature of the contract with the selected consultant. The Public Contracting Officer shall simultaneously invite the consultants that have secured the minimum qualifying mark for the opening of the financial proposals indicating the date, time and place.

The opening date shall be set allowing sufficient time for consultants to make arrangements to attend. The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical points, and the proposed prices shall be read aloud (and posted online when electronic submission of proposals is used) and recorded. The Public Contracting Officer shall also prepare the minutes of the public opening and a copy of this record shall be promptly sent to all consultants who submitted proposals.

8.1.7 Evaluation of financial proposal

The Evaluation Entity shall review the financial proposals. The Evaluation Committee should first review the financial proposals for arithmetical errors and inconsistencies between the financial and technical proposals. If there are any arithmetical errors, they shall be corrected. In case of a

discrepancy between a partial amount and the total amount or between the wording and figures, the former will prevail in both cases. Omissions and inconsistencies should also be corrected. Activities and items described in the technical proposals, but not priced, shall be assumed to be included in the prices of other activities or items. If an activity or line item is quantified differently in the financial proposal than in the technical proposal and the Time-Based Form of Contract has been included in the RFP, the Evaluation Entity shall correct the quantification indicated in the financial proposal so as to make it consistent with that indicated in the technical proposal, apply the relevant unit price included in the financial proposal to the corrected quantity, and correct the total proposal cost. If the Lump-Sum Form of Contract has been included in the RFP, no corrections are applied to the financial proposal in this respect. For example, if a technical proposal indicates the presence of the team leader at the assignment site for 12 months (but the financial proposal indicates only 8 months) and the Time-Based Form of Contract has been included in the RFP, an adjustment should be calculated by adding the corresponding amount of staff remuneration to the proposed amount.

For the purpose of comparing proposals, the costs shall be converted to the ECOWAS Unit of Account (UA) or any other currency as stated in the RFP. The UA is equivalent to the Special Drawing Rights (SDR) of which the exchange rates are based on the EBID Monthly Exchange Rates. The Evaluation Entity shall make this conversion by using the selling (exchange) rates for those currencies. The RFP shall specify the date of the exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal.

For the purpose of evaluation, the cost shall exclude local identifiable indirect taxes on the contract and income tax payable to the country of the Contracting Authority on the remuneration of services rendered in the country of the Contracting Authority by non-resident staff of the consultant.

The cost shall include all consultant's remuneration and other expenses such as travel, translation, report printing, or secretarial expenses.

When FBS is adopted, adjustments made by the Evaluation Committee to correct omissions or inconsistencies detected during the evaluation of the financial proposal could raise the evaluated price of a proposal over the available budget indicated in the RFP. This could lead to the rejection of the proposal.

The proposal with the lowest cost shall be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in detail in the RFP.

8.1.8 Combined evaluation of quality and cost

If QCBS is the method of selection, the combined and final score shall be obtained by weighting the quality and cost scores and adding them. The weighting shall consider the complexity of the assignment and the relative importance of quality. For QCBS the weight for cost shall normally be 20 points out of a total score of 100. The proposed weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

8.2 Negotiations of an Intellectual services contract.

8.2.1 Introduction

The purpose of negotiations is to discuss and finalize certain details of a contract with the successful Proposer, prior to contract commencement. Negotiations should lead to a contract that is acceptable to both parties and therefore reduce the likelihood of disputes or the need for contract amendments.

Negotiations are not held with the intention of making substantial changes to a contract or of obtaining price reductions from the successful bidder.

Negotiations shall be undertaken by the Evaluation Entity after selection of the most responsive proposal.

8.2.2 The negotiation processes

The successful Proposer shall be invited for negotiations, proposing the time, date and location for negotiations. The invitation and notification letter may state that the proposal has been evaluated as successfully, but it is important that no contractual commitment is made at this stage

The negotiators should prepare by reviewing the invitation document, the proposal from the successful Proposer and the evaluation report to identify areas where negotiations are required. For each area, the Procuring Entity should identify and quantify the objectives that it wishes to achieve from the negotiations, and where possible set maximum and minimum negotiating parameters.

When holding the negotiations with the successful Proposer, it is important that the negotiators do not commit to any arrangements or agreements during the negotiations;

It is important that a record of what is agreed during negotiations is signed by the Proposer upon completion of the negotiations;

The negotiators shall prepare a record of the negotiations, make recommendations on how to proceed and seek the approval for the recommendations.

The recommendations made to the Contracting authority may include:

- a) Proceed with contract award to the successful Proposer, incorporating the revisions agreed during negotiations;
- b) Revise the objectives of the negotiations and negotiate further on specified areas;
- c) Terminate the negotiations, where they have failed to result in an acceptable contract, reject the Proposer and award of contract or negotiate with the next best ranked Proposer;
- d) Cancel the procurement proceedings, where it is believed that the original invitation document was flawed, the need has changed or the budget is insufficient for the requirement.

The results of any negotiations, and the resulting recommendations, must be cleared by the Reviewing Entity before any contract award or other commitment is made to any Proposer.

8.2.3 Areas of negotiations.

Negotiations shall include discussions of:

- a) TOR,
- b) methodology,
- c) contract implementation calendar,
- d) mobilization arrangements;
- e) personnel,
- f) clarifying details that were not apparent or could
- g) not be finalized at the time of tendering;
- h) the Procuring or User Entity inputs,
- i) special conditions of the contract.
- j) Financial arrangements – see article 8.2.4

These discussions shall not substantially change the original TOR or the terms of the contract, the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs shall not be made solely to meet the budget. The final TOR and the agreed

methodology shall be incorporated in “Description of Services,” which shall form part of the contract. The selected firm shall not be allowed to substitute key personnel, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key personnel were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key personnel proposed for substitution shall have qualifications equal to or better than the key personnel initially proposed.

8.2.4 Financial negotiations

Financial negotiations shall include clarification of the consultants’ tax liability in the country (if any) of contract execution and how this tax liability has been or would be reflected in the contract.

As Lump-sum Contract payments are based on delivery of outputs (or products), the offered price shall include all costs (staff time, overhead, travel, hotel, etc.). Consequently, if the selection method for a Lump-sum contract included price as a component, **this price shall not be negotiated.**

In the case of Time-based Contracts, payment is based on inputs (staff time and reimbursables) and the offered price shall include personnel rates and an estimation of the amount of reimbursables. When the selection method includes price as a component, negotiations of personnel rates shall not take place, except in special circumstances, like for example, personnel rates offered are much higher than typically charged rates by consultants for similar contracts. Consequently, the prohibition of financial negotiation does not preclude the right of the client to ask for clarifications, and, if fees are very high, to ask for change of fees. Reimbursables are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore are not subject to negotiations. However, if the Procuring Entity wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates), they shall indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.

8.2.5 Successful negotiations

Successful contract negotiations should end with both parties initialing a draft contract and its annexes. The draft contract should include all appendixes required by the applicable standard contract form, providing the following information:

- Negotiated TOR, including the scope of work of the services, agreed-on methodology, organization chart, and program of activities indicating dates for completion of the various tasks;
- List of reports indicating format, frequency, content, submission dates, and approval procedures;
- Job descriptions of key personnel and the staffing schedule;
- List of services, facilities, and counterpart personnel to be made available by the Procuring Entity; also, the timing for the provision of such services, facilities, and counterpart personnel;
- Estimated contract amounts in foreign or local currency (or both), indicating monthly rates for foreign and local staff and reimbursable expenses
- Detailed capacity-building program (if this is a specified requirement of the TOR)

8.2.6 Unsuccessful negotiations

If the negotiations fail to result in an acceptable contract, the Public Contracting Officer shall inform the Review Entity/Committee to close the negotiations and invite the next ranked firm for negotiations. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the Public Contracting Officer shall not reopen the earlier negotiations. After successfully completed negotiations and the Contracting Authority has approved the initialled contract, the Public Contracting Officer shall notify the successful firm of the contract award and other firms from the short list that they were unsuccessful.

8.2.7 Proposal evaluation report

The Public Contracting Officer shall prepare a detailed proposal evaluation report including:

- the evaluation reports (shortlisting, technical and combined) setting forth the specific reasons on which the recommendation is based for the award of the contract;

These reports shall be sent to the Review Entity for clearance/NO Objection.

The negotiations report shall be forwarded to the Review Committee for information whilst the negotiated draft contract is forwarded to Legal Affairs Directorate for its vetting and finalization.

8.2.7.1 Contract award clearance by the Review Entity

The Review Entity activities are described in paragraphs 10.1 of this Manual.

8.3 Other methods of selecting Intellectual services

8.3.1 Quality Based Selection

Quality-Based Selection (QBS) is based on the evaluation of the proposal quality without any consideration for cost. The consultant that submitted the highest-ranked technical proposal is then invited to negotiate its financial proposal and the contract

QBS is appropriate for the following types of assignments:

- a) complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sector feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);
- b) assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
- c) assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).
- d) the introduction of cost as a factor of selection makes competition unfair; or
- e) the need exists for an extensive and complex capacity building program.

QBS shall be used for assignments such as the following:

- a) Complex sector and multidisciplinary studies of a complex nature
- b) Important and far-reaching strategic studies
- c) Complex master plans, prefeasibility and feasibility studies, or design of large and complex projects
- d) Assignments in which consultant organizations with different cost structures (for example, traditional consultants, nongovernmental organizations, or UN agencies) are required to compete
- e) Large projects requiring a high creative and/or innovative input.

In some cases, the choice between QBS and QCBS may be difficult. In situations of strong uncertainty or risk for the project, QBS shall be adopted, because quality is the key element. In QBS, the RFP

may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP shall provide either the estimated budget or the estimated time of key experts, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

The personnel effort indicated by the consultants or the proposed cost may differ considerably from the estimates, depending on the particular methodology adopted by the consultant. Such differences shall not constitute a reason for rejection.

If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the Public Contracting Officer shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The Public Contracting Officer and the consultant shall then negotiate the financial proposal and the contract. All other aspects of the selection process shall be identical to those of QCBS, including the publication of the award of contract, except that only the contract price of the winning firm is published. If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS to ensure that the financial proposal of only the selected firm is opened and the rest returned unopened, after the negotiations are successfully concluded.

Because the TOR of assignments under QBS are generally more complex and less defined than under QCBS, contract negotiations with the winning consultants may be lengthy and complicated.

For large assignments, the Evaluation Entity may decide to hire an independent adviser to assist in the most critical aspects of the technical evaluation (for example, discussion of the plan of work, staff rates and reimbursable expenses, and the definition of the consultants' staff-months).

Occasionally, ECOWAS funds building construction projects, that have an aesthetic component that has to be considered when the consultant or architect firm is selected.

Design Contest (DC) is a selection method with procedures very similar to those of QBS, under which a Contracting Authority invites consultants to present a plan or design for a project based on a concept or criteria provided by the Procuring or User Entity. The winner is selected by an Evaluation Committee ad hoc based on the quality of the presentation. The procedure may also provide the winner with an award. DC procedures are a tool for selecting the best available architects, engineers, and planners for projects with important aesthetic contents.

The following consulting assignments for major projects can be awarded through DC:

- a)* Railway stations, ports, and airport terminals
- b)* Public buildings such as hospitals, theatres, concert halls, university campuses, art and sports centres, exposition and fair complexes
- c)* Rehabilitation of large, obsolete, or abandoned structures and areas to create multipurpose centres for public use
- d)* Rehabilitation or construction of landmark buildings or works of art.

8.3.2 Selection under a Fixed Budget (FBS)

Selection under a Fixed Budget (FBS) is based on the disclosure in the RFP of the available budget to invited consultants and selecting the consultant with the highest-ranking technical proposal within that budget. Because consultants are subject to a cost constraint, they must adapt the scope and quality of their services to that budget. Furthermore, it allows to receive better-quality proposals than under QCBS, because it is easier for consultants to maximize quality under a fixed budget than under simultaneous quality and cost competition.

This method is appropriate only when the assignment is simple and can be precisely defined and

when the budget is fixed. TOR shall be particularly well-prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks within the budget. The RFP shall clearly indicate whether the budget includes taxes or levies payable in the recipient country, and the price of any inputs provided by the Procuring or User Entity.

More so than with QBS and QCBS, FBS requires the TOR to be consistent with the established budget and to contain a well-specified scope of work for consultants to present clear and responsive proposals. The main risk of using the FBS is underbudgeting the TOR and, in doing so, discourage good consultants from participating, and then receiving poor performances from the awarded consultant.

FBS is appropriate only when

- a)* the budget cannot be exceeded;
- b)* the objective and the TOR, including the scope of work, are very precisely defined;
- c)* the time and staff-month effort required from the consultants can be assessed with precision; and
- d)* capacity building is limited to a simple transfer of knowledge that can be very easily estimated.

Typical assignments awarded under FBS include the following:

- a)* Studies and surveys of limited scope
- b)* Not-too-complex prefeasibility studies and reviews of existing feasibility studies
- c)* Reviews of existing technical designs and bidding documents
- d)* Project identification activities for which the level of detail can be matched with the available funds

Under FBS, consultants are requested to submit their technical and financial proposals in separate envelopes.

The evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the financial proposals shall be opened. Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract.

Because the budget is fixed, the consultant's TOR cannot change substantially, and technical negotiations cover only minor aspects. Financial negotiations will not include discussion of remuneration rates and of other unit rates, but only of minor rearrangements of activities and staff for compatibility with the work plan and clarification of any tax liability.

Because the Lump-Sum Form of Contract is often used for assignments awarded under FBS, no corrections may be made to the financial proposals. Activities and items described in the technical proposals but not priced or quantified differently in the financial proposal from the technical proposal, shall be assumed to be included in the prices of other activities or items.

In short, FBS requires a shorter time than QBS for negotiations.

8.3.3 Least Cost Selection (LCS)

Under Least-Cost Selection (LCS), a minimum qualifying mark for quality is established and indicated in the RFP. The consultant with the lowest price is selected.

Proposals, to be submitted in two envelopes, are invited from a short list. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark are rejected, and the financial proposals of the rest shall be opened. The firm with the lowest price shall then be selected. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on "cost". The minimum qualifying mark shall be

stated in the RFP. The award of contract shall be published.

This method is generally appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist as in the following examples:

- a)* Standard accounting or simple audits
- b)* Engineering designs or supervision of very simple projects
- c)* Repetitive operations, maintenance work, and routine inspections
- d)* Simple surveys

Contracting Authorities may adopt this selection method when they wish to capture cost reductions from simple technologies or new methods for which quality risks for the final output are negligible. For example, the Internet allows competing from geographically remote locations for standard services to be produced at low cost. Because quality is set as the minimum qualifying mark, the Contracting Authority shall set a mark that is higher than usual (for example up to 85 or 90 percent) to ensure quality and avoid the risk of selecting low-cost proposals of poor or marginally acceptable quality. The Contracting Authority shall be wary of the risk that this method may be abused by pushing a specific consultant technical proposal above the minimum mark and by doing so actually selecting based on its cost with disregard of quality.

8.3.4 Selection Based on the Consultants' Qualifications (CQS)

CQS may be used for small assignments or emergency situations declared by the Community and recognized by the Institution for which the need for issuing an RFP and preparing and evaluating competitive proposals is not justified. In such cases, the Institution shall prepare the TOR and obtain expressions of interest that include information on their experience and qualifications, eventually through an REOI as may be needed. Firms having the required experience and competence relevant to the assignment shall be assessed and compared, and the best qualified and experienced firm shall be selected. Only the selected firm shall be asked to submit a combined technical and financial proposal and, if such proposal is responsive and acceptable, be invited to negotiate a contract. Both technical and financial aspects of the proposal may be negotiated. The minutes of negotiations shall be prepared and signed by both parties.

The CQS method can substantially reduce the process cost for the Procuring Entity and the consultants, as well as the time needed to hire a consultant. This selection method is particularly suitable when the past qualifications and experience of the consultant are crucial to the choice while the technical proposal itself is not likely to reveal much additional or decisive information on the suitability of the consultant for the proposed assignment. CQS may be considered for assignments such as the following:

- a)* Evaluation studies at critical decision points in the project cycle (review of alternative solutions with large downstream effects)
- b)* Executive assessments of strategies and programs
- c)* High level, short-term, expert advice
- d)* Participation in project review panels

8.3.5 Non-Governmental Organizations

Nongovernmental organizations (NGOs) may be included in a consultant short list if they express interest. Short lists may comprise NGOs entirely for assignments typically attributed to NGOs because they, for example, emphasize experience in community participation and in-depth local knowledge. In this case, QCBS shall be followed, and the evaluation criteria of proposals shall reflect the NGO-unique qualifications, such as the following:

- a) History of work with grassroots communities and evidence of satisfactory performance
- b) Familiarity with participatory development approaches and low-cost technologies
- c) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries
- d) Committed leadership and adequate management
- e) Capacity to co-opt beneficiary participation

However, if the short list is mixed and includes for instance private consulting firms and NGOs and/or Universities and/or Specialized Agencies, selection shall be based on QBS, CQS or FBS because the cost structures of these entities are different, and therefore cost cannot be a selection criterion.

8.3.6 Procurement Agents

When a Procuring Entity lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ, as its agent, a firm that specializes in handling procurement. Procurement agents may be selected using QCBS or LCS. The procurement agent shall conduct the procurement on behalf of the ECOWAS Institution following all the procurement arrangements outlined in the Legal Agreement and Procurement Plan.

8.3.7 Selection of Individual Consultants

1. Individual Consultants may be contracted under the conditions of article 63 of the Procurement Code. Although selection of individual consultants is based on the consultant's qualification and very comparable with CQS, the selection method CQS is reserved for selection of consulting firms only.
2. The Procuring Entity shall prepare Terms of Reference in line with paragraph 8.1.1 of this Manual.
3. Framework Agreements, Competitive Dialogue and PPP arrangements may be used for the procurement of individual consultants.

8.3.8 Long-term individual contractors/ Project implementation support personnel

Long-term individual contractors, such as project implementation staff, may be selected according to the donor's personnel hiring procedures for such activities, as reviewed and found acceptable to ECOWAS.

8.3.9 Direct Selection

Direct selection is allowed under the conditions of Article 64 of the Procurement Code.

Direct selection of consultants does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, Direct selection shall be used only in exceptional cases. The justification for Direct selection shall be examined in the context of the overall interests of the client, and the Institution's responsibility to ensure economy and efficiency and provide equal opportunity to all qualified consultants.

In all such cases, the Public Contracting Officer is not required to issue an RFP and shall submit to the Contracting Authority for its review and approval the TOR of the assignment, a sufficiently detailed justification including the rationale for Direct selection instead of a competitive selection process, and the basis for recommending a particular firm, except for contracts below a threshold defined in Annex 1 of the Procurement Code and set forth in the Procurement Plan.

9 PURCHASING

9.1 Definition

ECOWAS has purchase provisions in place when regular procurement provisions are unlikely to achieve best value for money. Purchase differs from procurement in terms of (...)

9.2 Submitting Requisitions

9.2.1 Initiation of Procurement Actions

To initiate purchase actions executed by the PCO, requisitioners must submit approved electronic requisitions or approved requisitions for goods, works or services to the Procurement Officer who then process for approval by the PCO. Requisitions must fully describe the need and show how the purchase will be funded. This means that, for goods: the requisition should include a full product description, size and any other special identifying characteristics. (Refer 6.4 on Exceptions to Competition). In exceptional cases where it is inevitable to include the manufacturer's name and model number, the clause "or equivalent" should be added.

For services: the requisition should include a SOW, time frame/Period of Performance, hourly requirements, and any related work reports or deliverables. Certain services and complex goods may require additional documentation. For labour services and complex goods, requisitions must be accompanied by supporting documentation. This may include a PWS, a TOR, technical specifications, a SOW, a technical/operational evaluation plan, cost estimates, or any proposed licensing agreements for software requirements.

9.2.2 Submission of Requisitions

Requisitions must be submitted when User Departments wish to test and evaluate goods prior to purchase and without committing ECOWAS Institutions funds. Under these circumstances, once a requisition for test and evaluation purposes is received, upon agreement with the vendor, the Public Contracting Officer issues a no-cost purchase order stipulating the terms and conditions associated with the test and evaluation. The vendor remains responsible for the care, proper use, and safe return of the test/evaluation merchandise.

9.2.3 Labour Service Requirements and Complex Goods

For labour service requirements and for complex goods, requisitions must be accompanied by supporting documentation. This may include a PWS, a TOR, technical specifications, an SOW, technical/operational evaluation plan, cost estimates and/or any proposed licensing agreements for software requirements. Requisitions for Intellectual services must be accompanied, at a minimum, by a TOR.

9.3 Receiving and Processing Requisitions

Upon receipt, the Procurement Officer reviews each requisition in order to accomplish the following:

- a) Ensure that all necessary identifying information is included in, or attached to, the requisition;
- b) Determine the appropriate procurement method; and
- c) Determine whether the requisition requires expedited processing.

9.3.1 Determination of Status of a Procurement Action

The requisitioning officers or approvers should periodically check on the status of requisitions submitted. The Procurement Officer should at all times be able to determine the status of the requisitions and associated purchase orders and to review line-item information.

9.4 Procurement Service Standards

Listed below are the expected turnaround times for transactions conducted by the Procurement Service. Processing times are based on receipt of the appropriate documentation by the Procurement Service and assume that all documentation is accurate and complete.

9.4.1 Processing Times for Purchase Orders and Solicitations

Type of Procurement	Competition Level	Processing Time
One-time or repetitive purchases	No competition required	5 calendar days
One-time or repetitive purchases	RFQ; IFB required	5 to 15 calendar days
Non repetitive purchase	RFP required	30 to 45 calendar days

9.4.2 Exceptions

Complex procurements, international procurements and procurements involving several decision-makers may take several months to complete (for example, IT services, outsourcing, food/conference services, custodial/facilities management services, medical benefit plans, and travel). Turnaround times for these types of procurement are determined in collaboration with the requisitioner.

9.5 Changes to Purchase Orders

9.5.1 Change Orders

Change orders are used to cover the following:

- a) Correction of errors
- b) Additions or deletions of items
- c) Cancellation of item(s)/orders
- d) Adjustments to price
- e) Adjustments to delivery dates, and
- f) Other necessary adjustments or clarifications.

A request for any change in a Purchase Order shall be in writing by the User Department in the format of an approved purchase requisition. Changes to purchase orders cannot be made without the agreement of the vendor. Procurement Officers are responsible for obtaining vendor agreements and issuing change orders to existing purchase orders.

9.5.2 Administrative Changes

Change orders are not issued for changes in budget allocations, cost centres, internal orders, or any other administrative adjustment that does not impact the terms of the purchase order. When administrative changes cannot be made by a requisitioner in SAP, an approved requisition must be submitted. The Public Contracting Officer will then make the changes to the purchase order.

9.6 Purchasing Card (PCard)

9.6.1 Definitions

The purpose of the Purchasing Card (PCard) program is to offer an alternative for the purchase and payment of small expense items, transactions for which the traditional purchase order processes may be protracted or too costly. The PCard is a corporate credit card that empowers the User Department (cardholder) to purchase low value goods, works and services for authorized ECOWAS Institutions use. The PCard cannot be used for personal charges. The PCard is also utilized as the payment tool for some of ECOWAS Institutions' term contracts and electronic commerce initiatives.

The PCard is essentially a payment vehicle through which charges for goods, works or services are billed to and paid by a central office. The PCard streamlines the traditional procurement process by reducing the number of requisitions, purchase orders, receipts, invoices and checks needed for handling miscellaneous low transactions.

Streamlining the processing and reducing the paperwork benefit ECOWAS Institutions by reducing overhead costs and improving efficiency.

The PCard does not replace ECOWAS Institutions' Corporate Travel Card and must not be used interchangeably with it.

9.6.2 Authority

Based on the PCOs approval, PCards are issued by the Procurement Unit to qualified and trained ECOWAS Institutions employees only. To qualify, a potential cardholder must be an ECOWAS Institutions' staff member, must attend a PCard training session, and must agree to abide by the policies and procedures of the PCard Program. (Staff members holding appointments of less than one year as well consultants are not eligible for PCards).

The potential cardholder's manager will determine the employee's eligibility, review and authorize the application, and forward to the PCard Program Administrator for processing. Issuance of the PCard constitutes delegation of the respective approval authority for PCard purchases only.

Failure by the cardholder to comply with the policies and procedures for use of the PCard may result in either revocation of PCard privileges or other disciplinary actions, including termination of employment. The cardholder's negligence in the use or misuse of the PCard are subject to ECOWAS Institutions policy on misconduct.

The PCO, upon the recommendation of the Procurement Unit may suspend or cancel any cardholder's PCard privileges at any time.

9.6.3 Guidelines

Each PCard has a per-transaction limit and a monthly limit predetermined by the cardholder's manager and the Procurement Unit. A cardholder may not exceed established credit limits. Limits can be revised with the approval of the cardholder's manager and the PCard Program Administrator. The Public Contracting Officer may reduce or restrict the limits of the card at his/her sole discretion.

Each PCard is issued in the name of a specific staff member. It is not transferable to nor may be used by anyone other than that cardholder. When a cardholder is reassigned to another department or to any other ECOWAS Institution, his or her PCard must be cancelled. If a replacement employee requires a PCard, a new application must be submitted.

The cardholder is responsible for safeguarding the PCard against misuse or theft by other individuals, protecting the account number and keeping the card in an accessible but secure location. The cardholder must agree to resolve credits, errors, and disputed charges.

The cardholder is responsible for the verifying and reconciling all account activity and for retaining all receipts and documentation. The card holder is also responsible for reconciling the purchases made on a monthly basis and submitting for the approval of the PCO. Where the purchase expenses are approved, such an approval is forwarded to the Finance Department for subsequent reimbursement of the PCard.

The cardholder's manager retains responsibility for oversight of the PCard holder's purchasing activity and for reviewing and approving all statements of charges and credits. The cardholder's manager is responsible to ensure that the PCard holder is in compliance with the PCard policy and procedures and with the Financial/Accounting policy and procedures.

In some cases, advance payments are allowed on the PCard subject to the limitations outlined in Chapter 1, "Procurement Authorities and Responsibilities". It is the cardholder responsibility to ensure that the amount advanced is reasonable for the total amount invoiced.

The PCard works on a cash basis - there are no accruals. Instructions for Year End closing procedures, issued by the Director of Finance, should be followed.

9.7 Delivery Terms/Title/Destination

When executing a purchase order, the Procurement Officer determines the delivery terms. The delivery terms are important since they determine the delivery location by the vendor and where title (liability) passes to ECOWAS Institutions. Delivery terms also determine who is responsible in the event of damage or loss. ECOWAS Institutions' preference for delivery is Delivery Duty Paid ("DDP") destination. For international delivery, other shipping terms may apply. The delivery location noted on the purchase order is the final destination, in most cases.

However, the Procurement Officer may instruct a vendor to deliver goods to an interim point (for example, to ECOWAS Institutions headquarters) and then have the goods redelivered to a distant point through a method determined by the ECOWAS Institutions. Under these circumstances, once the goods are delivered to ECOWAS Institution's premises, the ECOWAS Institution becomes the responsible party. The ECOWAS Institution's offices should not be used as interim delivery points except under unusual circumstances, and such use must be cleared with the PCO.

When goods are being delivered from one country to another, customs clearance is necessary. It is the responsibility of ECOWAS Institutions' personnel at the delivery site to coordinate with the local customs office for clearance of the goods. It usually takes 10 or more calendar days to process goods through member states' customs. ECOWAS Institutions' property is exempt from customs duties in all of ECOWAS member countries.

9.8 Late Deliveries/Expediting

The ECOWAS Institutions' Procurement Officers are responsible for expediting their orders against LPOs and are welcome to follow up on deliveries with vendors. If a delivery is delayed or late, they should contact the vendor and obtain the status. If a revised delivery date is acceptable, they should issue a change order to reflect the new date (for LPOs within the set value thresholds). If Procurement Officers are unsuccessful in resolving a late delivery or if the change exceeds the LPO set threshold, they should contact the Public Contracting Officer for assistance.

9.8.1 POs/Contracts Issued by the PCO

Timely recognition of the receipt of goods is required. All receipts are to be recorded and posted by the Receiving Office within three days of the date of actual delivery or title transfer. Hard copies of all receipt documents (for example, packing lists and bills of lading) are official procurement records and must be maintained in accordance with ECOWAS Institutions Document Retention Schedule for Procurement Documents

9.8.2 Delivery

In cases where delivery is made to alternate delivery locations, the staff member receiving purchased items is responsible and accountable for receiving, inspecting, and certifying acceptance of the goods. Staff members are required to submit proof of delivery to the Receiving Office within 72 hours of acceptance so that the appropriate action can be taken to record delivery and authorize payment. Proof of delivery is to include all relevant documentation, such as vendor documentation (for example, packing slips, bills of lading, and insurance certificates), ECOWAS Institutions' Local Purchase Order number, quantity received, date received, product serial number and recipient. Partial deliveries against purchase orders are acceptable.

All delivered goods and relevant bills of lading are to be validated by the Receiving Office against the specifications and quantities listed on the governing purchase order.

Cartons are to be visually inspected to ensure that they have been received in good condition. If cartons are damaged, they may be returned to the shipper or retrieved by the vendor through alternative arrangements. The Receiving Office is required to sign and note all variances on receipt documents.

The Receiving Office is responsible for opening and inspecting all cartons and checking the contents and the quantity and condition of the goods received against purchase order specifications. Goods are examined for damage and other irregularities. All non-conforming goods are to be referenced as such on the receiving documents.

Goods received and inspected are to be entered into SRV to recognize receipt within 72 hours of inspection and acceptance.

The Receiving Office is responsible to ensure that final delivery is made to the internal delivery point designated on the purchase order.

9.8.3 Acceptance

ECOWAS Institutions staff who receive goods from the Receiving Office are required to check all goods delivered against the purchase order and delivery documents, including verification that the serial numbers on the boxes and on the delivery docket match. Final inspection and acceptance of the goods are the responsibility of the receiving team¹. Discrepancies must be reported immediately to the Receiving Office.

9.9 Returning Goods to Vendors

9.9.1 Warranties

ECOWAS Institutions are entitled to the manufacturer's standard warranty unless the purchase order specifically provides to the contrary. Therefore, User Departments should act promptly upon discovery

¹ The Receiving Team is made up of Stores, Procurement Unit and the User Department

of any defect. Once a warranty has expired, the vendor has no obligation to correct the defect or replace the item, unless the contract with the vendor provides otherwise.

9.9.2 Defective Goods and Goods Delivered in Error

Goods may be returned to a vendor, after consulting with a Procurement Officer, when they are defective or when the vendor has delivered the wrong product. When User Departments find goods to be defective, it is often advantageous for the staff member to speak directly with the vendor, particularly when technical questions are at issue. However, such contacts with the Vendor shall be made through the Procurement Officer. If the vendor refuses to honour a warranty, the client notifies the responsible Procurement Officer who will negotiate a reasonable solution to the problem. Upon finding goods to be at variance with purchase order specifications, the User Department notifies the Procurement Officer, who discusses options with the vendor for replacement or correction and obtains from the vendor a Returned Goods Authorization Number (RGN), if applicable.

9.9.3 Returning Goods to Vendors

Once the Procurement Officer notifies the User Department that goods may be returned to the vendor and provides the vendor's RGN (if applicable), the User Department performs the following actions:

- a) In conjunction with the Stores Officer, repackages the item(s) and affixes an address label, which includes the purchase order number and the vendor's RGN (if applicable)
- b) For errors made by the vendor: Arranges for the vendor to pick up the item(s) at either the User Department's office or (at HQ) the central receiving dock
- c) For errors made by ECOWAS Institutions: The Transport Officer arranges to transport the item(s) directly to the vendor, and
- d) If the vendor fails to pick up the goods within five days or the time specified in the contract, the Public Contracting Officer returns the goods to the Vendor at their expense.

All actions above shall be in consultation with the Stores Officer.

9.9.4 Goods Ordered in Error

Vendors are under no obligation to take back items ordered in error; further such returns are likely to incur a restocking charge and transportation/handling costs that will be the responsibility of the requisitioner. It is therefore important that User Departments exercise care in ensuring that requisitions and POs contain correct information. Should a User Department need to return goods ordered in error using a PO, the User Department should contact the Procurement Officer on the need to return the goods ordered in error who shall contact the vendor requesting information on exchanges/credits/restock charges and transportation costs. Once an agreement has been reached, the vendor will provide an RGN authorizing the return. The Procurement Officer must reflect the agreement in a change order on the original purchase order and follow the instructions for returning goods.

When goods are ordered in error and the User Department does not want to keep them but the vendor will not accept a return, the goods may be disposed of by following the procedures for disposal of surplus goods. These procedures also provide for potential redistribution of certain goods to other parts of ECOWAS Institutions where they may be put to use.

For goods ordered in error using a PCO-issued local purchase order or contract, the User Department contacts the responsible Procurement Officer. The Procurement Officer contacts the vendor on behalf of ECOWAS Institutions. If the vendor agrees to an exchange, credit, restocking fee, or reimbursement, the Procurement Officer completes a requisition to request the change, upon receipt of approval from the PCO; the Procurement Officer obtains from the vendor an RGN and issues a

change order, which is a modification of the original local purchase order. In these circumstances, the Procurement Officer also notifies both the Public Contracting Officer and the User Department. If the vendor does not agree to a return transaction, the Procurement Officer notifies the User Department who then follows standard disposal procedures.

10 CONTRACTING

10.1 Review Requirements

In conformity with article 17 of the Procurement Code, the Review Entity shall clear contract awards.

10.1.1 Notification process

Notice of bid/proposal acceptance will be issued by the Public Contracting Officer after clearance from the Review Entity has been obtained. In preparing the notice, the Public Contracting Officer should:

- a) Ensure that the clearance to award the contract has been received in writing. The recommendation for a contract award is made in the evaluation report, so the written clearance by the Review Entity must be received.
- b) Obtain any other necessary approvals, including financial approval for commitment of the required funds.
- c) Ensure that the successful bid/proposal is still valid and that any modifications to the bid/proposal have been confirmed in writing by the Bidder/Proposer.
- d) Prepare the notification of contract award – see below for guidance on contents.
- e) Ensure that the notice is signed by the authorized signatory.
- f) Dispatch the notice to the successful Bidder/Proposer, keeping evidence of dispatch, such as proof of posting.
- g) Ensure the Bidder/Proposer's confirmation of receipt of the notification of contract award is received.

10.1.2 Contents of the notice

The contents for the notice vary slightly depending on the nature of the procurement. For goods, works and non-consultancy requirements, as a minimum, the letter of tender acceptance should include:

- a) the name and address of the Contracting Authority, which is party to the contract;
- b) the name and address of the bidder/supplier;
- c) the date of the letter of tender acceptance;
- d) the ECOWAS reference number of the procurement
- e) transaction and a brief description of the goods,
- f) works or services procured;
- g) the date and any reference number of the bidder's tender;
- h) reference to any modifications to tender resulting from clarifications or corrections, and any items excluded from the contract or variations in quantity or any other detail;
- i) the currency and total contract price;
- j) the wording that 'The letter of bid acceptance constitutes a contract between the Contracting Authority and the bidder until such time as a formal contract is signed and the bidder shall provide any required performance security within a maximum of 15 (fifteen) calendar days of the date of the letter of tender acceptance'.

The letter should be signed by the Public Contracting Officer and should request that the bidder confirms receipt of the letter of tender acceptance and confirms that they are proceeding with contract performance.

For intellectual services the notification of contract award should include:

- a) the name and address of the procuring entity, which is party to the contract;
- b) the name and address of the consultant;
- c) the date of the letter of notification of contract award;
- d) the ECOWAS reference number of the proposal being accepted;
- e) the wording that 'The notification of contract award constitutes a contract between the procuring entity and the Proposer until such time as a formal contract is signed.

The letter should be signed by the Public Contracting Officer and should request that the Proposer confirms receipt of the notification of contract award.

10.2 Standstill period

The Standstill period must be observed as a condition to the contract signature in line with article 90 of the Procurement Code.

There shall not be a requirement for a Standstill Period in the following situations:

- a) only one Bid/Proposal was submitted in an open competitive process;
- b) direct selection/contracting;
- c) call-off process among firms holding Framework Agreements.

10.3 Debriefing of unsuccessful consultants/bidders

Requests from unsuccessful consulting firms for a debriefing will be entertained in line with article 44 of the Procurement Code and article **Error! Reference source not found.** of this Manual. The debriefing will cover the grounds on which its proposal was not selected, without disclosing any information on other proposals. The debriefing can be done either in writing and/or in a debriefing meeting, at the option of the consultant. The requesting consultant shall bear all the costs of attending such a debriefing.

10.3.1 Content of debriefing letters

Where an unsuccessful bidder has requested a more detailed debrief regarding their bid, the procuring entity can issue a debrief letter. Debrief letters should contain sufficient detail to provide the unsuccessful bidder with an explanation of why the contract was not awarded to them, without providing excessive details or taking too much time to prepare.

Debrief letters must be prepared individually for each unsuccessful bidder as they should not disclose information on other tenders, with the exception of the limited information on the successful tender.

The debrief letter should state which stage of the evaluation the tender was rejected at (i.e., preliminary review, detailed evaluation or financial evaluation).

10.3.1.1 Where a tender was rejected during the preliminary review

The letter should give a brief statement of the reason or reasons for rejection. For example:

- a) your tender security was not issued by an acceptable institution;
- b) your tender was not signed and authorized; or

- c) your tender was not valid for the required period.

10.3.1.2 Where a tender for goods, works or non-consulting services was rejected during the detailed evaluation

The letter should give a brief statement on how it failed to meet the technical specification or standard required or how it was commercially unacceptable. For example:

- a) your tender did not meet the required specification, as the engine size was too small;
- b) your tender did not meet the required specification, as the processor speed was too slow;
- c) your proposed payment terms did not comply with the conditions stated in the invitation document and were not acceptable to the evaluation committee; or
- d) your supervisory staff did not have appropriate qualifications or sufficient experience for the contract.

10.3.1.3 Where a proposal for consultancy services evaluated using QCBS or LCS was rejected during the detailed technical evaluation

The letter should state that the proposal failed to reach the minimum qualifying score and provide a brief statement on the main weaknesses of the proposal. For example:

- a) the key personnel included in your proposal did not have sufficient experience of this type of work or of work in the conditions prevailing in (country or southern region);
- b) your team leader did not have sufficient management experience or experience of working at this level; or
- c) your methodology didn't address the capacity building component of the terms of reference adequately or would not achieve sufficient transfer of knowledge.

10.3.1.4 Where a tender was rejected during the financial evaluation

The letter should state:

- a) that the tenderer did not submit the most responsive bid to achieve best Value for Money;
- b) for consultancy services evaluated using QCBS, that the tenderer did not submit the proposal offering the best overall combination of quality and price;
- c) for consultancy services evaluated using LCS, that the tenderer did not submit the lowest-priced proposal, which reached the minimum qualifying score.

The price of the contract will already have been provided in the letter notifying the unsuccessful bidder and, for consultancy services, the technical scores and prices will have been read out at the financial opening. However, the Public Contracting Officer may repeat these details in the debrief letter, for the sake of completeness.

No further debate or discussion should be entered into with the bidder once the debrief letter has been issued.

10.4 Rejection of All Bids/Proposal or cancellation of the procurement process

The Evaluation Entity may reject all bids, declare the contracting process unsuccessful and/or cancel the contracting process in accordance with article 70 of the Procurement Code.

If all bids are rejected, the Review Entity shall review the causes justifying the rejection. If the rejection of all bids is due to lack of competition, wider advertising shall be considered. If the rejection is due to most or all of the bids being non-responsive, new bids may be invited from the initially prequalified firms, or with the agreement of the Contracting Authority from only those that submitted bids in the first instance.

Lack of competition shall not be determined solely on the basis of the number of bidders. Even when

only one bid is submitted, the bidding process may be considered valid if the bid was satisfactorily advertised and prices are reasonable in comparison to market values.

All bids shall not be rejected and new bids invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. Alternatively, and with the approval of the Contracting Authority, the Evaluation Entity may negotiate with the Lowest Evaluated Bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, a substantial reduction in the scope or modification to the contract documents may require re-bidding.

The Evaluation Entity prior to the cancellation of a procurement process shall seek the approval of the Contracting Authority before, entering into negotiations with the most responsive Bidder/Consultant.

In case of rejection of all bids, the bidders shall be informed accordingly and their bid security returned to them within three (3) calendar days of cancellation.

Within fifteen (15) calendar days, a new invitation to bid may be published on the basis of revised conditions of contract, design and specifications, scope of the contract or a combination of these.

10.5 Contract signature

Conclusion, signature and entry into force of the contract will be in accordance with Article 91 of the Procurement Code.

10.6 Types of Contracting Instruments

Contracts can be classified in line with Article 93 of the Procurement Code. The following types are used:

10.6.1 Lump-Sum Contracts.

Lump-sum contracts are used mainly for assignments in which the content and duration of the services and the expected output of the consultant are clearly defined. Under a lump-sum contract, ECOWAS agrees to pay the consultant a fixed sum of money for services given with up-front specified technical characteristics, such as a study report, project design, and tender document (the quality of which can usually be readily assessed) to be delivered within a specified deadline.

Lump-sum contracts leave the risk of assignment cost overruns with the consultant. Lump-sum contracts are often used in relatively simple and clearly defined assignments such as planning and feasibility studies, environmental studies, detailed design of infrastructures, preparation of databases, and surveys. Lump-sum contracts are also adopted in cases of sophisticated and clear-cut assignments of short duration in which external factors generally are not expected to influence (delay or substantially change) the outcome of the advice or study being provided.

Remuneration is fixed for the duration of the contract, and no physical or price contingencies are normally provided. Payments are made in accordance with a contractually agreed-on schedule at the delivery of an agreed-on product. If payments are made against a schedule of percentage of work completed, then, as a minimum, a progress report and supporting evidence that the planned work has been completed satisfactorily should be submitted. The lump-sum contract is easy to administer and requires little technical supervision, because no matching of inputs to payments is required. This type of contract is also indicated for User Departments with relatively small or weak administrative and managerial structures, but with capacity for appreciating the quality of the consultants' advice or services.

A lump-sum contract transfers cost risk to the consultants and gives User Departments certainty about the costs involved in procuring Intellectual services. However, it can increase the risks with regard to the quality of the advice. Because fees are fixed, after the contract is awarded, consultants may internalize efficiency gains. Their incentives are to reduce outputs compared with those they had originally planned so as to increase profit margins. These incentives can be offset by the User Department's ability to assess and enforce quality standards. The User Department can engage peer reviewers to monitor the quality of advice and ensure that important issues are completely covered. This activity requires relatively little time or expense. If quality is not easy to assess, the timely delivery of the agreed-on output may be one proxy. Before committing to a lump-sum contract, consultants should evaluate the main technical, institutional, and (where necessary) political risks that may affect their capacity to manage these parameters, and they should make sufficient provision for them in the contract.

10.6.2 Contract based on Unit Prices.

The contract based on unit prices or unit price contract is used when:

1. The requirements for services are clearly defined, but
2. The total demand is not certain, and
3. A legal commitment is required

Unit price contracts may be used for routine contracted service requirements, where the total value of the contract can be calculated by multiplying identical units of work by a fixed unit price. This type of contract can easily be confused with Framework Agreements. But Framework Agreements are a special type of contracting arrangements (see next chapter) comprising essentially two phases while unit-price contracts comprise a single phase.

Generally, a unit price contract will not be used to cover a wide range of services of a similar nature, but may be appropriate when a specific service is required for a defined period of time. In such cases, the total amount of work may not be known. They may also be appropriate for recurring requirements that are supplied on a routine, automatic basis, such as heating fuel deliveries.

It is important that the scope of the intended service requirements be clearly defined. The contractor should know exactly what the contract covers. For example, if a contract is established for routine servicing of vehicles, such as oil changes, etc., then the description of the requirements should explicitly describe the work, and indicate that other related work is not covered.

The establishment of unit price contracts should be subsequent to the competitive bidding process unless the requirement meets the criteria for direct contracting. The following supplementary terms may be included, as appropriate, in tenders for unit price contracts:

1. The amount or volume of work provided in the "Description of Work Required" is an estimate only and is made in good faith. However, ECOWAS is not bound by such an estimate, and the actual work to be performed is limited solely to that specifically requested by ECOWAS. Similar work not provided for in this contract will not form part of this contract.
2. Any request for service made by ECOWAS to the Contractor will be made in the manner set out in the "Description of Work Required".
3. The Contractor is required to respond to requests for service within 24 hours or sooner as requested by the Contract Authority. If the Contractor is unwilling or unable to respond to service requests in the manner required, ECOWAS reserves the option of making any other arrangement that the ECOWAS deems appropriate to provide the service, and may consider the Contractor in default and terminate the contract.
4. The contract pricing shall be inclusive of all wages, allowances, supervision, insurance, compensations, minor shop materials, tools, tackle, local transportation, overhead, profit, and any charges associated with providing the service after normal business hours.

When considering the establishment of a unit price contract, an estimate of the amount of work and associated materials is required. This estimate is incorporated into the Request for Tenders, and forms the basis of a financial commitment of funds. This estimate of work used in establishing a unit price contract is usually based on past history and the current condition of the assets being maintained. This figure is indicative and only used to provide the bidders with a reasonably accurate estimate of the work and forms the basis of the financial commitment of funds to be used to pay the contractor's invoices. This is not the contract amount. The ultimate contract amount is the sum of all work undertaken during the term of the contract.

If unit price contracts are established to provide for routine service requirements or emergencies, there is no commitment to the contractor for a fixed amount of work. However, there is a clear legal obligation to employ the successful contractor for the contracted work, unless the contractor is unavailable or unwilling to do the work. Conditions where the contractor will not be used for the defined work must be clearly described in the contract.

10.6.3 Time-based Contracts.

Under this type of contract, services are provided on a timed basis according to quality specifications, and the remuneration is based on (a) agreed-on unit rates for staff multiplied by the actual time spent by the staff in executing the assignment and (b) reimbursable expenses using actual expenses or agreed-on unit prices. Time-based contracts transfer cost risk to the User Department. They require a system to monitor and control assignment progress and costs because the incentives of firms are to assign more resources on the job, including more senior resources.

Time-based contracts are recommended in the following cases:

- The nature and scope of the services are such that the TOR cannot be established with sufficient precision, as may be the case for complex or unusual assignments that are difficult to define (such as management of complex institutions or studies of new approaches).
- The duration and quantity of services (that is, the number of staff-months) depend on variables that are beyond the control of the service provider, or the services are related to activities undertaken by third parties (for instance, supervision of implementation assignments).
- The output required is difficult to assess in advance (for instance, for technical assistance, institutional development, or emergency situations, in which the User's requirements for assistance may evolve during the execution of the assignment).
- A capacity-building program (transfer of knowledge) forms part of the assignment.

Time-based contracts normally include a ceiling on the payments, and work will be suspended until a change in the scope of work is authorized or the deadline for the completion of the services is extended. This ceiling should include a contingency allowance for unforeseen work and its duration, as well as a provision for price adjustments, where appropriate. An allowance for price adjustment should normally be included if the contract lasts for more than 18 months, or if foreign and local inflation are estimated to exceed a certain rate (for example, 5 percent per year). Another option includes an agreement to reduce unit fee rates if the volume of work exceeds an agreed-on level.

This type of contract requires close supervision and greater involvement of the User Department in the execution of the assignment. The User Department is usually aware of who is working on the job and the nature of each expert's task. Key staff are usually named in the contract, and their tasks outlined. Administration of this type of contract may require significant administrative efforts and contract management capacity on the part of the User Department. Time-based contracts are particularly suitable for long-term assignments (one or more years) wherein the project can be subject to variations and delays that may change the duration and modify the scope of the contract.

10.6.4 Reimbursable-cost Contracts.

A cost reimbursable contract (sometimes called a cost-plus contract) is one in which the contractor is reimbursed the actual costs they incur in carrying out the works, plus an additional fee. A cost reimbursable contract might be used where the nature or scope of the work to be carried out cannot be properly defined at the outset, and the risks associated with the works are high, such as, emergency work (for example, urgent alteration or repair work, or if there has been a building failure or a fire requiring immediate reconstruction or replacement of a building so that the client can continue to operate their business).

Tendering may proceed based on an outline specification, any drawings and an estimate of costs. This is a high-risk form of contracting as the final cost is not known when the contract is entered into. This risk can be mitigated by fixing a contract ceiling or target cost, elaborated in following paragraphs. The costs for which the contractor is entitled to be reimbursed must be set out very clearly in the contract. This is a complex procedure that needs to be carefully considered, as whilst some direct costs may be relatively straight forward to determine, whilst other 'shared' costs, might not.

Direct costs that are clearly attributable to a single project could include:

1. Labour
2. Materials
3. Hired plant
4. Sub-contractors

Other costs that might be spread across more than one project could include:

1. Head office costs
2. Staff costs
3. Manufacturing facilities
4. Owned plant

These costs might be calculated on a pro-rata basis and charged, along with profits as a pre-agreed lump sum, or percentage fee. In order that the contractor can maintain their cash flow, cost reimbursable contracts may also allow them to charge for liabilities, or for costs that will be incurred before the next interim payment.

Costs are calculated based on the contractor's accounts and other records, which are made available to the client on an 'open book' basis. The client may also monitor activities on site to verify that costs are legitimate (for example, checking whether plant that is being charged is actually being used) and that costs are not excessive. This can become complex where the contractor is thought to be operating inefficiently or incompetently.

Risk

The contractor can be incentivised to operate efficiently by the introduction of a contract ceiling or target cost. A contract ceiling is reached when the maximum quantities are delivered, the ceiling cannot be exceeded unless agreed and/or negotiated by both parties.

A softer approach is the target cost. A target cost is agreed at the beginning of the project. At the end of the project the actual cost is compared to the target cost. (considering any changes that have been agreed). If the actual cost is lower than the target cost, the savings are shared between the parties to the contract on some pre-agreed basis (often a percentage). If the actual cost is higher than the target cost, the additional costs may also be shared.

To minimize ECOWAS risk:

1. the contractor makes all records and accounts available for inspection by ECOWAS or by some agreed neutral third party; and

2. the contract includes appropriate incentives to limit costs.

A variation to the cost-plus contract is the prime cost contract, in which the cost of works packages (the prime cost) is reimbursed, but the main contractor takes a risk on staffing, overhead costs and profit which might be tendered on a fixed price.

10.7 Special types of Contractual Arrangements

10.7.1 Framework Agreements (FA)

10.7.1.1 Purpose

These paragraphs supplement the provisions of Chapter XVIII (Article 98) of the Procurement Code and describes the minimum requirements for establishing a FA for contracts financed by ECOWAS.

10.7.1.2 Requirements

A Contracting Authority may establish a FA with firms that are capable of delivering specified Goods, Works, Non-Consulting Services and/or Intellectual Services agreeing, in advance, the applicable terms and conditions. These usually include the fees, charge rate or pricing mechanism.

FAs may be pre-existing FAs or Long-Term Agreements (LTA) used through ‘piggy backing’ or newly established agreement.

To be used under ECOWAS financing:

- a. Pre-existing: The Contracting Authority shall be satisfied that a pre-existing FA or LTA is consistent with the ECOWAS Procurement Principles; or
- b. New: a new FA established shall meet the requirements of the Procurement Code and this manual.

Firms awarded a FA (FA firms) have no guarantee of any call-off contracts. The number of firms awarded FAs should be proportionate to the anticipated demand. This allows all FA firms an opportunity to be awarded a call-off contract.

10.7.1.3 Parties

A FA can be concluded with a single provider or with several providers, for the same Goods, Works, Non-consulting Services, or Intellectual Services. The Evaluation Entity shall decide on the appropriate strategy based on the market conditions and its requirements.

Once a FA is established by one (1) Contracting Authority of ECOWAS Institutions, this Contracting Authority shall be the lead Authority allowing other Contracting Authorities access to the FA.

When several Contracting Authorities establish a FA together, a lead Contracting Authority is appointed to act on behalf of the group. Each Contracting Authority in the group is identified in the request for bids/request for proposals documents at the time of going to market. Each individual Contracting Authority shall be specified in each call-off contract.

10.7.1.4 Establishing the FA

In order to establish a FA, the Evaluation Entity shall use open competitive procurement with appropriate request for bids/request for proposals documents. Once a FA is established, the Evaluation Entity does not need to openly advertise individual contract opportunities to be awarded as call-offs.

The information in the request for bids/request for proposals documents shall include as a minimum:

- a) a description of the Goods, Works, Non-consulting Services or Intellectual Services that the FA is intended to cover;
- b) an estimate of the total volume/scope of the Goods, Works, Non-consulting Services or Intellectual Services for which call-off contracts may be placed and, as far as possible, the volume/scope and frequency of the call-off contracts to be awarded under the FA;
- c) qualification and evaluation criteria and, evaluation methodology;
- d) the terms and conditions of contract that will apply to call-offs under the FA, which shall include the following information:
 - i. a statement that the fees, charge rate or pricing mechanism, and any other associated costs shall be agreed with each firm, and be valid for the term of the FA;
 - ii. a statement that explains that the Contracting Authority will engage FA firms as required, through call-off contracts;
 - iii. a statement that the FA is:
 - 1. a closed panel (which should normally be the case), and the constitution of the panel shall remain unchanged during the term of the FA (other than firms being removed from the panel, no additional or replacement firms may be added); or
 - 2. an open panel and an outline of the process for selection;
 - iv. a statement that there is no guarantee of being awarded a call-off contract, and no commitment will be made with regard to possible volume of Goods, Works, Non-consulting Services, or Intellectual Services;
 - v. a statement that the FA is not an exclusive agreement and that the Contracting Authority reserves the right to procure the same or similar Goods, Works, Non-consulting Services, or Intellectual Services from non-FA firms;
 - vi. a description of the circumstances that may lead to a firm being removed from the FA, and the process to be used in securing the removal;
- e) the secondary procurement method or methods the Contracting Authority shall use to select a firm (the call-off process);
- f) the contractual method the Contracting Authority will use to secure the call-off contract (for example, a statement of work or purchase order); and
- g) the duration of the FA, including any option to extend. FAs shall be established for a maximum period of three (3) years, with the option to extend by up to a further two (2) years, if the initial engagement has been satisfactory.

The Contracting Authority shall issue a Notification of Award to conclude a FA, and a Standstill Period shall apply at the time when the FA is established. A public notice of the conclusion of the FA shall be published when the FA is established.

10.7.1.5 Call-off Contracts

For each procurement under a FA, a firm shall be selected from the panel using the secondary procurement process, or one of the processes, described in the FA.

The secondary procurement for the call-off process shall take one or, as an option both, of the following forms:

- a) ***mini-competition*** based on objective criteria for call-offs that have been described in the FA, such as:
 - i. competitive quotes (RFQ - from some or all of the panel members) based on the lowest evaluated cost;
 - ii. competitive Bids or Proposals (RFQ or RFP from some or all of the panel members), based on expertise, proposed solutions and value for money; and/or
- b) ***direct selection*** based on objective criteria for call-offs that have been described in the FA, such as;

- i. location where call-off contracts are awarded to the firm that is best able to deliver based on their location and the location where the Goods, Works, Non-consulting Services, or Intellectual Services are to be delivered.
- ii. balanced division of supply/scope/task where an upper value limit is fixed and call-off contracts are awarded in turn on a rotational basis when a firm reaches the upper value limit;

As part of the call-off process, firms shall be given a description of the scope of supply/tasks that they will be expected to provide. The statement of work or purchase order to be issued as part of the call-off process shall specify the objectives, tasks, deliverables, timeframes and price or price mechanism. The price for individual call-off contracts shall be based on the fees, charge rate or pricing mechanism detailed in the FA.

10.7.2 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, reliability and outcomes of any combination thereof. Payment is made in accordance with the outputs delivered, subject to their delivery according to criteria required in the contract. Reductions from payments, or retentions, may be made for lower-quality level of outputs and, in certain cases, premiums may be paid for higher quality level of outputs. The Contractor is free to propose the most appropriate solution, based on mature and well-proven experience, and shall demonstrate that the level of quality specified in the request for bids/request for proposals documents will be achieved.

10.7.2.1 Performance Based procurement may involve:

- a) the provision of Non-consulting Services to be paid on the basis of outputs;
- b) design, supply, construction (or rehabilitation), and commissioning of a facility to be operated by the User Department; or
- c) design, supply, construction (or rehabilitation) of a facility, and provision of non-consulting services for its operation and maintenance for a defined period of years after its commissioning.

10.7.2.2 Performance-based 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.

10.7.2.3 Minimum requirements

Essential elements that a performance-based contract must contain:

- a) Performance Requirements, that define in measurable terms the work to be accomplished or the service to be provided. Also called “performance measures” and “performance indicators;
- b) Performance Standards, that define the allowable deviation, if any, from the performance requirements. Also called Acceptable Quality Levels (AQLs);
- c) a Quality-Assurance or monitoring plan, that specifies the means by which contractor performance will be determined and documented. Also called a “QA-plan,” a “surveillance plan” and a “monitoring plan.” Acceptable approaches to quality assurance plans include:
 - A. 100% Inspection
 - B. Random Sampling
 - C. Periodic Inspection
 - D. Customer Input

- d) positive and negative incentives. tied to the quality assurance plan, also called “incentives” and “penalties.

10.8 Contract creation

10.8.1 Introduction

The contract document confirms in writing the contract that has been agreed and formed between the Contracting Authority and the supplier, contractor or consultant. It defines the goods, works or services to be provided, the price to be paid for the goods, works or services, and establishes the rights and obligations of each party. The contract is the governing document for administration of the contract. It is therefore important that the contract document is prepared clearly, correctly and with attention to detail as any mistakes or ambiguities will impede effective implementation of the contract. The Public Contracting Officer is responsible for the preparation of contract documents getting the approved contract document signed and issuing the document.

10.8.2 Contents of contract document

The contents of the contract document will depend on the sample contract included in the bidding document/RFP. The contents of a contract and the order of precedence are normally listed in the contract form or special conditions of contract. As guidance only, contract documents normally consist of the following:

- a) The General Conditions of Contract (GCC) - a statement of the general conditions that will apply;
- b) The Specific Conditions of Contract (SCC) – a statement that the special conditions of contract prevail over the general conditions of contract and the order of priority of other contract documents;
- c) A clear description of the goods, works or services purchased in the contract, including the technical requirements, quantity and delivery or completion schedule, based on the statement of requirements included in the invitation document and the supplier’s tender subject to any modifications agreed;
- d) Clearly stated contract management responsibilities;
- e) The total contract price and, if applicable, the conditions applicable to varying, adjusting, modifying or recalculating the actual price payable;
- f) The payment conditions, including the payment period, schedule currency and documentation required;
- g) Any requirement for performance securities;
- h) The procedure agreed for dispute settlement.

10.8.3 Process of contract creation

In order to ‘create’ the actual contract document, the following steps are usually necessary but not in any particular order:

- a) Ensure that all necessary approvals to proceed to contract have been obtained.
- b) Ensure that the bid/proposal being accepted is still within validity.
- c) Collect copies of all the documents that will form part of the contract document.
- d) Assemble the complete contract document, by including all necessary documents in the correct order. Ensure that the contract does not include any new terms or conditions that were not included in the bidding document/RFP or have been subsequently discussed and agreed with the Bidder/Proposer. It is the responsibility of the Contracting Authority signing the contract to ensure the contract is in line with the approved evaluation report recommendation.

- e) Make the required number of copies of the approved contract and bind or secure the pages in such a way that pages cannot be replaced or lost. The number of copies required must be at least two – one for the supplier/contractor/service provider and one for the Contracting Authority. (Good practice suggests that once the two copies are signed, one photocopy is made of the contract document, so that there is a record of the two document copies that were sent to the Bidder/Proposer. This is retained on file until one signed copy is countersigned and returned by the Bidder/Proposer).
- f) The authorized signatory for the Contracting Authority should sign all copies of the contract.
- g) Send all copies of the contract to the supplier/contractor/service provider, with a covering letter instructing the supplier/contractor/service provider to countersign all copies, retain one for its records and return all other signed copies to the Contracting Authority.

The original signed contract document returned by the supplier/contractor/service provider must be kept in a secure location, with a copy kept on the procurement file for reference.

11 CONTRACT ADMINISTRATION

11.1 The Focus of Contract Administration

Effective contract administration is critical to successful contract implementation and meeting the objectives of the procurement requirement. Contract administration procedures are designed to ensure that:

- a) the supplier/contractor/service provider performs the contract in accordance with the terms and conditions specified in the contract, i.e., obtaining supplies, services, or data of requisite quality, on time and within budget.
- b) the Procuring Entity fulfils its obligations and duties under the contract; and
- c) swift remedial or preventive action is taken when problems arise or are foreseen.

While the legal requirements of the contract determine ECOWAS Institutions officials' proper course of action in administering a contract, skill and judgment must often be exercised to protect the Community's interest effectively. Good contract administration ensures that the User Departments are satisfied with the goods, works or services.

The Procuring Entity has the overall responsibility for contract management, but will draw on other resources, such as technical expertise, payment services, legal services and supply management systems, as required. Where such other services and systems are used, the Procuring Entity will remain responsible for monitoring their performance and ensuring that their activities, in relation to the contract, are completed on time and in accordance with procurement rules. Day-to-day contract management/administration will often be assigned to a User Department or technical expert.

The specific nature and extent of contract administration varies from contract to contract. It can range from the minimum acceptance of a delivery and payment to the contractor to extensive involvement by program, audit and procurement officials throughout the contract term. Factors influencing the degree of contract administration include the nature of the work, the type of contract, and the experience and commitment of the personnel involved.

11.2 Contract Administration functions

11.2.1 Establish contract management responsibility

Upon award of the contract, the Public Contracting Officer shall advise on duties and responsibilities in writing to the Contracting Authority, the Procuring Entity and the User Department, Finance and any other personnel who are assigned responsibilities for administration of the contract.

The Contracting Authority will retain control of contract amendments and dispute resolution.

The Procuring Entity will retain overall responsibility for contract management, payments but not necessarily the day-to-day functional activity and liaison between the supplier, contractor or consultant and the User Department, which can often be undertaken from outside the Procuring Entity if deemed to be appropriate.

When considering the most appropriate person or team to manage/administer the contract the Procuring Entity should take into account:

- a) whether supervision needs to be conducted by a person with appropriate technical skills, such as for construction contracts or the installation of complex plant and machinery. If so, contract administration is best allocated to the User Department or an external consultant;

- b) where contract administration is likely to be time-consuming or require skills not available within the procuring entity, an external contract administrator should be appointed, such as a project manager for a major construction contract;
- c) where goods are to be delivered directly to the User Department, contract administration is best allocated to either the User Department or procurement staff;
where a consultant is required to work with the User Department in conducting a study, providing advice or building capacity, contract administration is best allocated to the User Department and particular counterpart staff may need to be designated to work with the consultant.
- d) Where services are provided in support of the general management or administration of the Procuring Entity, contract administration is best allocated to the member of staff responsible for that function.

11.2.2 Contract start-up

The nominated contracts manager or contracts management team should:

- a) Carry out a review of the contract to assimilate the details of the requirements and the program for fulfilling them;
- b) ensure that a signed copy of the contract is received from the supplier, contractor or consultant;
- c) ensure that any required performance security or advance payment security is received from the supplier, contractor or consultant;
- d) ensure that the Procuring Entity meets any immediate obligations, such as payment of an advance payment, opening of a letter of credit or assistance with obtaining visas for the supplier's foreign staff;
- e) for larger contracts, prepare a contract implementation plan, showing key milestones, such as dates for mobilization, deliveries or completion of certain deliverables or sections of work, and the procuring entity's obligations, such as providing access to a works site, payment or approval of reports.

The contract implementation plan is a key management tool to ensuring that the contract is performed as intended and within the obligations undertaken in the contract by both parties. It enables the contract manager to formulate an expediting plan for the contract to proactively ensure that deliverables are received on time.

11.3 Post-Award Orientation

Post-award orientation, either by conference, by letter, or by some other form of communication, should be the beginning of the actual process of good contract administration. This communication process can be a useful tool that helps ECOWAS Institutions and contractors achieve a clear and mutual understanding of the contract requirements, helps the contractor understand the roles and responsibilities of ECOWAS Institutions' officials who will administer the contract, and reduces future problems.

It is helpful to have a meeting between the Public Contracting Officer, the Procuring Entity, User Department and contracting officials prior to the post-award orientation conference so that they all have a clear understanding of their specific responsibilities and restrictions in administering the contract. Items to be discussed at this pre-meeting include such things as

- a) the authority of ECOWAS Institutions personnel who will administer the contract,
- b) quality control and testing,
- c) the specific contract deliverable requirements,
- d) special contract provisions,

- e) ECOWAS Institutions' procedures for monitoring and measuring performance,
- f) contractor billing,
- g) voucher approval, and
- h) payment procedures.

11.4 Contract Monitoring

The task of contract monitoring is to ensure that both parties to the contract perform in accordance with that contract and to take action as required to address any problems or delays, whether actual or anticipated.

The Procurement Entity has the responsibility to monitor contractor performance through meetings, reports, and inspection in order to ensure contract compliance. The Procurement Entity must also require deliverables for all services and document contractor performance. It is also his/her responsibility to prepare a Surveillance Plan for complex or high-value contracts.

11.4.1 Contract monitoring of Goods contracts

For goods contracts, the focus is on ensuring that goods are delivered on time, that the goods are acceptable to the User Department, in terms of quantity, quality and supporting documentation, and that the procuring entity meets its obligations to pay for the goods delivered.

For goods contracts, the tasks typically required by the contract administrator are:

- a) ensuring that the actual dates when deliveries are due are agreed with the supplier, based on the date of contract effectiveness;
- b) expediting during the delivery period, to ensure that manufacturing, freight-forwarding and deliveries are proceeding on schedule;
- c) ensuring that all deliveries, targets or deliverables are completed by the supplier; maintaining a contracts delivery record is a good way to control and monitor the contracts deliverables;
- d) witnessing tests or approving samples, where required;
- e) arranging collection, freight-forwarding, customs clearance or delivery, where the procuring entity is responsible for any of these tasks;
- f) arranging for receipt and inspection of the goods;
- g) checking all documentation relating to the goods, such as delivery notes, and ensure that documentation is correct before signing;
- h) recording any missing, damaged or incorrect items and initiating claims against insurance policies or the supplier;
- i) reporting any contractual problems or requests for contract amendments to the procuring entity;
- j) checking invoices and supporting documentation for payment are correct and arranging payment;
- k) managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value, when required, and releasing them promptly, when all obligations have been fulfilled;
- l) ensuring all documentation and information relating to warranties and warranty claims are in good order;
- m) ensuring that assets are registered and labelled, where required;
- n) ensuring all user guides, manuals, licences, etc. are kept with the goods or in an appropriate place; and
- o) ensuring goods are recorded in the procuring entity's asset records and issued to the User Department in accordance with any national or institutional stores and supply management procedures that may be applicable.

11.4.2 Contract monitoring of Works contracts

Contract monitoring for works is often complex and time-consuming, as it involves supervision of the progress of the works, ordering variations where unforeseen conditions are encountered and measuring the work completed for payment purposes. For major contracts, the Procuring Entity will normally use a full-time supervising engineer or project manager, who will exercise control and supervision of the contract on behalf of the Procuring Entity.

Where a project manager is used, the Procuring Entity must:

- a) ensure that the role of the project manager is clearly defined, in particular his powers to issue contract variations, which result in changes to the overall cost, completion date, quality and design of the works and to settle disputes;
- b) establish arrangements for keeping the procuring entity informed of contract progress, variations issued and any disputes; and
- c) designate a contract administrator within the Procuring Entity who will be the contact point for the project manager.

This contract administrator is typically responsible for:

- a) ensuring that the actual mobilization and completion dates are agreed with the supplier, based on the date of contract effectiveness;
- b) monitoring the overall progress of the works and the performance of the project manager;
- c) referring any requests for contract variations, which are outside the authority of the project manager, to the designated authority, for approval;
- d) reporting any contractual problems or requests for contract amendments to the procuring entity;
- e) checking invoices and supporting documentation for payment are correct and arranging payment;
- f) managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value, when required, and releasing them promptly, when all obligations have been fulfilled;
- g) ensuring all final acceptance and handover arrangements are completed and documented satisfactorily; and
- h) ensuring all final drawings, manuals, etc. are received and kept in an appropriate place.

11.4.3 Contract monitoring of Intellectual Services contracts

When managing services contracts, the focus is on ensuring that services are delivered on time and to an acceptable quality. This can be difficult, as the quality of services, particularly consultancy services, can be subjective and difficult to measure. A good working relationship with the consultant and ongoing monitoring of services is therefore important to ensure successful contract performance. The Procuring Entity must also ensure that it meets its obligations, particularly where the performance of consultancy services is dependent on certain inputs or information from the procuring entity or where staff must be made available to benefit from capacity-building initiatives.

For services contracts, the contract administrator is typically responsible for:

- a) ensuring that the actual dates for mobilization, key milestones or deliverables and completion are agreed with the supplier, based on the date of contract effectiveness;
- b) monitoring contract performance to ensure that levels of service are maintained and that deliverables are submitted or completed on time;
- c) ensuring that all required reports are submitted on time;
- d) ensuring that, where required, the procuring entity provides written comments or approvals to deliverables or reports in a timely manner;

- e) ensuring that any resources, assistance or counterpart staff to be provided by the procuring entity are made available at the appropriate time;
- f) checking invoices and supporting documentation for payment are correct and arranging payment;
- g) managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value, when required, and releasing them promptly, when all obligations have been fulfilled;
- h) notifying the service provider in writing of any failings in performance or failure to meet targets; and
- i) ensuring all reports or deliverables are kept in an appropriate place and circulated or implemented as required.

11.5 Contract Changes/Modifications

Contract modifications need to be in line with Article 105 of the Procurement Code. The Contracting Authority has the responsibility to make changes to the contract, document them, and ensure that they are all within the scope of the contract. The Public Contracting Officer in consultation with the User Department, may recommend changes or modifications to the contract to the Procuring Entity.

11.5.1 Modification process

1. Identify the need for a contract amendment – this will normally be done by the contract manager/administrator. A contract amendment is required where there is a need to change any terms or conditions of the contract (e.g., the delivery or completion period, the technical description of the goods, works or services, the quantity of an item purchased, the price etc.).
2. Provide full details on the required amendment to the Procuring Entity.
3. The Procuring Entity should discuss the amendment with the supplier/contractor/service provider, if required.
4. Prepare the contract amendment. The contents of a contract amendment will be determined by the reason for the amendment and the term or condition that is being amended. However, all contract amendments should include at least the following details:
 - a) the procurement reference number and date of the contract that is being amended and a brief description of the subject of the contract; the number of the contract amendment (i.e., ‘Contract Amendment No. 1, 2, 3’);
 - b) the date of the contract amendment;
 - c) a clear statement of the part of the contract that is being amended, including relevant clause or annex numbers;
 - d) a clear statement of how the contract is amended (e.g., ‘the completion period is hereby extended by one week, to give a revised completion period of thirteen weeks’ or ‘the quantity for item 3 is hereby increased by two (2) to give a revised quantity of five (5)’);
 - e) where the contract price is being amended, a clear statement of the amount by which the contract is increased or decreased and the revised total contract price (i.e., ‘the contract price is hereby increased by a sum of \$5,000, giving a revised total contract price of \$135,000’);
 - f) a statement that all other terms and conditions of the contract remain unchanged; and
 - g) a request to the supplier, contractor or consultant that they acknowledge their acceptance of the amendment;
 - h) A suggested draft contract amendment is attached for information.
5. Obtain the approval of the Procuring Entity to the contract amendment.

6. Obtain any other necessary approvals and vetting, including financial approval for the commitment of any additional funds.
7. Make the required number of copies of the approved contract amendment. The number of copies required must be at least two – one for the supplier/contractor/service provider and one for the Procuring Entity.
8. The authorized signatory for the Contracting Authority should sign all copies of the contract amendment.
9. Send all copies of the contract amendment to the supplier/contractor/service provider, with a covering letter instructing the supplier/contractor/service provider to countersign all copies, retain one for his records and return all other signed copy to the procuring entity.

11.6 Contract Completion/ Closeout

Following the contract Closeout, the contractual relationship between the ECOWAS Institutions and the vendor ceases. It is important that contracts are formally reviewed, and the procurement file closed once all contract activities and obligations have been completed. It is necessary to ensure that the contract has, in fact, been completed and that nothing outstanding is overlooked.

Should there be a requirement for the supplier/contractor/service provider to perform services or deliver goods beyond the stated contract end date, the Procuring Entity should contact the Contracting Authority prior to the contract expiration to obtain clearance to extend the contract and with sufficient time to allow Public Contracting Officer to process a contract modification in line with Article 105 of the Procurement Code. Contracts cannot be retroactively extended.

11.6.1 Contract closeout checklist

The Procuring Entity is responsible for completing contracts and closing the procurement file. Before closing a procurement file, the contracts manager or contract administrator should check – if applicable- that:

- a) all goods have been delivered, works completed and handed over, services performed and contract deliverables received;
- b) contractual as-built documents, manuals and operating guidelines have been delivered;
- c) installations have been commissioned and commission reports signed and delivered;
- d) User Acceptance Training (UAT) has been delivered and approved;
- e) the prime contractor has fully settled sub contractual obligations;
- f) there are no warranties or guarantees still in place;
- g) there are no outstanding claims for missing or damaged items against either the supplier or an insurance company;
- h) all necessary payments have been made;
- i) the total payment is correct, taking into account any contract amendments, variations, price variations and the amortization of any advance payment;
- j) all guarantees and securities have been returned except the structural Warranty of ten (10) years;
- k) all necessary documentation is in place and correct; and
- l) the overall performance of the contract has been reviewed and any serious failings have been identified and resolved.

11.6.2 Retention of documents

The Procuring Entity is required to retain all records relating to a contract for purposes of audit for the period defined in the Financial regulations and chapter 12.1 of this Manual.

11.7 Contract Termination

11.7.1 Decision

As a general rule, contracts should not be terminated unless it cannot be avoided. However, ECOWAS Institutions may terminate a contract in whole or in part under the following conditions:

- a) for ECOWAS convenience without any fault by the contractor;
- b) to avoid or minimize demonstrable progressive loss to ECOWAS;
- c) where contract performance is below contract standards;
- d) Force Majeure
- e) where a supplier is no longer qualified; or
- f) where the supplier has engaged in corrupt practices.

The Procuring Entity is responsible for terminating contracts, subject to the approval to terminate by the Contracting Authority.

Procedures for contract termination are stipulated in each contract and must be strictly adhered to, in order to terminate the contract and to protect ECOWAS Institutions' rights under the contract. The Procuring Entity should contact the Public Contracting Officer when events that could ultimately lead to a termination have occurred.

11.7.2 Grounds for termination

The grounds for termination of a contract will depend on the terms and conditions of the individual contract concerned. The following notes provide guidance on typical grounds for termination of a contract, but it is essential that the Procuring Entity is guided by the contract document itself:

- a) Termination for default: most contracts include a condition that enables the Procuring Entity to terminate the contract, where the supplier has failed to perform its obligations under the contract or to comply with an agreement reached through arbitration or other dispute resolution mechanism. The contract will often specify a procedure by which the Procuring Entity must formally notify the supplier of the default and give them time to correct the default, before actually terminating the contract. Where the Procuring Entity terminates because of the supplier defaulting, it is normally permitted to procure the goods, works or services from another source and charge the original supplier for any additional costs incurred.
- b) Termination for corrupt practices: all contracts must include a condition that enables the Procuring Entity to terminate the contract, where the supplier has engaged in corrupt or fraudulent practices in competing for or implementing the contract. As with termination for default, the Procuring Entity is normally permitted to procure the goods, works or services from another source and charge the original supplier for any additional costs incurred.
- c) Termination for insolvency: most contracts include a condition that enables the Procuring Entity to terminate the contract, where the supplier has become bankrupt or insolvent. In such cases, there is normally no compensation to the supplier.
- d) Termination for force majeure: most contracts include a condition that enables the Procuring Entity to terminate the contract, where the supplier has been unable to perform the contract for a specified period of time, due to an event of force majeure. In such cases, the Procuring Entity must normally make payment for all goods, works or services satisfactorily

completed prior to termination and any other expenses incurred by the supplier. In case of force majeure, no penalties apply.

The Procuring Entity should note that the contract will also give the supplier grounds for termination, which normally include failure by the Procuring Entity to make payments that are overdue by a specified period of time, force majeure or failure of the Procuring Entity to comply with an agreement reached through arbitration or other dispute resolution mechanism.

11.7.3 Steps of termination process

The following are basic steps to be taken when considering termination:

- a) Check the contract or order document, to confirm the conditions of contract relating to termination. Identify which of the grounds for termination will be used and ensure that the Procuring Entity has sufficient justification for using the selected grounds.
- b) Estimate the cost, if any, that will be due to the supplier/contractor/service provider following termination.
- c) Prepare a formal notice, clearly terminating the contract and stating the grounds for termination.
- d) Seek legal advice prior to proceeding.
- e) Obtain the approval of the Contracting Authority to the notice and the justification for terminating. Ensure that the Contracting Authority is informed of any costs of terminating the contract.
- f) Issue the termination notice and ensure that it is received by the supplier/contractor/service provider.
- g) Take any follow-up action required, including making any payments which may be due to the supplier/contractor/service provider under the contract and referring default or corrupt practices by the supplier, contractor or consultant to the competent authorities.
- h) In the event that a supplier/contractor/service provider disputes the termination notice, then this becomes an issue of dispute resolution under Article 1.9 of this Manual.

11.7.4 Records required

A copy of the notice terminating the contract, and the approval by the Contracting Authority to terminate, must be kept on the procurement file. Any other correspondence or documentation relating to the termination must also be kept on the procurement file.

11.7.5 Next steps

No further action is required following termination of a contract. Any new procurement proceedings, in place of the terminated contract, should be treated as a completely separate procurement process and started again from the requisition stage. Consideration should be given to the reasons resulting to termination of the contract, to ensure that they are not repeated in any new procurement process.

11.7.6 Contractor Performance Report

The Procuring Entity documents contractor performance and shares the information with the Public Contracting Officer. The Public Contracting Officer is responsible for maintaining a record of the past performance of contractors and vendors to facilitate risk management.

The evaluation must consider the experience with the supplier/contractor/service provider during the entire contract period. It is important to carefully document contract performance in order to provide

evidence of the performance of the supplier/contractor/service provider; in the event of disputes; in order to form an institutional memory, and for audit purposes.

Supplier performance evaluation (SPE) is mandatory for all procurement activities. A simplified evaluation is recommended for low value contracts below UA 100,000 and a full evaluation above. It must be performed using the functionality in the SPE portal, link below, or other mechanism decided by ECOWAS until such functionality is available

In order to ensure contract compliance, the project manager in charge of the procurement activity is expected to monitor performance on an ongoing basis through reports, meetings, and, if applicable, inspections. When the final payment under a contract has been made and there are no more pending claims, the supplier performance evaluation form must be completed. This is a mandatory step of the procurement process and must be completed in a timely manner.

11.7.6.1 Simplified Supplier Performance Evaluation (SSPE)

The following topics shall be addressed in a simplified SPE:

- a) Fulfilment of delivery schedule/timely delivery;
- b) Quality of goods or services provided in accordance with the contract;
- c) Compliance with contractual terms and conditions;

11.7.6.2 Full Supplier Performance Evaluation (FSPE)

In addition to SSPE topics, the following topics shall be addressed in a FSPE:

- a) Adherence to warranty provisions;
- b) Fulfilment of social and environmental requirements;
- c) Sustainability performance exceeding minimum requirements;
- d) Timely response to ECOWAS requests;
- e) Undue delay of the performance under the contract;
- f) Any frivolous claims against ECOWAS;
- g) Failure to disclose information relevant to performance (e.g., bankruptcy, ongoing litigation, etc.).

11.7.6.3 SPE approaches

Depending on the complexity, size and nature of the procurement, the SPE process could consider the following approaches:

- a) Using the SPE tool in the SPE portal;
- b) Using questionnaires, which require a sound knowledge of what will be measured to ensure relevance of result;
- c) Undertaking site visits;
- d) Using metrics and key performance indicators in the contracts/service level agreements;
- e) Developing and using supplier scorecards to measure cost of poor quality, customer social responsibility, etc.;

11.7.6.4 SPE report repository

The Office of the Auditor General will be the custodian of the SPE report repository and will provide access to selected or aggregated information upon request from ECOWAS staff.

11.8 Payment to Vendors

Payments must adhere to Chapter XXI of the Procurement Code, covering advance payments, progress payments, modalities of payment, delayed payment, final payment, direct payment to contractors and retention payment as a security.

Upon receipt of proper invoices, ECOWAS Institutions will pay contractors at the prices/rates stipulated in the contract, for goods delivered and accepted or services delivered or rendered and accepted, minus any deductions provided in the contract.

The Procuring Entity has the responsibility to inspect, accept, verify, and recommend payment to the Finance Department, who then initiates payment process except for final payment. Final payment will be made only upon completion of the Contract Closeout Checklist

According to the Procurement Code Article 109 ECOWAS pays invoices within thirty (30) calendar days of receipt, unless the invoice is determined to be:

- a) defective (that is, missing required information to preclude processing);
- b) the goods, works or services being billed have not yet been received and accepted by ECOWAS Institutions;
- c) there is a disagreement with the contractor over compliance with a contract requirement; or
- d) billing errors are identified on the invoice.

Invoice errors and other deficiencies should be brought to the supplier/contractor/service provider's attention immediately. Payment should only be made after submission by the supplier/contractor/service provider of a complete and correct invoice.

12 Procurement records and reports

12.1 Procurement records

Each procurement activity shall have its own separate file or folder or dossier where records are kept properly coded in chronological order, relating only to the matter of the procurement in question. The purpose is to be able to review at any one moment the entire historical record of the procurement of one requirement in a logical and sequential manner.

Procurement Officers shall document the entire solicitation process as follows:

- a) Retain in office for six (6) months after contract expiration, then
- b) Transfer to electronic ARCHIVES for ten (10) years, then
- c) Destroy upon approval of the Contracting Authority.

Examples below include, but not limited to, the different types of procurement documents used by Procurement Officers.

NON-exhaustive list of records to be kept:

- a) GPN
- b) SPN or Request for Expression of Interest – if applicable
- c) Published pre-qualification and invitation documents and any amendments, extensions or clarifications that were requested and issued
- d) A record of tender opening/financial proposals signed by all present
- e) Each bid/proposal received and evaluated, plus clarifications requested and responses received
- f) Approved price survey
- g) Bid/proposal Evaluation report

- h) Signed minutes of all meetings relating to the procurement, including pre-bid and negotiation meetings where these were held
- i) Notification of contract award
- j) Letter of tender acceptance to the supplier, contractor or consultant
- k) The signed contract document and contract acceptance
- l) Any contract amendments
- m) All contractual correspondence between the procuring entity and a supplier, contractor or consultant
- n) Post-contract documents relating to the fulfilment of contract obligations, in particular photocopies of bank guarantees or payment guarantees
- o) Contract performance evaluation report
- p) Signed minutes of any meetings related to contract management, including contract progress or review meetings
- q) Signed delivery documents evidencing delivery of supplies or signed completion certificates in relation to a contract for services or works under the contract, including any contract delivery records
- r) Invoices for works, services or supplies, including work papers verifying the accuracy of payments claimed and details of the actual payment authorized
- s) Cumulative payment worksheets/records evidencing management of all payments made
- t) All submissions to and all decisions of the appropriate approval authority related to the procurement, including the approval of the invitation documents, approval of the evaluation report(s), contract award, approval of contract documents and contract amendments and any decision to suspend or cancel procurement proceedings short supply, damage and other claims upon the provider or upon the procuring entity
- u) Any other communications relating to the procurement in questions, including internal entity correspondence
- v) Declarations of Confidentiality and Impartiality
- w) Lodged complaints
- x) Decisions of Sanctions Committee

12.2 Procurement reports

This paragraph shall be read in line with Article 22 of the Procurement Code. The Public Contracting Officer shall be responsible to prepare procurement reports covering procurement activities and transactions

12.2.1 Procurement implementation reports

The reports on procurement transactions or package (quarterly and annually) shall provide an overview, identifying planned and actual entries, issues encountered if any, final results and lessons learnt, whichever applies:

- a) Unique ECOWAS Reference
- b) ECOWAS Procuring Entity
- c) Procurement title
- d) Brief description
- e) Selection method
- f) Division in lots
- g) Value(s)
- h) Requisition reception
- i) Publication/launching/PQ/REOI
- j) Bid closing

- k) Bid opening
- l) Evaluation report submission
- m) Contract award
- n) SL clearance
- o) RFP/PQ/ 2nd stage bid invitation
- p) RFP/PQ/ 2nd stage bid Closing
- q) RFP/PQ/ 2nd stage bid Opening
- r) Negotiations start
- s) Negotiations closure
- t) Contract award recommendation
- u) Contract award notification
- v) Contract signature
- w) Contract value
- x) Contract start date
- y) Contract completion date
- z) Disputes
- aa) Sanctions
- bb) Any other relevant report

12.2.2 Procurement activities reports

The reports on procurement activities shall provide an overview of:

- a) Procurement plan submitted, approved
- b) Procurement plan modifications submitted, approved
- c) Procurement plan statistics segregated by contract value, selection method, delays, geography, Procuring Entity
- d) Procurement planning lessons learnt and recommendations
- e) Declarations of Confidentiality and Impartiality statistics
- f) Lodged and resolved disputes
- g) Sanctions

ANNEXES

ANNEX I: ECOWAS VENDOR ELIGIBILITY GUIDANCE NOTE

Vendor Eligibility

This annex needs to be read jointly with Articles 9 - 11 of the Procurement Code.

The following prescribes policies, standards and procedures for determining whether a vendor is excluded, either permanently or for a specified period of time, from receiving future contract awards from ECOWAS based on a findings and recommendations by the Sanctions Committee that the vendor falls under Article 11 of the Code.

Only vendors found to be responsible or conditionally responsible are eligible to be awarded ECOWAS contracts.

Nothing in these policies, standards, and procedures and nothing shared, exchanged, transmitted or otherwise produced during proceedings, will be considered to alter, abrogate or waive the privileges and immunities set forth in provisions of national law and international conventions, and in the governing documents of ECOWAS.

General Standards

To be deemed a responsible vendor with whom ECOWAS will conduct business, a vendor:

- a) Must have adequate financial resources to perform the contract (or the ability to obtain those resources);
- b) Must be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and other business commitments;
- c) Must have a satisfactory performance record;
- d) Must have the necessary organization, experience, accounting and operational controls, appropriate insurance and technical skills (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the vendor);
- e) Must have the necessary technical experience, equipment, and facilities;
- f) Must not have committed any act or offense indicating a lack of integrity or honesty that seriously and directly affects the present responsibility of a vendor, including fraudulent, corrupt, collusive, coercive, or obstructive practices as defined above;
- g) Must not have been debarred by ECOWAS in connection with the vendor's involvement in operational work;
- h) Must not have been identified on any Anti-Money Laundering/Combating the Financing of Terrorists sanctions lists monitored by ECOWAS, including but not limited to the United Nations 1267 sanctions list (member states list earlier stated);
- i) Must not have violated the terms of an ECOWAS contract in a manner so serious in nature as to justify a determination of non-responsibility, such as:
 - i. wilful failure to perform in accordance with the terms of one or more ECOWAS Institutions contracts, and/or
 - ii. a history of failure to perform, or unsatisfactory performance on, one or more ECOWAS

Institutions contracts;

- j) Must not have refused to cooperate with any ECOWAS review, audit, or investigation, and/or;
- k) Must not have undertaken any other action that in the sole discretion of ECOWAS Institutions is so serious or compelling in nature that it
 - i. affects the present responsibility of the vendor, including but not limited to attempting to influence an ECOWAS procurement decision, or
 - ii. could result in harm to ECOWAS reputation or image.

ECOWAS may also consider a vendor to be non-responsible if it has been suspended, debarred, or otherwise identified as ineligible by any ECOWAS member government or other international organization.

Should it come to the attention of ECOWAS that a vendor may no longer be a responsible vendor with whom the ECOWAS will conduct business, the Public Contracting Officer may make a determination whether a vendor is responsible, conditionally responsible, or non-responsible.

Suspension of Vendors

The Sanctions Committee may suspend a vendor for a period of between one (1) and three (3) years, whenever the Sanctions Committee determines that a vendor is in violation. When a vendor and any specifically named affiliates are suspended, they shall be advised in writing by the PCO:

- a) that they have been suspended;
- b) of the cause(s) relied upon and reasons for imposing suspension;
- c) of the effect of the suspension;
- d) that the suspension is for a temporary period pending the completion of proceedings that may ensue;
- e) that within the time period specified in the notice, the vendor may submit, in writing, information showing that the vendor is responsible, including any additional specific information that raises a genuine dispute over the material facts, as well as any evidence of remedial measures taken or proposed by the vendor, or mitigating factors, and
- f) that suspension may lead to a determination of non-responsibility or conditional responsibility.

A vendor suspended (a) is not eligible to receive ECOWAS contract awards and/or to bid on ECOWAS solicitations; (b) is excluded from conducting new business with ECOWAS as agents or representatives of other vendors; and (c) is precluded from having discussions with ECOWAS concerning the award of new contracts. A suspension applies to all affiliates of the vendor, unless the suspension decision is limited by its terms to specific divisions, organizational elements or commodities.

Re-admission of Sanctioned Vendors

After the expiring of the sanctions period, the Sanctions Committee will make the determination whether a vendor is in good standing, based on all relevant information reasonably available, including any information submitted by the vendor to ECOWAS. This determination is final and without appeal.

Vendors found to be in good standing are eligible to bid on ECOWAS solicitations and receive ECOWAS contract awards, subject to the vendors continuing to satisfy the requirements necessary to be considered responsible.

Vendors found to be conditionally responsible are required to meet the conditions and obligations prescribed by the Sanctions Committee in an administrative agreement prior to being eligible to receive ECOWAS contract awards or to bid on ECOWAS solicitations.

Vendors found to be non-responsible are, for a period of time determined by the Sanctions Committee (a) ineligible to receive ECOWAS contract awards or to bid on ECOWAS solicitations, (b) excluded from conducting business with ECOWAS as agents or representatives of other vendors, and (c) precluded from having discussions with ECOWAS concerning the awarding of contracts. A Non-responsibility Determination applies to all affiliates of the vendor unless the decision provides otherwise.

In any action in which the determination of non-responsibility is not based upon a conviction, the Non-responsibility Determination must be established on the basis of evidence that it is more likely than not that the vendor is not a responsible vendor. "More likely than not" means that upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the vendor is not a responsible vendor.

Notice of Decision on Responsibility

Notice to the vendor of a Decision on Responsibility will:

- a) Refer to the notice of suspension, if applicable;
- b) Indicate whether the vendor has been determined to be responsible, conditionally responsible, or non-responsible;
- c) In the case of a Non-responsibility Determination, specify the reason(s) for non-responsibility and the period of non-responsibility, including effective dates, and identify all affiliates, if any, of the vendor also deemed non-responsible;
- d) In the case of conditional responsibility, specify the reason(s) for the Conditional Responsibility Determination and include an administrative agreement as an attachment to the notice indicating the conditions and obligations with which the vendor is required to comply prior to being eligible to receive ECOWAS contracts and to bid on ECOWAS solicitations.

Ineligibility of a vendor due to non-responsibility shall be for a period commensurate with the seriousness of the cause(s).

The Sanctions Committee may extend the ineligibility period for an additional period, if he/she determines that an extension is necessary to protect ECOWAS interests. The Sanctions Committee may, upon a vendor's written request, reduce or eliminate the period or extent of ineligibility for reasons such as:

- a) newly discovered material information;
- b) reversal of the conviction upon which the Non-responsibility Determination was based;
- c) bona fide change in ownership or management;
- d) measures taken by the vendor to become responsible; or
- e) other reasons the Sanctions Committee deems appropriate.

A copy of all notices of Non-responsibility will be sent to the President. The ECOWAS Institutions will post publicly the names of non-responsible vendors with the basis in the policy for that determination. This policy can be amended with the approval of the President.

ANNEX II: CLOSE RELATIVES

Father

Mother

Spouse

Child (Natural or Adopted)

Siblings

Grand Father

Grand Mother

Grand Child

In-laws

Uncles, Aunts, Nephews, Nieces,

Step Children, Step Parents and Step Siblings

ANNEX III: ALL LINKS

ECOWAS procurement manual links

Note 1: The procurement manual contains a number of links to the Code, Institutional portals, templates, external information sites, etc.

Note 2: Whenever, there are links to portals e.g., Dispute Resolutions Committee, the Office of the Auditor General, the (Statutory) Reviewing Entity, etc. these portals do not belong to the procurement manual but to the institutional owners. In this regard the completeness and effectiveness of the manual depends on information in links outside the procurement purview.

Note 3: Links will have cross-links e.g., the link to the Dispute Resolutions Committee provides access to a portal that will have guidance notes and templates, which can be accessed from the Tools portal as well.

ECOWAS procedures

1. Procurement system assessment portal
2. Material Management portal

ECOWAS department portals

1. President's portal
2. Vice-President's portal
3. Parliament portal
4. Court of Justice
5. Commissioners' portals
6. Institution's portals
7. Capacity building unit
8. Sanctions Committee
9. Auditor of the Officer General
10. Reviewing Entity
11. Supplier Diversity Facility
12. Contracts: Wages, Benefits, Health and Safety

ECOWAS Information pages

1. Vision 2020
2. Community Strategic Framework 2016-2020
3. Procurement Code
4. Grant Code
5. Grant Manual (Portal)
6. Financial Regulation
7. Code of Ethics
8. List of Close Relatives

ECOWAS Tools

1. Standard Bidding Documents
2. Standard templates, checklists
3. Disabled Access checklist
4. Environmental procurement

5. Sustainable procurement
6. Gender in procurement
7. Supplier Management portal
8. Supplier performance portal
9. Beneficiary Management portal
10. Vendor Registration portal
11. Dispute Resolution Committee
12. Alternative Dispute Resolution (ADR)
13. Definition of requirements
14. Procurement Strategy
15. Procurement Planning
16. Standard Bidding Documents
17. Standard procurement templates
18. Procurement Selection Methods
19. Procurement Selection Arrangements
20. Goods, Works
21. Non-intellectual Services
22. Intellectual Services
23. Purchasing
24. Advertisement of bid opportunities
25. Bid/Proposal opening
26. Bid/Proposal Evaluation
27. Contracts
28. Contract Management
29. Negotiations
30. Supplier debriefing
31. Reporting
32. Archiving

External (information links)

1. **OECD web site/MAPS**
2. World Bank **Capacity Building Results Framework** (2009)
3. **Institute for Supply Management (MSI) for Principles and Standards of Ethical Supply Management**
4. **World Bank Procurement-related Complaints guidance**
5. **UNCITRAL Portal on International Commercial Arbitration & Conciliation**
6. **Corporate Social Responsibility in a Developing Country - information article**
7. **UN Security Council Sanctions**
8. **Multilateral Development Banks Cross debarment website**
9. United Nations Global Marketplace (UNGM) **www.ungm.org** ;
10. United Nations Development Business Magazine, **www.devbusiness.com**
11. **Incoterms**

Methods to assess Alternative Procurement Arrangements

The MAPS and other guidance and tools are available under the links below.

[Link to the Procurement Assessment portal](#)

[Link to OECD MAPS](#)

ECOWAS fiduciary oversight

[Link to the ECOWAS oversight of alternative procurement arrangements](#)

Revisions

[Link to ECOWAS procurement capacity building portal](#)

Legislative & Regulatory framework

[Link to the ECOWAS Vision 2050](#)

[Link to the Procurement Code](#)

[Link to the ECOWAS financial regulation 2019](#)

[Link to the Procurement SBD portal](#)

Principles

[Link to the Procurement Code](#)

Accessibility

[Link to disabled access checklist](#)

Environmentally Preferred Products (EPP)

[Link to environmental procurement checklist](#)

[Link to sustainable procurement checklist](#)

Examples of requirements for the implementation of contracts

[Link to gender mainstreaming checklist](#)

Internal administrative review

[Link to the Procurement Code Chapter II](#)

[Link to the Procurement Code Annex I](#)

Action(s) when procurement-related complaint is upheld

<http://pubdocs.worldbank.org/en/975671478891365829/Complaints-Guidance-FINAL-Revised.pdf>

Dispute Resolution

Mediation

[Link to UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation](#)

Conciliation

[Link to UNCITRAL Model Law on International Commercial Conciliation](#)

Adjudication

[Link to ADR portal](#)

Arbitration

[Link to UNCITRAL Portal on International Commercial Arbitration & Conciliation](#)

Content of a Statement of Dispute

[Link to the Procurement Code Chapter III](#)

Sanctions Committee

[Link to the Procurement Code Chapter III](#)

[Link to Sanctions Committee Instruments and tools](#)

Capacity building and professionalisation of practitioners

[Link to capacity building portal](#)

[Link to World Bank Capacity Building Results Framework \(2009\)](#)

Technology: e-Commerce, Use of Electronic Systems in the Procurement Practices

[Link to ECOLink MM portal](#)

The Contracting Authority

[Link to the Procurement Code Chapter II](#)

[Link to the Contracting Authority Instruments and tools](#)

The Public Contracting Officer (PCO)

[Link to the Procurement Code Chapter II](#)

[Link to the Public Contracting Officer Instruments and tools](#)

The Evaluation Entity

[Link to the Procurement Code Chapter II](#)

[Link to the Evaluation Entity Instruments and tools](#)

[Link to the Procurement Code Chapter II](#)

[Link to the Evaluation Committee Instruments and tools](#)

The Review Entity

[Link to the Procurement Code Chapter II](#)

[Link to the reviewing Entity Instruments and tools](#)

Checklist for Goods, Works and Services

[Link to the Procurement Code Chapter II](#)

[Link to the Review Committee Instruments and tools](#)

Procuring Entity/ Requisitioner

[Link to the Procuring Entity/ Requisitioner Instruments and tools](#)

Authorized Cooperative Purchasing

[Link to the cooperative procurement model MOU](#)

ISM - Principles and Standards of Ethical Supply Management Conduct

[Link to the Institute for Supply Management \(ISM\)](#)

<https://www.instituteforsupplymanagement.org/resources/content.cfm?ItemNumber=4740&SSO=1>

Acceptance of Gratuities, Benefits, or Employment

[Link to the ECOWAS Code of Ethics\)](#)

Fraud and Corruption

[Link to the Procurement Code Part IV](#)

Employment and Close Relatives

[Link to list of close relatives](#)

Institutional Social Responsibility principles

[Link to ECOWAS social responsibility guidance article:](#)

<https://link.springer.com/article/10.1007/s10551-006-9168-4>

Supplier Diversity

[Link to Supplier Diversity Facility](#)

Wages and Benefits, Health and Safety

[Link to ECOWAS Wages and Benefits, Health and Safety](#)

Guidelines, training modules and training delivery information – to be developed

Vendor Eligibility

[Link to Part I Chapter IV of the Procurement Code](#)

Background Investigation

[Link to Standard Bidding Documents portal](#)

– to be developed

Supplier Relations

[Link to supplier management portal](#)

– to be developed

[Link to supplier performance management guidance](#)

– to be developed

Beneficiaries' relations

[Link to beneficiary management guidance](#)

– to be developed

Request for Expression of Interest for registration as a vendor

[Link to vendor registration portal](#)

– to be developed

Vendor Review Guidelines

[Link to Vendor Bid Review Guidelines](#)

[Link to Ethics portal](#)

[Link to UN Security Council Sanctions List webpage](#)

<https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>

[Link to cross debarment website http://lnadbg4.adb.org/oai001p.nsf/Home.xsp](http://lnadbg4.adb.org/oai001p.nsf/Home.xsp)

Vendor list maintenance

[Link to http://www.ecowas.int](http://www.ecowas.int)

Link to be operationalised

Review of Vendor List

[Link to ECOWAS vendor registration portal](#)

The portal needs to be created including:

- procurement activity reporting format

Characteristics of requirements

Link to Definition of Requirements Form

To be developed: requirements analysis checklist, including criteria for Best Value for Money, environmental procurement and sustainable procurement

To be developed: KPI description and checklist

Procurement Strategy

Link to Procurement Strategy Development Form

Sources of Market research

www.ungm.org

www.devbusiness.com

Benefits of good procurement planning

Link to Annual Procurement Plan formats and guidance

Competition Requirements

Link to ECOWAS Standard Procurement Templates portal

- *The portal needs to be created including e.g.:*
- *Standard Bidding Documents (SBD)*
- *Standard Contracts (to be included in SBD)*
- *Standard bid evaluation templates*
- *Standard Performance Evaluation templates*

General Procurement Notice

Link to ECOWAS GPN template

The portal needs to be created

Link to ECOWAS SPN template

The portal needs to be created

Link to ECOWAS REOI template

The portal needs to be created

Approval of PQ list

Link to ECOWAS PQ portal

The portal needs to be created

Shortlisting (SL) for Intellectual Services

Link to ECOWAS SL portal

The portal needs to be created

Local Competitive Bidding (LCB)

Link to bid SBD portal

Portal to include LCB descriptive and conditions.

Portal to include Country Procedures Methodology Assessment

Reference to OECD Methodology for Assessment of Country Systems (MAPS)

<http://www.oecd.org/gov/ethics/benchmarking-assessment-methodology-public-procurement-systems.htm>

Bidding preceded by prequalification

[Link to bid PQ portal](#)

Two-stage bidding

[Link to bid Two-Stage Bidding portal](#)

Portal to be developed

INCOTERMS

www.iccwbo.org

Preference

[Link to Preference page](#)

Page to be developed in line with Article 69 of the Procurement Code, with explanation, calculating guidance and interactive tool.

Works contracts

[Link to Standard Bidding Documents portal](#)

Expression of needs/Advertisement

[Link to advertisement portal](#)

Portal to be developed

Bid opening session

[Link to Bid Opening Committee portal](#)

Portal to be developed

Evaluation of bids

[Link to Evaluation Entity portal](#)

Portal to be developed

Bid evaluation report

[Link to bid evaluation portal](#)

Portal to be developed, with checklist, report formats, calculating guidance and interactive tool.

Restricted Bidding

[Link to bid Restricted Bidding portal](#)

Portal to be developed

Request for Quotations (RFQ)

[Link to bid RFQ portal](#)

Portal to be developed

UN Agencies

[Link to UN Agencies procurement portal](#)

Portal to be developed

Undertaking a Competitive Dialogue

[Link to Competitive Dialogue portal](#)

Portal to be developed

Project structuring: PPP Structure Requirements

[Link to PPP portal](#)

Portal to be developed

Electronic Reverse Auction (e-Auction)

[Link to e-Auction portal](#)

Portal to be developed

Procurement under Grants

[Link to Grant Code](#)

Portal to be developed

Procurement of Intellectual services

[Link to RFP](#)

Including QCBS RFP format

Preparation of the Terms of Reference (TOR)

[Link to TOR template](#)

To be developed

Cost estimate and the budget

[Link to budget design template](#)

To be developed

Form of contract

[Link to RFP](#)

Including LOI, ITC, Standard Form of Contract

Receipt of proposals

[Link to RFP](#)

Including opening of proposals protocols

Evaluation of technical proposals

[Link to RFP](#)

Including evaluation of proposals

Public opening of financial proposals

[Link to RFP](#)

Including opening of proposals protocols

Evaluation of financial proposal

[Link to EBID Exchanges Rates](#)

[Link to RFP](#)

Including evaluation of proposals

Unsuccessful negotiations

[Link to RFP](#)

Including evaluation of proposals

Proposal evaluation report
[Link to bid evaluation portal](#)

Portal to be developed, with checklist, report formats, calculating guidance and interactive tool

Quality Based Selection

[Link to RFP](#)

Including QBS RFP format

Including DC provisions and recommended modification to the RFP

Selection under a Fixed Budget (FBS)

[Link to RFP](#)

Including FBS RFP format

Least Cost Selection (LCS)

[Link to RFP](#)

Including LCS RFP format

Selection Based on the Consultants' Qualifications (CQS)

[Link to RFP](#)

Including CQS RFP format

CONTRACTING

[Link to bid evaluation portal](#)

Portal to include contract award notification formats.

Debriefing of unsuccessful consultants/bidders

[Link to RFP](#)

Including debriefing of unsuccessful consultants

Framework Agreements (FA)

[Link to FA portal](#)

Portal to be developed

Performance-based Contracts

[Link to contract type formats and guidelines](#)

Contents of contract document

[Link to contract Templates and guidelines](#)

CONTRACT ADMINISTRATION

[Link to contract management portal](#)

Retention of documents

[Link to ECM](#)

Steps of termination process

[Link to Contract management portal](#)

Records required

[Link to ECM](#)

Contractor Performance Report

[Link to Supplier Performance Evaluation \(SPE\) portal](#)

Payment to Vendors

[Link to Procurement Code](#) Chapter XXI

[Link to Financial Regulations](#)

Procurement records

[Link to ECOLink ECM, MM, Procurement records and archives](#)

The portal needs to be tailored to the new Code, SBD and practices

[Exchanges Rates](#)

[Link to EBID Exchanges Rates](#)