

*Economic Community
Of West African States*



*Communauté Economique
Des Etats de l'Afrique de l'Ouest*

WEST AFRICAN POWER POOL

SYSTEME D'ECHANGES D'ENERGIE ELECTRIQUE OUEST AFRICAIN

General Secretariat / Secrétariat Général

WAPP PROCUREMENT CODE

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PREAMBLE

The subject of this Procurement Code is to define the principles that shall govern the acquisition of goods, services and works in WAPP Secretariat. It is largely inspired from ECOWAS Procurement Code (2019 version) and Procurement Rules of certain WAPP Donors. These principles are based on transparency, equity, fair competition and best governance within all the procurement process in order to ensure an effective and rational management of WAPP funds.

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PART I: GENERAL PROVISIONS

Chapter I - Definitions. Principles and Scope of Application

Article 1. Definitions

In this Code, the following definitions shall apply:

Addendum	A document modifying the terms and conditions of a contract in execution.
A Framework Agreement	A framework Agreement (FA) is an agreement with one or more firms that establishes the terms and conditions that will govern any contract awarded during the term of the FA. The terms and conditions will usually include the fee rate, charge rate or pricing mechanism. FAs may be established for the anticipated procurement of Goods, Works, or Non-Consulting Services, as and when required, over a specified period of time. An FA does not commit either party to procure or supply. Once established, a FA provides a fast and efficient way to procure Goods, Works or Non-Consulting Services. A multi-supplier FA allows a Contracting Authority to select from a number of firms, helping to ensure that each procurement represents best value for money.
Affiliate	An entity is an affiliate of another entity if (i) Either entity controls or has the power to control the other; (ii) A third party controls or has the power to control both entities.
Division in lots	Breakdown of a contract into several lots for economic, financial or technical reasons. Each lot is an autonomous unit which is allocated separately and gives rise to the establishment of a separate contract.
Expression of Interest (EoI)	Request from a Contracting Authority to consultants for the establishment of the shortlist; it specifies the services to be provided and indicates the qualifications and experience required for the preselection.
Contracting Authority	Officer authorized by virtue of Article 7 of the WAPP Articles of Agreement.
Regional Competitive Bidding	Procurement process by which the invitation to tender is published only in ECOWAS member states.
Restricted Tendering	Procurement process whereby bidders are directly invited to bid without any public advertisement.

Successful Bidder	Any natural or legal person or public entity or consortium of such persons selected and entering into contract at the end of the procedure for the award.
Applicant	A firm, joint venture or Consultant that submits an Application in response to an invitation for Prequalification, Initial Selection or Shortlisting.
Bid	An offer, by a firm or joint venture, in response to a Request for Bids, to provide the required Goods, Works or Non-consulting Services
Bidding Documents	Documents provided by the Contracting Authority to bidders as a basis for preparation and submission of their bids.
Bid/Performance Security	An guarantee to secure the fulfillment of obligation of a contractor, or a supplier or a consultant which may take the form of a financial deposit, bond, irrevocable letter of credit or bank guarantee.
Bid validity	Period within which the bidder is bound by its offer and such offer cannot be withdrawn without forfeiting its bid security.
Complaint	Protest regarding procurement process or award contract.
Community	Economic Community of West African States which establishment is reaffirmed under Article 2(1) of Revised ECOWAS Treaty.
Conflict of interest	Any event influencing the capacity of a candidate, tenderer, applicant or contractor or grant beneficiary to give an objective and impartial professional opinion, or preventing it, at any moment, from giving priority to the interests of the Contracting Authority. Any event that compromises the impartial and objective exercise of the functions or the Contracting Authority, or the respect to the principles of competition, non-discrimination or equality of treatment of candidates/tenderers/applicants with regards to the award procedure or contract. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a candidate, tenderer, applicant or contractor. These restrictions also apply to any sub-contractors and employees of the candidate, tenderer, applicant or contractor. There is also a conflict of interests where the impartial and objective exercise of the functions of a player in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.
Consortium	A grouping of eligible natural and legal persons or public entities which submits a tender or an application, under a tender procedure or in response to a Call for Proposals. It may be a permanent, legally established grouping or a grouping which

has been constituted informally for a specific tender procedure or Call for Proposals. All members of a consortium (i.e., the leader and all other partners) are jointly and severally liable to the Contracting Authority.

Consultant	Natural or legal person under contract with a procuring entity to provide intellectual services.
Consultant Services	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.
Contractor	Any natural or legal person or group of such persons and/or bodies entered into a public contract with a procuring entity for the execution of works, the acquisition of goods or the provision of services.
Competitive Dialogue	Procedure only used for particularly complex contracts. A contract notice sets out the needs and requirements and the Contracting Authority opens a dialogue with candidates satisfying the selection criteria announced in the contract notice.
Direct Contracting	Procurement method of contracting without competition
Dispute	Protest regarding a contract.
Eligibility	Capacity of a natural person or a legal entity to participate in the contracting process with the Contracting Authority.
Goods	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.
International Call for Tender	Procurement process where the selection is advertised in one or more international media (newspaper, website or social media).
National Call for Tender	Procurement procedure by which the call for tender is published in one or more nationwide media (newspaper, website or social media).
Non-consultants Services	Category of services not requiring an intellectual service from the service provider.
Notice of Invitation to Bid	Any public notice which purpose is the call for tenders for a specific contract.
Open Tendering	Procurement process by which applicants are invited to tender through a public notice.

Pre-qualification (PQ)	Formal procedure of qualification of bidders whereby bidders 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	Document including the implementation procedures developed by the WAPP for the procurement with reference to the provisions of this Code.
Procurement Plan	Planning document with the purpose of providing information on the budgeted contracts and about upcoming opportunities during a determined period.
Procurement Unit	Service in WAPP Secretariat responsible for coordinating the implementation of the overall procurement process.
Proposal	Technical and financial submissions made by Consultant(s) in response to a Request for proposals.
Public Contract	Written contract for pecuniary interest entered into by Contracting Authority and a contractor or contractors for the supply of goods, the execution of works and services
Request for Proposals (RFP)	Selection documents used by the Contracting Authority to invite submission of proposals from shortlisted consultants.
Shortlist	List composed of consultants or Association of consultants (Consortium, Joint-Venture, Sub-consultant) selected at the end of the evaluation of expressions of interest to participate in the submission of proposals
Technical Evaluation Committee	Ad hoc Committee in charge of evaluation of offers / proposals
Tenderer	A natural or legal person or consortium thereof submitting a tender with a view to concluding a contract.
Terms of Reference (ToR)	Statement (document) issued by the Contracting Authority giving the definition of the objectives, goals and scope of the services that apply only to intellectual services.
User Department	Department/Service which expressed the need and is the beneficiary of the procured goods, works or services.
WAPP	West African Power Pool
Works	Means all works associated with the construction, reconstruction, demolition, repair or renovation of a building or structure, such as site preparation, excavation, erection, building, installation of equipment and materials, decoration, as well as services incidental to construction, such as drilling, mapping, satellite photography, seismic investigations and similar services provided the value of those services does not exceed that of the construction itself.

Article 2. Principles

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

- a. Transparency: This principle requires appropriate review of the procurement activities, supported by appropriate documentation and disclosure. Transparency requires:
 - (i) that relevant procurement information be made publicly available to all interested parties, consistently and in a timely manner, through readily accessible and widely available sources at reasonable or no cost;
 - (ii) appropriate reporting of procurement activity; and
 - (iii) the use of confidentiality provisions, where justified.
- b. Equity/Fairness/equal opportunity: This principle refers to:
 - (i) equal opportunity and treatment for bidders and consultants;
 - (ii) competitive tendering;
 - (iii) equitable distribution of rights and obligations between the Contracting Entity and bidders and consultants; and
 - (iv) credible mechanisms for addressing procurement related complaints and providing recourse.
- c. Effectiveness: This principle refers to the degree to which WAPP objectives are achieved and the extent to which targeted problems are solved.
- d. Economy/Value for Money: This principle means the effective, efficient, and economic use of resources, which requires an evaluation of relevant costs and benefits, along with an assessment of sustainability, quality, and non-price attributes and/or Life Cycle Costs (LCC), as appropriate. Price alone may not necessarily represent value for money.
- e. 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.
- f. Integrity: The principle of integrity requires that funds, resources, assets, and authority are used solely for the intended purposes and aligned to the best interest of the WAPP and the beneficiaries of the proceedings.

Article 3. 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.

Article 4. 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.

Article 5. Respect for the Environment

1. The WAPP may need to procure particular types of goods with characteristics that are considered necessary or desirable as part of the environmental policies largely accepted internationally in the sector. This includes in particular the encouragement of the use of "green" or energy efficient. 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 and use of "green" sources of energy, provided this does not lead to a reduction or distortion of the competition.
2. Such qualification requirements and/or qualitative evaluation criteria shall be objectively framed in internationally recognized and industry-accepted methodologies and procedures to ensure a fair and equitable qualification and/or bid evaluation process. The WAPP shall not request sustainable procurement requirements that are proprietary or otherwise available to only one firm, unless such a requirement is justified to the satisfaction of the Contracting Authority.
3. The sustainable procurement requirements should be based on evidence (i.e., with supporting data), and on existing social-label criteria, eco-label criteria, or information collected from stakeholders in industry, civil society, and international development agencies.
4. If sustainable procurement requirements are specified, relevant evaluation and qualification criteria shall be specified in the request for bids/request for proposals documents to enable the evaluation of sustainable procurement aspects in Bids/Proposals. The WAPP may adopt international sustainability standards covering a wide range of product and service groups, provided they are consistent with WAPP's Core Procurement Principles. Internationally recognized certification or accreditation schemes may be used to demonstrate a firm's ability to apply environmental management measures. Firms may also be able to demonstrate that they apply equivalent sustainable management measures, even without certification.

Article 6. Scope of Application and Exclusions

1. The provisions of this Code are applicable to all public contracts within the WAPP Secretariat, without any exception, and irrespective of their source of funding such as;
 - a. the general budget of WAPP;
 - b. external funding;
 - c. any fund managed by the WAPP Secretariat under the implementation of specific project; and
 - d. any other special funds;
2. The provisions of this Code govern contracts financed by external resources unless otherwise agreed with the partners and without prejudice to the objectives of the WAPP.
3. However, the Code shall not apply for the following contracts:
 - a. acquisition of official vehicles, in particular those covered by Articles 33 and 77 of the WAPP Staff Regulations: the indication of the make of car may be provided in the bidding document within the limits of the budget available;
 - b. acquisition of vehicles for the WAPP automobile fleet: the indication of make of car may be provided in the bidding document within the limits of the budget available;
 - c. acquisition of airline tickets online without use of travel agencies;

d. catering as part of the organization of a lunch or dinner.

4. The provisions of this Code are not are applicable for the following contracts:

- a. Acquisition of petroleum products such super fuel, regular gasoline and diesel, for the use of administrative vehicles as well as butane gas for the use of administrative vehicles as well as diesel for domestic use
- b. accommodation of participants during the organization of official summits, seminars or workshops as well as the accommodation of WAPP agents on mission
- c. ensure the publication by the press of advertising insertions as well as infomercials by audiovisual media.

Article 7. Public Access

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

Article 8. Threshold of Contracts

1. The thresholds for contracts are as set out in Annex 1 of this Code and may be reviewed only by the Executive Board of WAPP.
2. The thresholds determine:
 - a. Value of the procurement package
 - b. The choice of procedure and method of procurement;
 - c. the evaluating entity;
 - d. the evaluation report approval entity.
3. The publication arrangements to be used for each selection method and threshold are defined in Annex 2 of this Code.

Article 9. Eligibility

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

Article 10. Exclusions from Procurement Process

1. Bidders in the following situations are excluded from the procurement process of WAPP :
 - a. Any bidder that is insolvent, in receivership, bankrupt or being wound up, or whose business activities have been suspended;
 - b. Any bidder, whether a natural person or a legal entity found to be in violation of any provisions of this Code;
 - c. Any person or legal entity whose administrators or directors have been convicted of a criminal offence or have been found to be in violation of a tax law of country of origin unless rehabilitated;
 - d. Any bidder who is excluded from participating in any public contracting proceedings pursuant to a decision rendered by the Sanctions Committee, on grounds of contract termination by reason of default or negligence in the execution of an earlier contract awarded by the WAPP;

- e. Any bidder who is excluded from participating in any public contracting proceedings pursuant to a decision rendered by the Sanctions Committee, or any other national, foreign or similar international organisation on grounds of misrepresentation in relation to a false statement as to their qualifications to enter into a public contract;
 - f. Any bidder debarred from taking part in public contracting by ECOWAS Commission, an ECOWAS member country, the WAPP, a WAPP Member Utility, a WAPP Technical and Financial Partner and the United Nations system;
 - g. Any State-owned company not financially and legally autonomous and/or does not operate under commercial law; and
 - h. Any bidder in which any member of WAPP has a financial or personal interest.
2. The above provisions shall also apply to natural or legal persons acting as sub-contractors to the main contractors.

Article 11. Disqualification of Bidders

- 1. The Contracting Authority shall reject a bid, proposal or quotation if it is found that the bidder or bidders has directly or indirectly engaged in fraudulent practices as defined in Article 105.
- 2. Such rejection and the reasons thereof, shall be included in the record of the procurement proceedings and duly communicated to the bidder or bidders who may file for review of the rejection under the provisions of Article 75 of this Code "Information to Bidders/Consultants".

Chapter II -Responsibilities for Procurement Proceedings and Contract Awards

Article 12. Contracting Authority Functions and Contract Awards

- 1. Procurement proceedings and contract awards by WAPP Secretariat shall be carried out in accordance with the provisions of this Code.
- 2. The Contracting Authority shall be the WAPP Secretary General. He shall assume the following duties:
 - a) Oversee the proper application of procurement procedures by the Procurement Committee and by WAPP Technical Evaluation Committee;
 - b) Oversee the preparation of bidding documents including the invitation for bids and their advertisement, where needed;
- 3. The Contracting Authority is entrusted to approve the Procurement Committee report and sign the contract;
- 4. The Awarding Authority is the Procurement Committee, responsible for selecting a candidate or contractor through processes specified in this Code for the award of a contract.
- 5. Contracting Authority may delegate his functions but Awarding Authority shall not delegate his functions.
- 6. No Department, Division or Section of WAPP shall publish, request for offers, propositions or quotations unless authorized by the Contracting Authority. Also, no Department, Division or Section shall award or finalise any contract if the procurement process of WAPP stipulated in this Code is not followed.

Article 13. Responsibilities and Functions of Procurement Unit

The Officer Responsible for Procurement Unit shall have the responsibility to:

- a. prepare the Procuring Entity's annual procurement plan, taking into account packaging critical paths, complexity and available resources.
- b. Contribute to the revision of the technical specifications and terms of reference.
- c. Prepare the bidding documents, request for quotations and request for proposals.
- d. Make the arrangements for the advertisements required by the Code.
- e. After the award, assess and submit draft contracts for review and approval.
- f. Communicate with the bidders throughout the procurement process (for requests of clarifications, complements of documents, transmission of various documents etc.) in compliance with the procedures provided for this purpose;
- g. Support the Contract Execution Units with regard to procurement aspects.
- h. Draft Reports regarding procurement activities.

Article 14. Procurement Committee

1. A WAPP Procurement Committee is established; it is composed as follows:
 - i. Director of Administration and Finance -Chairman;
 - ii. Director of ICC Department -Member
 - iii. Director of PIPES Department - Member
 - iv. Legal Adviser - Member
 - v. Officer Responsible for Procurement Unit - Secretary
2. This entity shall be responsible for the opening and evaluation of bids, proposals and quotations and recommend the award of contracts to the Contracting Authority according to the approved thresholds as set out in Annex 1 of the Code and the Procurement Procedures Manual.
3. Upon the recommendation of WAPP Procurement Committee, the WAPP Contracting Authority or his authorized representative shall endorse and sign the contract.
4. In case the Chairman of the Procurement Committee is not be available, he shall delegate in writing his authority to one of the members, to his acting or to one of the representatives of the members. However, the Director of the beneficiary department cannot assume the role of the Chairman of the Procurement Committee. The Secretary of the Committee may in any case chair the said Committee.
5. In the event that some Procurement Committee members shall not be available, a reduced bids opening committee will be established; it is composed of least three members of Procurement Committee including the Chairman, a representative of the user Department and a representative of the Procurement Unit. The latter will be the Secretary.
6. The bid opening committee shall be responsible for the public opening of bids at a time and place as stipulated in the Bidding Document.

Article 15. Technical Evaluation Committee (TEC)

1. Bids with a value above the threshold set in Annex I of this Code, shall be evaluated by an Evaluation Committee appointed by the Procurement Committee.
2. The Procurement Committee shall make sure that evaluators are available during the scheduled evaluation period and will appoint alternate evaluators for each procedure to prevent delays in case of unavailability. Evaluators must be provided with adequate information regarding the planned timetable and the workload that the evaluation implies. Every evaluator must have reasonable command of the language in which the bids/proposals are submitted.
3. The composition of the Technical Evaluation Committee shall remain strictly confidential all along the evaluation process and never disclosed to the bidders/consultants.
4. The participants in the evaluation process shall be free of conflict of interest as defined in Article 106 of this Code. The members and the observers shall sign a Declaration of Impartiality and Confidentiality using the template provided in the WAPP Procurement Manual.
5. When a member becomes aware that he/she is in a situation which might generate a potential conflict of interest, he/she shall notify the Procurement Officer by giving details of the particulars that created the potential conflict of interest and recuse him/herself from further participating in the meetings or decisions in relation with that particular procurement process. In such case s(he) is replaced by decision of Procurement Committee. Such circumstances shall be recorded in the report of meetings.
6. Composition of the Technical Evaluation Committee
 - a. The Technical Evaluation Committee shall comprise at least three evaluators, which must include representation of the User Department of Procurement. There shall be an alternate for each evaluator. The procurement unit shall serve as a secretary to the Committee.
 - b. Quorum for the Evaluation Committee shall be as follows:
 - (i) For a Committee of three to six: Three evaluators;
 - (ii) For a Committee of more than six: Four evaluators.
 - c. The expertise level of the evaluators and their substitute shall be adequate to the complexity and value of the contract under scrutiny;
 - d. The Procurement Committee shall ensure appropriate representation of the User Department of the contract under scrutiny;
 - e. The Chairman of Procurement Committee will appoint alternate evaluators with the same expertise level for each procedure to prevent delays in case of unavailability of one or many evaluators;
 - f. Evaluation committee members must attend all meetings. Any substitution due to unavailability with the alternates must be recorded in the evaluation report.
7. Use and Role of Technical Experts
 - a. In case the evaluation requires expertise not available among the evaluators, technical experts may be called to assist the Technical Evaluation Committee by decision of the Procurement Committee;
 - b. Technical experts provide the evaluators with a technical opinion about the bids/proposals under scrutiny, but they do not take part in the decision-making process.
 - c. Technical experts must be made aware of their obligation of impartiality and confidentiality and sign the correspondent declaration.

8. Presence of Observers during the Evaluation Process

- a. The Procurement committee may authorize the presence of observers during the evaluation process. The observers shall have no voting powers.
- b. Observers may be from Agencies/ Institutions or be designated by the donor or be members of Technical Assistance Teams supporting WAPP.
- c. Observers do not take part in the evaluation decision.
- d. The presence of the Observers is not mandatory for each session of the Technical Evaluation Committee.
- e. Observers are bound by the same obligations of impartiality and confidentiality as Evaluation Committee members and must sign the correspondent declaration.

9. All the members of the Committee shall be collectively and individually accountable for any decision and recommendation made by the Technical Evaluation Committee.

10. The Role of the Secretary

- a. The role of the Secretariat shall be assumed by the Procurement unit.
- b. The Secretary shall participate in the evaluation and in addition contribute to the evaluation process in relation with the procedures, principles and regulations contained in this Code and any other legal document applicable to the specific procedure. He has no deliberative voice.
- c. The Secretary shall be responsible for carrying out all administrative tasks connected with the procedure, including but not limited to preparing/circulating the declarations of impartiality and confidentiality; keeping the reports of all meetings, attendance lists and relevant records and documents. At the end of the process, (s)he shall compile the evaluation report with annexed supporting documents in the required format.

11. Role of the Chairman of the Technical Evaluation Committee The work of the Committee is coordinated by a Chairman also designated by the Chairman of the Procurement Commission.

12. Confidentiality of the Process

- a. For supplies, works tenders and non-consultant services apart from the public bid opening session in the procedures that foresee such session, the proceedings of the Evaluation Committee are conducted "*in camera*" and are confidential.
- b. For service tenders and calls for proposals, apart from the public bid opening session of the financial proposals, the proceedings of the Technical Evaluation Committee, from the opening of bids/proposals to the conclusion of the work of the evaluation committee, are conducted "*in camera*" and are confidential.
- c. In order to keep the proceedings confidential, attendance at Technical Evaluation Committee meetings is strictly limited to the committee members, technical experts and authorised observers.
- d. The bids and any other working documents including reports, drafts and notes of the Technical Evaluation Committee shall be kept in a safe place during the pauses or interruptions of the evaluation. The secretary will ensure that this provision is strictly respected.
- e. The documents are confidential and shall not be shared to anyone for any reason whatsoever outside the Evaluation Committee.
- f. The Contracting Authority shall arrange for a proper secured archiving space for the period required by this Code or the requirement of the donor in sight of ex-post audit, verifications or claims. The management of this space is entrusted to the Procurement Unit.

- g. Any attempt by a bidder/consultant to influence the process in any way will result in the immediate exclusion of its bids or proposal from further consideration. Without prejudice to the application of further sanctions, such occurrence shall be circumstantiated and recorded in the Evaluation Report.

13. Particular Situations

- a. In duly justified cases, for instance when the members/experts/observers are in another country, proceedings may be done using videoconference systems. The system to be used has to support end-to-end encryption and this option has to be enabled by the IT Department;
 - b. Any electronic transfer of information and documents needed under this modality must also guarantee its confidentiality;
 - c. Such occurrence shall be recorded in the Evaluation Report.
14. At the conclusion of its work, the Technical Evaluation Committee shall make its recommendation through an evaluation report formulating:
- a. a recommendation of award identifying the winner and the maximum value of the contract to be signed; or
 - b. a recommendation of cancellation of the procedure under the conditions of Article 73. (2).
15. In the case of suggestion of cancellation, the Procurement Committee shall suggest the suitable way forward before any further action is taken.

Article 16. Review Procedure

- 1. The review of conformity is carried out by WAPP Procurement Committee before transmission of the recommendation of award to the Secretary General.
- 2. Reviews shall be done in a period not exceeding the fifteen (15) calendar days from the day following the day of submission to the Review Committee.
- 3. The responsibilities of the Review Committee shall be to:
 - (i) In general, the Review Committee shall conduct reviews and come up with one of the following decisions:
 - a) Issue a "No Objection" if it is determined that a given procurement exercise complied with the applicable provisions of the Procurement Code, or
 - b) Issue an "Objection" if it is determined that one or more applicable provisions of the Procurement Code were not followed.
 - (ii) In specific, the Review Committee shall:
 - a. Review the recommendations for award/cancellation formulated by the Technical Evaluation Committee to determine if said recommendation followed the procurement process as spelt out in the approved Procurement Code;
 - b. Review that the recommendations of the Evaluation / Negotiation Committees, as reflected in the evaluation/ negotiation report, to determine if it followed the Procurement Code with respect to the qualification, evaluation and award criteria indicated in the solicitation documents;
 - c. Determine if the principles of public procurement, as stated in Article 2 are respected and applied in all procedures proposed in the Procurement Plan;
 - d. Determine if the appropriate procurement method was used for the procurement of services, goods and works to obtain the best Value for Money for WAPP;

- e. Determine if the requests for using direct contracting are justifiable pursuant Article 45 for goods, works and service contracts or Article 57 for intellectual services;
 - f) Determine if any derogation from using the standard bidding documents and procurement methods are necessary and in the interest of the WAPP.
4. Any rejection or objection on a solicitation document or evaluation/negotiation report shall be duly substantiated with reference to the dispositions of this Code including suggested corrective measures.

Article 17. Confidentiality and Communication

1. For the sake of ensuring equal access and opportunity, the entire process of contracting shall be conducted with the highest level of confidentiality.
2. Without prejudice to the principle of transparency and other obligations, in particular those relating to the publication of the contract award notice and debriefing of unsuccessful bidders, applicants and consultants, the Contracting Authority shall not disclose information provided by bidders, applicants and consultants in their bids and applications which they have marked as confidential. This may include proprietary information, trade secrets and commercial or financially sensitive information.
3. Communications between the Contracting Authority and bidders, proposers and consultants during the different stages of the procurement process shall be in writing with proof of receipt.
4. The methods of communication and the level of information that can be disclosed at the different stages of the procedures is better described further in this Code and in the Procurement Manual.
5. Written records of the entire procurement procedure must be kept confidential by the Procurement Unit and the documents filed in accordance with the policy adopted by WAPP on physical and digital archiving. Tenders or technical proposals must not be moved from the room/building where the committee works before the end of evaluation. They must be kept in a safe place when not in use. The Financial proposals are kept in a safe place by the Chairman of the Procurement Committee before their opening.
6. All participants in the evaluation process must be made aware of their obligations of confidentiality and impartiality and sign an appropriate declaration.

Article 18. Audit of Procurement Process

Procurement audits shall be performed by external auditors. The Audits shall cover all procurement activities undertaken during the period under review.

Article 19. Record of Proceedings of Technical Evaluation Committees

1. The Officer Responsible for Procurement Unit shall maintain records of public contracting proceedings and documents to allow control and verification in accordance with the provisions of this Code. The contents of the records shall be as prescribed in the Procurement Manual.
2. The Officer Responsible for Procurement Unit shall provide for an appropriate filing system, both electronic and physical, ensuring proper and secured archiving spaces.
3. Documents shall be preserved for at least seven (7) years. The retention period starts at the beginning of the year following the conclusion of the respective procurement activities.

Article 20. Procurement Reporting

1. The Public Contracting Officer shall prepare quarterly and annual procurement reports for the Contracting Authority.
2. These reports shall cover all procurement activities with sufficient detail.

Article 21. Procurement Manual

The details of the procedures governing procurement activities as set forth in this Code and the standard templates and documents to be used shall be set forth in the WAPP Procurement Manual.



PART II: PROCUREMENT PROCEEDINGS

Chapter III- General Provisions of procurement proceedings

Article 22. Language and Currency

1. Any documents written, published and provided to bidders/consultants or produced by them shall, be prepared in French and/or English.
2. Contracts shall be signed in the language of the bid/proposal.
3. The bidding documents/ request for proposals shall indicate the currency of the offer or that a bidder/consultant may quote the price of his/her bid/proposal in any convertible currency of its choice of its choice. A bidder/consultant wishing to submit a bid/proposal denominated in several currencies, including convertible currencies, may do so provided the number does not exceed three.
4. For the purpose of the evaluation, bids/proposals shall be compared using the exchange rate indicated in the Request for Bids/Proposals.

Article 23. Advertisements

1. The modalities for advertising of public contracts are described in the Annex 2 to this Code.
2. The WAPP website is intended to be the principal interface with the Public and therefore shall be constantly updated. Publication on the WAPP website may be supplemented by national, regional or international publication.
3. Annual procurement plans, once validated, shall be published on WAPP website at the beginning of every year and within twenty-one (21) calendar days after plans are updated.
4. As a disclaimer, it shall be mentioned in the website that publishing the annual procurement plan does not bind the Contracting Authority to finance the contracts proposed and that modifications may intervene during the year.
5. Specific Procurement notices (SPN): *Open call for tender or request for expression of interest* are published subject to the method of procurement and associated threshold. Every invitation to bid or request for expression of interest shall be published in accordance with the format contained in the WAPP Standard bidding documents.
6. *Notifications for contract awards* shall comprise the outcome of the procedure for the award of contracts containing the identification references mentioned in the contract notice, the contractor selected, the value of the contract and the Legal Basis. The award notices are published according to the model indicated in the Procurement Manual.
7. All disputes and complaints irrespective of the value shall be published when lodged. The publication shall indicate the time required to reach a decision in accordance with the procurement manual.
8. All decisions of the Sanctions Committee shall be published on WAPP website within one month after reaching the decision.

Article 24. Technical and Financial Qualifications

1. To be awarded a contract, each candidate or bidder shall demonstrate capacity to enter into the contract. Generally, all bidders shall, if applicable:
 - a. possess the necessary:



- i. professional and technical qualifications to carry out particular procurements;
 - ii. sound corporate and financial standing;
 - iii. equipment and other relevant infrastructure;
 - iv. personnel to perform the obligations of the procurement contracts.
 - b. not be in receivership, the subject of any insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;
 - c. have fulfilled all its obligations to pay taxes and social security contributions;
 - d. not have a General Director or any Administrator who has been convicted in any country for any criminal offence relating to fraud and corruption and other financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
2. Evidence of such qualifications shall be verified by the Procurement Committee requesting the submission of supporting documents together with the bid.
 3. Misrepresentation in relation to the information required under this article may lead to the disqualification of a bidder or, the immediate cancellation of the contract, at the risk and expense of the declarant without prejudice to the imposition of sanctions applicable in such cases under this Code.

Article 25. Certificate of Classification

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

Article 26. Registration of Enterprises

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

Article 27. Association

1. Any firm may bid independently or as part of an association, either with national firms and/or with foreign firms. This applies to all categories of procurement, although the bidding and associating modalities are different.
2. The WAPP requires that Joint ventures commit to specific obligations, in particular, the legal requirement that all partners in the Joint venture are jointly and severally liable during the bidding process and during the execution of the contract. Similarly, if the association is in the form of a consortium, it will be only accepted when all its members are jointly and severally liable.
3. Others forms of association are sub-contracting and sub-consulting agreements. In any of these cases, the parties are not jointly and severally liable to the Contracting Authority; only the main contractor and/or the consulting firm would be liable to the Contracting Authority.

Article 28. Subcontracting

1. The contractor or bidder may sub-contract parts of a public contract up to a maximum of 30% of the contract value upon the approval of the Contracting Authority. Such an approval shall include the conditions for payment of the sub-contractor.
2. Bidders shall indicate in their bids/propositions, the references of any sub-contractors they intend to use as well as the part and value of the main contract they intend to sub-contract.
3. If a subcontractor expects to be paid directly, the main contractor must also obtain the consent of the Contracting Authority on the conditions of payment of each subcontractor. The main contractor remains fully responsible for the execution of the contract.

Chapter IV - Procurement Planning

Article 29. Identification of Needs

1. Identified goods, works and services shall meet the needs of the Contracting Authority.
2. The needs assessment shall consider the capacity of the targeted market and require the user Department as well as the Procurement Unit to maintain and update good knowledge of market diversity and capacity.
3. The procuring entity shall determine the components, the quantities and specifications of the goods, works or services to be procured prior to initiating the contracting process.
4. The technical standards and specifications set out in the bidding documents shall comply with all the set criteria and shall not refer to trademarks, brand names or catalogue numbers except as specified in Article 6, Article 45 and/or Article 57.
5. There shall be no request for proposals or bid invitation, nor award of contract without confirmation by the Department of finances that funds are available.

Article 30. Procurement Plan

1. The purpose of the annual procurement plan is to:
 - a. Constitute a strategic procurement activity planning tool;
 - b. Ensure the availability of the budget envelope for each procurement action, following its approval;
 - c. Provide information to the potential bidders about upcoming opportunities;
 - d. Constitute a procurement monitoring tool for management;
 - e. Constitute a time management tool for procurement practitioners.
2. The Procurement Unit in collaboration with the various Departments and Services shall prepare an annual procurement plan which shall be submitted for validation of Procurement Committee and approval of Secretary General along the following lines:
 - a. Preparing the needs assessment and evaluation;
 - b. Identifying the goods, works or services required;
 - c. Taking into consideration appropriate market and statistical surveys and on this basis preparing an analysis of the cost implications of the proposed procurement;
 - d. Aggregating its requirement whenever possible to obtain economy of scale and reduce procurement cost;
 - e. Integrating its procurement expenditure into its yearly budget;
 - f. Prescribing any method for effecting the procurement, subject to the necessary approval under this Code.
3. This plan shall be submitted to the Contracting Authority for review and approval by 31st January of each year and may be reviewed quarterly or as required by emergency situations as described under Article 62.
4. The Procurement Plan and any revision, once approved, shall be published on the WAPP website.
5. No contracting requirements for a given quantity of goods, works or services shall be split with the intention of avoiding a contracting procedure stated in this Code. Any member of the WAPP found to be in breach of this provision shall be sanctioned according to WAPP Staff Regulations.



6. No Procurement shall be conducted if it is not programmed under the procurement plan, nonetheless in exceptional circumstances this procurement must be submitted to the Contracting Authority for validation and approval.

Article 31. Division in lots

1. Where the division in lots of the public contract is technically and financially more advantageous and aims at reducing the cost on WAPP, the contracting of goods, works or services shall be divided into lots that may be awarded to different bidders.
2. The instructions to bidders shall determine the number, nature and the importance of the lots. It shall also indicate how bids for one or more lots shall be submitted and the basis for award. The Contracting Authority shall award the contract to the best value of combination of lots. The bidders are required to present separate bids for each lot.

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

Article 32. Process of procurement of goods, works and service contracts

The process starts with the invitation for bids or advertisement of the procurement opportunity after which bidders can purchase the bidding document and prepare bids. The submission of bids is immediately followed by the public opening of bids and bid evaluation. Once evaluation is concluded the bidders are notified of the bid award. After a standstill period of fifteen (15) calendar days the Contracting Authority and the successful bidder sign the contract after which contract execution starts.

Article 33. General provisions for Goods, Works and Service contracts

1. The bid selection process comprises the selection of the most responsive bid to achieve Value for Money, which has without negotiation met the technical requirements as provided for in the evaluation criteria put forth in the bidding document and expressed in monetary terms.
2. If bidders have not been prequalified, the Procurement Committee shall determine whether the bidder with the most responsive bid to achieve Value for Money has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, the Contracting Authority shall make a similar determination for the next responsive bid to achieve Value for Money.

Article 34. Open Call for Tender without Prequalification

1. Open call for Tender without prequalification shall be the default method of procurement.
2. Procurement procedures are open where all interested economic operators may submit a bid.
3. Invitations to bid shall be published according to the modalities defined in Article 23.
4. Bids shall be subject to local, regional or international publication, according to thresholds specified in the annex to this Code or such additional criteria as the nature of the contract, the estimated cost, or its complexity.
5. Each invitation to bid shall set out the following information and requirements:
 - a. The reference of contract in the procurement plan;
 - b. the object of the contract, the nature of the product or service to be procured, generic specifications, quantity, delivery period
 - c. the source of financing;

- d. the bid languages(s);
 - e. 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;
 - f. the place where the bidding documents may be inspected and the procedure for obtaining these documents;
 - g. the cost of the bidding document if applicable;
 - h. the value and form of the bid security if applicable;
 - i. the qualification criteria;
 - j. the name of WAPP as Procuring Entity;
 - k. the place, date and time limit for the receipt of bids;
 - l. the required bid validity;
 - m. the type and amount of required guarantee if applicable;
 - n. any other conditions as the WAPP may consider necessary.
6. Invitation to bid with simplified advertising, when required, shall be defined in the Procurement Manual.

Article 35. Preparation of Bids

- 1. The time allowed for the preparation of bids shall be a minimum of four (4) weeks for national Call for Tender and a minimum of six (6) weeks for Regional and International Call for Tender in order to allow prospective bidders sufficient time to prepare and to submit their bids in line with international best practices.
- 2. For complex procurement, if the tender documents so provide, the Contracting Authority may arrange a pre-Bid/pre-Proposal conference in which potential Bidders seek clarifications. The Contracting Authority shall also provide reasonable access to project sites for prospective Bidders.
- 3. Communication with bidders seeking clarifications shall be in line with Article 17 on Confidentiality and Communication.

Article 36. Submission of Bids

- 1. For any competitive procurement, bids must:
 - a. be submitted in writing and/or in any other format prescribed in the tender documents;
 - b. contain all the information related to the bidder;
 - c. contain the administrative documents required;
 - d. contain the bid security, if applicable;
 - e. contain the submission letter signed by an official authorized to bind the bidder to a contract and;
 - f. be placed in a sealed envelope.
- 2. Bids may be sent by registered mail services or by hand and shall remain sealed until the bid opening. Electronic submission may be allowed by Request For Bids/Proposals.
- 3. All submitted bids shall be deposited at the address indicated in the invitation for bids/proposals.
- 4. All bids shall be in the language pursuant the dispositions in Article 22.

5. The Contracting Authority shall issue a receipt showing the place, date and time the bid was delivered. Upon receipt, the envelopes shall be recorded by order of arrival in a special register.
6. Any bid received after the time and date set for the submission of bids shall not be opened and must be returned to the bidder.
7. No communication other than as provided for in this Code, the Procurement Manual or bidding document shall take place between WAPP and any bidder after the publication of a bid solicitation.

Article 37. Extension of the Deadline for Bid Submission

1. In the event that several bid clarifications are requested from more than one bidder, or clarifications that substantially change the bidding document, the Contracting Authority may decide to extend the bid submission period.
2. The decision for extension of bid submission deadline shall be communicated to all bidders. The decision shall be published through the same means as the publication of the Specific Procurement Notice.
3. Bids shall be opened on the bid opening date and examined as per this Code. In the event of an open invitation to tender, if only one tender is received, it may be opened provided that the advertisement has been made in a satisfactory manner.

Article 38. Public Opening of Bids

1. Bid opening shall be carried out by the Procurement Committee and take place immediately after the date and time set for bid submission.
2. The envelopes containing the bids shall be opened in the presence of the bidders or their representatives who wish to attend.
3. The Minutes of bid opening shall be prepared in the format contained in the procurement manual.
4. The name of each bidder, the price of the bid and of alternatives or discounts, if any, and the time frame for execution are read out, and the submission of the required bid security indicated or any other information relevant to the type of selection. This information is recorded in the minutes of the bid opening session and subsequently issued by the Procurement Officer to all bidders.

Article 39. Pre-qualification Proceedings

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

Article 40. Prequalification Notice of Invitation

The prequalification notice shall be published in the same manner as the invitation to bid referred to in Article 23.

Article 41. Evaluation of Prequalification

1. The Technical Evaluation Committee shall review all the applications and retain all those satisfying the prequalification conditions on pass/fail criteria, and there shall be no ranking. In arriving at a decision, the Technical Evaluation Committee shall apply only the criteria set forth in the pre-qualification documents.
2. The Contracting Authority shall notify all suppliers, contractors or service providers, having submitted an application within twenty-eight (28) calendar days after the closing date of the submission. The evaluation outcome shall also be published on the WAAP website.
3. Only suppliers, contractors or service providers that have been pre-qualified are entitled to participate further in the contracting proceedings.
4. Unsuccessful candidates may send a request for debriefing to the Contracting Authority, within five (5) calendar days of notification of the result, to find out the reasons for their non-selection. The Contracting Authority has ten (10) calendar days to respond.
5. The Contracting Authority may require a supplier, contractor or service provider that has been prequalified and selected for award of contract, to confirm, with supporting documents, its qualifications in his bid.

Article 42. Conditions and Procedures for Two-Stage Bidding

1. The Contracting Authority may engage in contracting in 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, it is not feasible to formulate detailed technical specifications for the goods or works or, in the case of services, to identify their characteristics.
2. Two-stage bidding may be preceded by prequalification proceedings conducted in accordance with Article 39.
3. In the first stage of the two-stage bidding, bidders are invited to submit their technical proposals on the basis of a conceptual design or of performance specifications as well as on contractual terms and conditions of supply and/or the qualification of the supplier or contractor. The evaluation of the technical bids may require the Contracting Authority to revise the cost estimate of the project.
4. All communications between the Contracting Authority and bidders shall be transparent and in writing on the understanding that all communications must be documented thoroughly in the evaluation report.
5. In the second stage of the two-stage bidding, bidders meeting the qualification criteria and whose bid was found technically acceptable at the first stage, are invited to present final technical and financial proposals on the basis of the bidding documents revised by the Contracting Authority.
6. A bidder not wishing to present a final tender may withdraw from the tendering process without forfeiting any tender security that may have been provided.

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

Article 43. Restricted Tendering

1. Restricted tendering is a procedure open only to bidders who have been directly invited by the WAPP to submit a bid.

2. Only candidates that have been selected on the basis of their references are allowed to submit bids. All other provisions governing open competitive bidding apply, i.e. those related to evaluation and award of the contract.
3. Restricted bidding may be conducted when the goods, works or services in question are available only from a limited number of entities. In order to guarantee an effective competition, a minimum of three (03) candidates must be invited. In all cases, at least three (3) bids are required.

Article 44. Request for Quotations (RFQ)

1. Where the estimated value of the contract for goods, works or services is less than a specific amount set forth in Annex 1 attached to this Code, the procurement processes may be conducted on the basis of a request for quotations from selected persons or entities; in that case, at least three quotations shall be required, if available, from the WAPP's list of suppliers, according to the procedures referred to in this Code.
2. The method and criteria used for selection shall conform to the relevant provisions contained in Chapter XIII of this Code.
3. The request shall contain a clear statement of the requirements of the WAPP as to quality, quantity, terms and time of delivery, terms and schedule of payments, validity provisions of quotations, as well as other special requirements and elements that must be included in the quoted price.
4. The contract is awarded to the bidder who meets the requirements of the WAPP as stipulated in paragraph (2) of this Article and who quotes the lowest price unless that price exceeds, by a significant margin, the price of similar items available on the market. In this case, provisions of Article 73 shall apply. The detailed provisions of this method will be specified in the WAPP Procurement Manual.
5. A Contracting Authority shall not divide its procurement into separate contracts for the purpose of invoking paragraph (1) of this Article.
6. Each bidder is permitted to give only one price quotation and is not permitted to change its quotation.

Article 45. Direct Contracting

1. Procurement may be made by direct contracting for goods, works and services in the following cases only:
 - a. if the additional procurements are for standardized equipment or spare parts compatible with the equipment already in use. In order to justify this procedure, 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 in reference to market prices, 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. where the company responsible for the design process requires that the essential parts to be purchased come from a particular supplier so as to ensure that the equipment is working properly.
 - d. in exceptional and newly emerging circumstances that could not be anticipated or planned, for example, in response to natural disasters, emergency as defined under Article 62 or for special security reasons.

2. In the event of natural disasters or emergencies, the Procurement Unit shall prepare a justification and description of the needs and any special requirements regarding quality, quantity, terms and time of delivery for approval by the Contracting Authority before the start of the procurement and negotiation process.
3. Direct contracting may only be used when suppliers or contractors accept to be subjected to price verification during the execution of the contract.

Chapter VII - Provisions Applying to Intellectual Services

Article 46. Process of procurement of consultant services

The process starts with the Request for Expression of Interest (REOI) after which consultants can express interest in carrying out the services. The selection criteria are announced in the REOI. After the evaluation of expressions of interest, a shortlist is established. Thereafter, the WAPP will send a Request for Proposals to shortlisted consulting firms. Upon submission of the Proposals, WAPP proceeds to the public opening of the Technical Proposals and undertake the evaluation of technical proposals first. After that step completed, the Contracting Authority will invite the consulting firms who have passed the minimum technical score to participate in a public opening of the Financial Proposals. The consulting firm with the highest combined score is invited for contract negotiations. Successful negotiations are followed by a standstill period of fifteen (15) calendar the days, after which the Contracting Authority and the successful bidder sign the contract.

Article 47. Request for Expression of Interest and Shortlist of Firms

1. A Request for Expression of Interest must indicate the type of service providers targeted. In principle, public entities, individual consultants and non-profit organizations (NGOs) cannot be on the same shortlist as the private sector firms.
2. The Technical Evaluation Committee shall shortlist firms to provide Intellectual Services for all selection methods except Consultant's Qualification-based Selection (CQS) and Direct Selection.
3. In using the expression of interest procedure, a shortlist of at least five (5) and not more than eight (8) best qualified firms, based on their capacity to perform the required service, shall be established in order to ensure adequate competition.
4. The period allowed for expression of interest shall not exceed twenty-one (21) calendar days and shall be in line with the provisions of Annex II.
5. The shortlist shall be based on the Expression of Interest documents submitted.

Article 48. Request for Proposals

1. The Contracting Authority shall request proposals for services from the shortlisted firms in accordance with the approved selection method in procurement plan.
2. The evaluation is based on the criteria established in the request for proposals and endorsed by the Contracting Authority. These criteria may relate to the following:
 - a. The qualifications, experience, reliability and professional and managerial competence of the provider and of the personnel to be involved in providing the services;
 - b. The technical approach and methodology of the proposal in relation to the Terms of Reference provided in the request for proposals;

- c. The qualifications of the key experts indicated in the Request for Proposals;
- d. The extent of participation by experts having citizenship of an ECOWAS country;
- e. The training program and transfer of knowledge;
- f. The financial proposal, including any ancillary or related costs.

Article 49. Selection Process

1. The opening of the technical proposals shall be public and shall take place immediately after the deadline for proposals submission.
2. The opening of the financial proposals shall be public and only qualified firms whose proposals passed the technical evaluation are invited to be present if they chose to do so.
3. The contract shall be negotiated with the selected firm. Negotiations shall not be simultaneously carried on with several firms. Negotiations shall include discussions of the organization and timing of intervention of the firm, procuring entity's inputs, but shall not alter substantially, the original terms of reference or the terms of the contract. Where price is a selection criterion the unit price proposed by the consultant shall not be negotiated.
4. When the price is a selection criterion, the overall price proposed by the consultant for lump sum contracts is not subject to negotiation. Regarding contracts paid for by the time based, the unit price is not subject to negotiation.
5. Within five (5) calendar days following the end of negotiations, the other firms that have submitted a proposal are informed of the result of selection.

Chapter VIII - Quality and Cost-based Selection

Article 50. Quality and Cost-based Selection (QCBS)

This selection method is the default method for intellectual services. It is a competitive process among Shortlisted consulting firms under which the selection of the successful firm takes into account the quality of the proposal and the cost of the services. The requirements of this method are inter alia:

- i) The request for proposals shall specify the minimum score for the technical proposals;
- ii) The relative weight to be given to the quality and cost depends on the nature of the assignment and must be indicated in the request for proposal;
- iii) Among the responsive proposals, the one with the highest combined (quality and cost) score is considered the most advantageous proposal.

Chapter IX - Other selection methods for Consultant Services

Article 51. Fixed Budget-based Selection (FBS):

Like QCBS, FBS is a competitive process among Shortlisted consulting firms under which the selection of the successful firm takes into account the quality of the proposal and the cost of the service. The requirements of this method are inter alia:

- i) The cost of services is specified as a fixed budget that shall not be exceeded as indicated in the request for proposal;

- ii) The budget and the minimum score for the technical proposals are specified in the request for proposal;
- iii) The proposal with the highest technical score that meets the fixed budget requirements is considered the most advantageous proposal.

Article 52. Least Cost-based Selection (LCS):

Similar to QCBS, LCS is a competitive process among Shortlisted consulting firms under which the selection of the successful firm takes into account the quality of the Proposal and the cost of the services.

- i) LCS is generally appropriate for assignments of a standard or routine nature (such as engineering designs of non-complex works and audit missions), for which well-established practices and standards exist;
- ii) The request for proposals specifies the minimum score for the technical proposals;
- iii) Among the proposals that score higher or equal than the minimum technical score the lowest evaluated cost is considered the most advantageous proposal.

Article 53. Quality-based Selection (QBS):

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

Article 54. Consultant's Qualification-based Selection (CQS)

- (i) It is appropriated for small assignments or Emergency Situations in which preparing and evaluating competitive proposals is not justified and can be used only for small contracts;
- (ii) The Contracting Authority shall request expressions of interest (REOI), by providing the Terms of Reference attached to the request. At least three qualified firms shall be requested to provide information about their relevant experience and qualifications;
- (iii) From the firms that have submitted an EoI, the Contracting Authority selects the firm with the best qualifications and relevant experience and invites it to submit its technical and financial Proposals for negotiations. The price is negotiable in this case;
- (iv) The publication of a notice of expression of interest is not mandatory.

Article 55. Special Arrangements

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

Article 56. Selection of Individual Consultants

1. Individual Consultants may be contracted where:
 - a. a team of experts is not required;
 - b. no additional home office professional support is required; and
 - c. the experience and qualifications of the individual are of paramount requirement.
2. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it is advisable to employ a firm. When qualified individual Consultants are unavailable or cannot sign a contract directly with a Contracting Authority because of a prior agreement with a firm, the WAPP may invite firms to provide qualified individual Consultants for the assignment. In all cases, individual Consultants selected to be employed by the WAPP shall be the most experienced and best qualified among the candidates and shall be fully capable of carrying out the assignment. The evaluation shall be based on the relevant qualifications and experience of the individual Consultant.
3. The Contracting Authority shall prepare Terms of Reference for the required services prior to advertisement of the request of expression of interest and/or request for proposals.
 - (i) Shortlisting of at least three consultants shall be based on qualification following the review and comparison of CV;
 - (ii) The final selection may be supported by oral interviews;
 - (iii) The Contracting Authority may call upon external assessors to participate in the selection.
4. The Contracting Authority may decide to advertise the opportunity in line with Annex 2 of this Code.
5. Advertisement shall be subject to local, regional or international publication, according to thresholds specified in Annex 1 to this Code or
6. Individual Consultants are selected from those that expressed interest in response to a REOI. Contract negotiation is done with the most experienced and qualified consultant for the mission.
7. Advertisement through REOIs is encouraged, particularly when :
 - i. the Contracting Authority does not have knowledge of experienced and qualified individuals;
 - ii. the Contracting Authority is not informed about their availability;
 - iii. the services are complex;
8. there is potential benefit from wider advertising. Framework Agreements and Competitive Dialogue may be used for the procurement of individual consultants.

Article 57. Direct Selection

1. Concerning intellectual services, the Contracting Authority may only use direct procurement in the following cases:
 - (i) As part of an intervention following a disaster or for consultancy services immediately after an emergency or for special security reasons;

- (ii) When a company is the only one with the requisite qualifications or experience needed for the particular assignment or sole source (holder of an exclusivity);
 - (iii) For tasks that represent a natural continuation of previous work carried out by a Consultant within the last 12 months, where continuity in the technical approach, experience acquired, and continued professional liability of the same Consultant may make continuation with the initial Consultant preferable to a new competition, if performance has been satisfactory in the previous assignment(s) and the initial contract allows such extension.
2. Direct contracting may only be used when service providers accept to be subjected to price verification during the execution of the contract.

Chapter X - Special Selection Arrangements

Article 58. Program contracting

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.

Article 59. Force Account

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

Article 60. Competitive Dialogue

1. Competitive Dialogue is an interactive, multistage selection arrangement that allows for dynamic engagement with Proposers. The Contracting Authority shall justify the use of Competitive Dialogue in the Annual Procurement Plan. It may only be used for complex or innovative procurement. Competitive Dialogue may be appropriate:

- a. where a diversity of solutions to satisfy the requirements may be possible, and where the detailed technical and commercial arrangements required to support those solutions require discussion and development between the parties; and
 - b. due to the nature and complexity of the procurement, the Contracting Authority is not objectively able to adequately define the technical or performance specifications and scope to satisfy its requirements and/or fully specify the legal and/or financial arrangements of the procurement.
2. In Competitive Dialogue, the Contracting Authority enters into Dialogue with Initially Selected firms, with the aim of better identifying and defining the means best suited to satisfy the requirements before inviting the firms to submit their final Proposals.
 3. Competitive Dialogue can be used for the procurement of Goods, Works, Intellectual and Non-intellectual Services.

Article 61. Competitive Dialogue Safeguards

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

Article 62. Deployment under Emergency Situations

1. Where the WAPP faces a disaster and/or where lives of its agents and / or its assets are in danger, such situations would require WAPP to immediately perform rapid deployment of life supporting goods, services and works to ensure timely acquisition and delivery of requirements.
2. Contracting methods that may be used are emergency acquisition procedures like direct contracting, framework contracts already in place.
3. The Contracting Authority is required to submit to the Chairman of WAPP Executive Board a report on all acquisitions effected under in the context of this emergency. The report must be presented within three months from the end of emergency situation duly noted by the Chairman of the Executive Board or his delegate.

Chapter XI - Electronic Procurement

Article 63. Electronic Procurement

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

- i. This extends to the entire supply chain, including advertisements, communications and document exchanges among bidders/consultants and other stakeholders of WAPP;
- ii. Access to the system shall be in accordance with the provisions in the Procurement Manual;
- iii. Data and documents sent or notified through such a system:

- a. shall be considered as equivalent to a paper document,
 - b. shall be admissible as evidence in legal proceedings,
 - c. shall be deemed original and
 - d. shall enjoy legal presumption of its authenticity and integrity.
- iv. The electronic signatures shall have the equivalent legal effect of handwritten signatures. Signature technologies acceptable to WAPP are specified and regularly updated in the procurement manual;
 - v. The Procurement Manual provides details and remedies under technology failure causing delays and/or errors in electronic procurement submissions;
 - vi. The extent of use of electronic exchange systems and conditions shall be specified in the notices for bids, call for proposals, request of quotes or any other public procurement procedure.

Chapter XII - Bidding Documents and Bid Security

Article 64. List of Bidding Documents

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

Article 65. Availability of Bidding Documents

The Contracting Authority shall provide bidding documents, immediately after first publication of the bid notice to all suppliers, contractors or service providers who request it. If required, the candidate pays the non-refundable fee, and a receipt shall be issued.

Article 66. Bid Security

1. The Procurement Officer may include in the bidding documents a condition that bids must be accompanied by a bid security issued by a reputable bank or a non-bank financial institution, located in an ECOWAS Member State or having a bank or a corresponding institution there. This guarantee is:
 - a. mandatory for procurement above 50,000 USD.
 - b. not required for the contracting of intellectual services.
2. Bidding documents shall specify the amount of the bid security.
 - a. The amount of such security shall be calculated on the basis of a percentage between one (1) and two (2) per cent of the contract cost estimate and expressed in absolute figures;
 - b. The bid security shall remain valid for 28 days following the expiry of the bid validity.
3. Bid security may be forfeited if a bidder withdraws his/her bid within the validity period or, in the case of a successful bidder, if the bidder rejects the correction of errors in his/her bid, fails to sign the contract or to furnish performance security, if so required.

Article 67. Return of Bid Security

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

- a. The expiry of the bid security;

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

Chapter XIII - Evaluation process

Article 68. General provisions of evaluation process

1. The Technical Evaluation Committee shall evaluate according to the provisions of this Code and the Procurement Manual within a maximum of thirty (30) calendar days starting from the date of the opening of the bids.
2. The Technical Evaluation Committee shall ensure compliance with the provisions of this Code. The deliberations shall be treated as absolutely confidential.
3. The Evaluation Entity may ask bidders in writing for clarifications on their bids/proposals in order to assist in the evaluation of bids/proposals. Clarifications from bidders/consultants shall be in line with Article 17 on Confidentiality and Communication. Clarifications from bidders/consultants cannot materially change the content of the bid/proposal.
4. No change in the substance of the bid/proposal, including changes in price, and changes aimed at making an unresponsive bid/proposal responsive shall be sought, offered or permitted.

Article 69. Conformity to Requirements

1. The Technical Evaluation Committee shall retain any bid/proposal that conforms to the requirements set forth in the bidding documents/Request for Proposal.
2. For goods, works and services, bidders may also submit an alternative bid only where such option has been expressly authorized in the bidding document.

Article 70. Evaluation Criteria and Report

1. The Technical Evaluation Committee shall evaluate and compare substantially responsive bids in order to achieve best Value for Money, in accordance with the provisions of this Code.
2. A substantially responsive bid is that without major deviations from the criteria.
3. The evaluation criteria for goods, works and services shall be objective and quantifiable, and shall be expressed in monetary terms.
4. In the case of intellectual services, evaluation criteria shall be given relative weights specified in the Request for Proposals.
5. The Technical Evaluation Committee shall prepare a detailed report on the evaluation and comparison of bids in conformity with the formats available in the Procurement Manual, including at least:
 - a. the names of the bidders/consultants;
 - b. the specific reasons on which its recommendations for the award of each contract are based;
 - c. the contract amount, the implementation period and specific remarks.
6. All bidders/consultants shall be notified of the outcome of the evaluation process by publication on the WAPP Websites within the related deadline.

Article 71. Preference

1. Citizens of ECOWAS and legal persons incorporated in ECOWAS Member States may enjoy a preference in public contracting proceedings.
 - a. Any preference shall be expressed as a percentage of the price of the bid and shall not exceed ten (10) per cent of the offered price for works and fifteen (15) per cent for goods and services including consultancy services;
 - b. No preference shall be invoked if it is not so provided in the bidding documents.
2. Citizens of ECOWAS and legal persons incorporated in ECOWAS Member States may be granted a margin of preference as provided for in paragraph 1 above only if they meet all the following applicable criteria:
 - a. for natural persons, if they are ECOWAS member State citizens and tax resident in one of these States; and
 - b. for legal persons;
 - i) if they are incorporated or registered in an ECOWAS member State and are tax resident in that State;
 - ii) if, at least fifty-one (51) per cent of the authorized capital of the company is owned by ECOWAS member State nationals.
 - c. for both natural and legal persons if:
 - i) for contractors, at least fifty (50) per cent of Community inputs are being used and seventy (70) per cent of their technical executive and staff on the construction site are ECOWAS member State nationals;
 - ii) for suppliers, at least fifty (50) per cent of the total value of the goods are made or manufactured in an ECOWAS member State;
 - iii) for service providers (including consultancy services), at least fifty (50) per cent of their services are provided by ECOWAS member State nationals;
 - iv) if they do not subcontract more than twenty (20) per cent of the contract, excluding advances, to non-ECOWAS member State suppliers, contractors or service providers;
 - v) if there is no arrangement whereby more than thirty (30) per cent of the net profits or other tangible benefits of the ECOWAS member State company will accrue or be paid to non-ECOWAS member State nationals or to entities which would not be eligible under this Article.
 - d. in case of a partnership or joint venture agreements with a non-ECOWAS member State partner, the preference shall be granted either:
 - i) to the bidder where the minimum domestic content is not, in total, less than the one applicable in the case of a single contractor, and is provided by a national of an ECOWAS State;
 - ii) if the aggregate domestic content is in compliance with paragraphs b and c of the present Article.
3. To benefit from preferences, potential service providers/bidders/, must always provide substantial documental proof when introducing their bid/proposal.
4. Preferences cannot be granted based on a simple declaration on honor.

Article 72. Abnormally low bids/proposals

1. If, for a given contract, bids/proposals appear to be abnormally low, the Contracting Authority shall, before rejecting such bids/proposals on that ground alone, request in writing details of the constituent elements of the bids/proposals which it considers relevant and shall verify those constituent elements, taking into account the written explanations received.
2. The Contracting Authority may, in particular, take into consideration explanations relating to:
 - a. the economics of the manufacturing process, of the provision of services or of the construction method;
 - b. the technical solutions chosen or the exceptionally favorable conditions available to the bidder/consultant;
 - c. the originality of the bid/proposal and the solutions proposed.
3. Where the Contracting Authority establishes that a bid/proposal is abnormally low as a result of State aid provided, it may reject the bid/proposal on that ground alone.

Article 73. Unsuccessful/ Cancellation of Contracting Process

1. In all cases, the Contracting Authority may reject all bids/proposals not in conformity with the stipulated requirements, declare the contracting process unsuccessful and/or cancel the contracting process.
2. An invitation for competition shall be declared unsuccessful in the following cases:
 - a. where no bid/proposal is received by the closing deadline;
 - b. where no bid/proposal is deemed acceptable after examination and evaluation;
 - c. where all the bids/proposals are for an amount substantially higher than the budget for the contract and the bidding document has no provision for reducing the contract quantities to meet budget constraints. The scope for intellectual services assignments can be reviewed but without substantial change to the Terms of Reference.
 - d. However, in the latter case, before declaring a bidding process unsuccessful, the Procurement Committee can:
 - i. either seek the approval of the Contracting Authority to negotiate a reduced scope of the contract with the most responsive bidder/consultant;
 - ii. seek additional funds from the Contracting Authority.
3. For goods, works and services, the bidders shall be informed accordingly, and their bid security returned to them within seven (7) calendar days of cancellation.
4. A new invitation to bid/ request for proposals may be published on the basis of a revised requirement.

Chapter XIV - Award and Entry into Force of the Contract

Article 74. Notification of Award

1. Within seven (7) calendar days of clearance of the evaluation report by the Procurement Committee and the approval by the Contracting Authority the provisional contract award is notified to the successful bidder/consultant.



2. Upon notification of the provisional award for goods, works and services, bid securities shall be immediately returned to unsuccessful bidders. For the successful bidder, the bid security shall be returned upon submission of the Performance Security/Bond if applicable.

Article 75. Information to Bidders/Consultants

1. The Contracting Authority shall inform all unsuccessful bidders/consultants of the result of selection.
2. In case of a specific written request from a bidder/consultant, the Contracting Authority shall, within seven (7) calendar days debrief the requester without disclosing information deemed confidential.

Article 76. Standstill Period

1. The Contracting Authority shall sign the contract with the successful bidder(s)/consultants immediately after a standstill period of fifteen (15) calendar days from the date of notification of provisional award.
2. The standstill period is not a requirement in case of negotiated or direct contracting or if only one bid/proposal was submitted after competition.
3. The standstill period may be extended by the Contracting Authority when deemed necessary.

Article 77. Conclusion, Signature and Entry into Force of the Contract

1. Contracts shall be signed between the Contracting Authority and the successful bidder/consultant or his/her duly authorised representative or in the case of consortia, their duly authorised agent within the time frame prescribed under Article 76.
2. The Procurement Unit shall work out the details of the contract in line with the bidding documents or request for proposals or quotations.
3. State-Owned Enterprises (SOE) shall be eligible to sign with WAPP contracts if administratively and legally independent and operating under commercial law.
4. The contract shall enter into force either upon signature by both parties or on the date provided in the signed contract. The final contract award shall be published on WAPP website after signature by both parties, specifying the name and address of the successful bidder/consultant that has been awarded the contract and the contract price.
5. Contracts which are not approved and signed in accordance with the provisions of this chapter shall be null and void.

PART III: CONTRACT EXECUTION

Chapter XV - General Provisions of contract execution

Article 78. Form of Contracts

1. The contract consists of all the documents which are referred to in the paragraph hereinafter. The contract must be duly endorsed and signed in accordance with the provisions of Article 76 and Article 77, prior to the commencement of execution of the contract.
2. Contracts shall include the following essential information amongst others:
 - a. the names, designation and addresses of the contracting parties;

- b. the scope of supply, works or services;
- c. reference to the Articles of this Code under which the contract is concluded, and the listing by order of priority of contract documents as prescribed in the bidding documents;
- d. the sources of funds and language of the contract;
- e. the contract price with its terms of payment;
- f. the provisions for payment in foreign currency with respect to the inputs from non-domestic sources;
- g. the period of execution of the works and services or the date of delivery of the goods;
- h. the conditions of acceptance or delivery of the goods, works or services;
- i. the conditions of payment and, where the contract value shall be revised, the terms of the review and the conditions for its application;
- j. the amount of performance guarantee required;
- k. the requisite insurance cover to be provided by the successful bidder;
- l. where necessary the regulatory provisions governing international transit and transport operations;
- m. the provisions governing contract termination;
- n. the date of contract notification;
- o. the bank account where payments shall be made;
- p. the applicable law and competent jurisdiction in case of conflict arising out of the execution of the contract;
- q. Provisions and penalties for payment and implementation delays;
- r. A clause on Force Majeure, meaning any unforeseeable, irresistible and insurmountable act of nature, any act of war, invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, provided that such acts arise from causes beyond the control and without the fault or negligence of the parties.

Article 79. Types of Contract

Contracts can be classified into different categories according to the provisions governing the modalities for their execution as contained in the Procurement Manual.

1. **Lump-Sum Contracts.** Under a lump-sum contract, the contractor/Consultant agrees to perform the scope of services for a fixed contract amount. Payment percentages or amounts are linked to the completion of contractual milestones or determined as a percentage of the value of the work to be done. Lump-sum contracts may be appropriate when:
 - a. the scope of the contract is clearly and accurately specified and is linked to milestone payments at the time of contract signature; and
 - b. the contractor is responsible for delivering the completed Works, Plant, or pre-built information technology solutions, as in turnkey contracts, and can be paid on a lump-sum basis per contractual milestones.
2. **Contract based on Unit Prices.** This type of contract is based on estimated quantities of items and contractual unit prices for each of these items and is paid on the actual quantities and contractual unit prices.

3. **Mixed remuneration contracts.** This type of contract combines the payment methods of the fixed-rate contract and those of the contract based on unit prices for specific portions of the contract. This type of contract is suitable when some quantities to be executed are difficult to determine and will be only known during execution.
4. **Time-based Contracts.** Under time-based contracts, the payment is made on the basis of agreed rates and time spent, plus reasonable incurred reimbursable expenses.
5. **Reimbursable-cost Contracts.** Under reimbursable-cost contracts, payments cover all actual costs, plus an agreed fee to cover overhead and profit.

Article 80. Framework or Purchase Order Contract

1. A Framework or Purchase order contract is a contract with which the WAPP Secretariat negotiates contracts for its yearly requirement, the exact quantity of which cannot be determined at the beginning of the year or which exceeds its storage capacity.
2. These contracts shall indicate the minimum and maximum limits of the services or goods to be provided, expressed in terms of quantity or value.
3. The contracts shall be concluded for a period not exceeding one year. However, they may contain a clause on an optional renewal for a maximum duration of one year, with each party having the right to give notice of renunciation of the said clause.
4. Such services or goods referred to in paragraph (2) of this Article, shall be delivered on the basis of purchase orders which shall indicate the quantity to be supplied and the place and date of delivery. Unit prices are binding.
5. Payment for Framework or Purchase order contracts is often done in batches, particularly in cases where requirements are aggregated to accord WAPP the advantage of economies of scale.

Article 81. Goodwill Contracts

1. Goodwill contracts are contracts under which the WAPP Secretariat undertakes to award to contractors all orders in respect of a particular category of services, for a fixed period not exceeding two years.
2. The bidding documents shall indicate the quantities normally required over a similar period and the approximate schedule of delivery, thereby allowing candidates the opportunity to calculate unit costs on the basis of a manufacturing schedule to be determined by them. Thereafter, the same procedure shall be followed as in the case of Framework or Purchase order contracts.
3. The services or goods shall be delivered on the basis of purchase orders which shall indicate the quantity to be supplied and the place and date of delivery. Unit prices are binding.



Article 82. Contract Price

1. The contract price shall cover all the expenses resulting directly and indirectly from the execution of the works, supply of goods or provision of services.
2. The price consists of either a unit price applied to the quantities, or is time-based in case of intellectual services, actually undertaken, or a lump sum, where the total value of the contract is determined in advance, or a combination of both, or calculated on a fixed cost-plus fee basis. The value of the different elements which are used to determine the amount payable shall be indicated in the contract.
3. The contracts are concluded on the basis of a fixed price. Contracts may exceptionally be concluded on the basis of a revisable price if provided in the tender document. Contracts based on provisional prices shall specify the accounting obligations of the suppliers or the contractors as well as the conditions governing the determination of the final price.
4. Contract prices can be fixed or adjustable in accordance with the provisions in the contract.

Article 83. General and Special Conditions of Contract

1. Conditions of Contract govern the execution of the contract and include General and Special Provisions.
 - a. General Conditions of Contract (GCC) include administrative provisions applicable to a category of contracts.
 - b. Special Conditions of Contract (SCC) include administrative provisions specific to each contract. SCC identify the General Conditions of Contract that are supplemented or amended.
2. General Conditions of Contract shall include a provision requiring that the supplier, contractor or service provider and their sub-contractors comply with legislative provisions governing the environment and workers' protection.
3. General Conditions of Contract will also take into account, where necessary, the WAPP Policy on Equity and Gender.

Article 84. Delivery and Acceptance

Prior to acceptance, Contracting Authority shall ensure that appropriate mechanisms and procedures in the Procurement Manual are applied to ensure that goods, works and services delivered are in accordance with the terms of the technical specifications in the contract.

Article 85. Liquidated damages

1. Where a contractor, service provider, supplier, party to the contract, fails to complete the works or services or deliver the goods within the agreed time for completion or extension period, it may be liable for the payment of liquidated damages subject in the form of late payment penalties to a maximum amount defined in the contract not exceeding 10% of the contract amount.
2. When the liquidated damages exceed 10% of the contract amount, the Contracting Authority shall take actions to terminate the contract in line with Article 103.
3. The provisions of Article 103 shall be applied without prior notice and the damages shall initially be deducted from the amounts owed to the supplier, contractor or service provider and subsequently from the securities. Where the balance is insufficient to offset the amount of damages, a payment order shall be issued to cover the outstanding amount and subsequently, the contract is terminated for non-performance.

4. The supplier, contractor or service provider shall be compensated according to the provisions of the contract documents, for any loss or damages they may suffer in the execution of the contract as a result of default by the Contracting Authority.

Chapter XVI - Special types of contractual arrangements

Article 86. Framework Agreement Arrangements

1. Framework agreements are a procurement selection method to enter into preliminary agreements, the purpose of which is to establish the terms, particularly relating to the duration, subject, price, maximum contract value, implementation rules and the quantities envisaged governing 'specific contracts' which may be awarded during a given period. The framework agreement is a contractual arrangement and not a specific contract unlike Purchase order contracts and Goodwill contracts. The framework agreement does not therefore have any fixed prices.
2. In the case of having more than one supplier in the framework agreement, there shall be a simplified competition among the suppliers.
3. The duration of such framework agreements per typology shall be defined in the Procurement Manual and, in any case, may not exceed four (4) years.
4. Framework agreements shall be governed by the provisions of this Code concerning the award procedure, including advertising.
5. Framework Agreements may be used for the procurement of Goods, Works, Intellectual and Non-intellectual Services as follows:
 - a. Framework agreement for supplies is an agreement on the basis of which the Contracting Authority negotiates contracts for its current yearly requirement, the exact quantity of which cannot be determined at the beginning of the year or which exceeds its storage capacity. In addition:

The bidding document shall be drafted in manner that would allow the supplier to determine the unit price for each item;

 - ii) The 'specific contract' shall be concluded for a period not exceeding one year;
 - iii) The 'specific contract' mentioned above may take the form of Purchase Order indicating the contract of reference, the quantity and the date and place of delivery.
 - b. Framework agreements for works are agreements under which the Contracting Authority undertakes to award to one or more contractors orders in respect of a particular category of works, for a fixed period not exceeding two years, without having to specify the quantities and value of the orders in the agreement document. In addition:
 - i) The bidding documents shall indicate a list of works required over a similar period and the approximate schedule of delivery, thereby allowing contractors the opportunity to calculate unit costs on the basis of a work schedule to be determined by them;
 - ii) The 'specific contract' mentioned above may take the form of a Service Order indicating the contract of reference, the place and the time schedule for execution of the works;
 - c. Framework agreements for non-consulting services are agreements under which the Contracting Authority undertakes to award to a service provider all orders in respect of a particular category of service, for a fixed period not exceeding two years, without having to specify the quantities and value of the orders in the agreement document. In addition:

- i) The bidding documents shall indicate the quantities normally required over a similar period and the approximate schedule of delivery, thereby allowing service providers the opportunity to calculate unit costs on the basis of a manufacturing schedule to be determined by them;
 - ii) The 'specific contract' mentioned above may take the form of a Service Order indicating the contract of reference, the place and the time schedule of delivery of the services.
 - d. Framework agreement for Intellectual services is an agreement used to select a panel of consulting firms (ideally 4 for each topic) able to satisfy the necessity of recurrent Intellectual services of the Contracting Authority about a specific subject (as included but not limited to Organisation of Conferences, International Trades and Standards, Information technology, Energy management and distribution, Environment) and the like. In addition:
 - i) The bidding document shall be designed to rank and select the firms based on their financial standing, define technical capacity and previous experience in providing and quickly mobilising the experts and define the unitary price per working day of the experts eventually provided;
 - ii) The agreement shall have the form of a commitment by the Contracting Authority to consult such firm when the need arises for the provision of service. The value of the agreement shall be zero and the validity shall be for a period of four years;
 - iii) The Contracting Authority shall draft the specific Terms of Reference and consult the selected firms giving them twenty-one (21) calendar days to submit their proposal;
 - iv) After selecting the experts based on their Curricula Vitae a 'specific contract' shall be signed for the specific action. Other costs included but not limited to travels, per diem, cost of production of documents, distribution and translations shall be estimated by the Contracting Authority and treated as Incidental in the agreement.
6. The WAPP will use the framework Agreement for the procurement of airline tickets.

Article 87. Performance-based Contracts

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

Chapter XVII - Contract Securities

Article 88. Form of Securities

- 1. Securities are submitted in the form of an irrevocable bank / insurance guarantee, or a joint and several guarantees, payable on first demand issued by a reputable bank or a non-bank financial institution, located in an ECOWAS Member State or having a correspondent bank. A security issued by a reputable foreign bank located outside the ECOWAS Member State territory shall not be rejected by the WAPP Secretariat if it is compliant to the requirements set forth in the bidding documents.

2. The securities provided for under this Chapter may be replaced by joint and several guarantors whereby a third party undertakes to pay to the procuring entity any sums owed by the supplier, contractor or service provider in respect of the contract up to the amount posted as guarantee.
3. The joint and several guarantors shall be chosen from approved reputable banks or a non-bank financial institution, located in an ECOWAS Member States or having a correspondent bank.
4. The joint and several guarantees shall be in a format specified in the tender document. The form shall contain an undertaking to pay on first demand, any amount owed by the contractor up to the amount guaranteed.

Article 89. Performance Securities

1. Contractors, suppliers or service providers must provide a performance security to guarantee the proper execution of the contract and against reimbursement of any amount owed by them in connection with the contract. Consultants are not subject to this requirement.
2. The Contracting Authority determines the amount of the security which shall specifically be provided for in the special conditions of the contract, depending on the contract value and the risk. Such amount shall not exceed ten (10) per cent of the contract price, subject to any further increase or decrease that may occur during contract execution.
3. The Performance Security shall be provided within twenty (20) calendar days after notification of the contract and, in any event, before any disbursement can be made.
4. The performance security shall be returned within thirty (30) calendar days after the expiry of the warranty period or, if such period is not stipulated in the contract, immediately following the acceptance of the goods, works or services, according to the modalities determined in the conditions of contract.
5. The security may be split into two securities of equal value: one performance security and retention security.

Article 90. Retention guarantee

1. Where the contract specifies a warranty period, a portion of each payment shall be retained by the Contracting Authority as retention guarantee in order to secure the full compliance with the contract obligations. The sum retained by the Contracting Authority as determined by the Contracting Authority, which may be replaced by a joint and several guarantees, shall not exceed ten (10) percent of the total amount of the payments and shall be specified in the conditions of contract depending on the contract value and risks. In any case, the retention guarantee shall be entirely returned at the expiry of the guarantee period. This period is the period during which the work is accepted, and the facility utilized during which any defects discovered shall be rectified by the contractor at no liability to the Procuring Entity. The duration of the guarantee period shall be provided in the contract.
2. At least, half of the retention guarantee shall be returned at the time of provisional acceptance of the works, supplies, or services by the procuring entity. The duration of the guarantee period shall be indicated in the technical specifications in accordance with the nature of the contract.

Article 91. Security for the repayment of the advance payments.

Where the contract provides for advance payment, the supplier, contractor or service provider, shall provide a security for the repayment of the advance payments.

Article 92. Other Securities.

1. If the contractor receives advance payments on materials or goods, the ownership of these materials is transferred to the Contracting Authority. The contractor shall be legally responsible for the safekeeping of these materials
2. The contract shall determine, where necessary, any guarantees other than those stipulated above which may, under special circumstances, be required of the supplier or contractor to ensure the discharge of his/her obligations. The contract shall define the rights of the Contracting Authority in relation to such guarantees.

Chapter XIII - Modifications during the Execution of the Contract

Article 93. Modification in the Contract Quantities or Price

1. Any variations to the initial contract shall be embodied in an amendment to the contract except in the cases specified in paragraphs (a), (c) and (e) of this Article.
 - a. Variations in the execution of contracts for works, supplies or services not exceeding ten percent (10%) of the total value of the contract can be requested by the contractor, verified by the supervisor and approved by the Contracting Authority;
 - b. Where the variation in the quantity of the works, supplies or services exceeds 10 percent but is less than or equal to twenty-five percent (25%) of the basic contract value, such variation shall be the subject of an amendment to the contract;
 - c. Where the totality of the variation in the quantity of the works, supplies or services exceeds twenty-five percent (25%) of the contract value calculated on the basis of initial costing, a new procurement procedure should be launched for additional services;
 - d. The total amount granted by virtue of amendments in respect of a single contract shall not exceed twenty-five percent (25%) of the initial contract value;
 - e. Price revisions in compliance with contractual terms shall not justify the introduction of amendments to the contract.
2. Additional clauses shall be drawn up and approved under same terms as the initial contract.
3. No additional clauses shall be added after delivery of the works, goods and services.

Chapter XIX - Payments in Public Contracts

Article 94. Advance Payments Progress and Final Payments

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

Article 95. Advance Payments

1. Advance payments and their terms of payment must be specified in the bidding documents or request for proposals. For intellectual services, the guarantee is not required if the advance payment is limited to a maximum of ten (10) per cent of the total contract price for contracts below 300,000 US Dollars.

2. Advance payments are reimbursed according to a fixed rate specified in the contract, by deduction from the sums due to the supplier, contractor or service provider, and in any event before the end of the contract. In the case of termination of the contract, the Contracting Authority has the right, without prejudice to other outstanding payments, to demand immediate refund of outstanding advances.
3. The total amount paid as advance payments under paragraph 2 of this Article must not exceed thirty (30) per cent of the initial value defined as the basic contract cost excluding all amendments or increases resulting from a price review.
4. In exceptional circumstances where the Contracting Authority considers a 100% advance payment necessary, this payment must be fully covered by an advance payment guarantee.

Article 96. Progress Payments

1. Payments for contracts are made through progress payments upon submission of invoices, valuations approved by the supervisor, except for contracts of less than three months duration, in which case progress payments are optional.
2. The amount of progress payments shall not exceed the value of the goods, works, or service contracts and intellectual services for which they are made, less repayment of the advance payments, if any, and subject to deduction of the amount retained as guarantee, under the terms of Article 95.
3. When progress payments are made against predetermined execution phases and not against physical completion, the contract may determine, in the form of a percentage of the initial price, the amount of each progress payment.
4. The Special Conditions of Contract specify for each type of contract the periods or the technical phases of contract execution at which progress payments shall be made.
5. A supplier, contractor or service provider shall not use the supplies for which the advance or progress payments have been made for any works or services other than those specified in the contract. Breach of this provision may lead to termination of the contract by the procuring entity.
6. In the event of disagreement as to the amount to be disbursed as progress payment, the amount shall be calculated on the temporary basis of the payment approved by the Contracting Authority for the execution of the contract. There shall be no interest on progress payments.

Article 97. Modalities of Payment

1. Invoices for payment, when received, shall only be accepted if accompanied by a written certificate of acceptance from the User Department to whom the goods, works or services were delivered.
2. The Contracting Authority shall arrange for payments within a period not exceeding forty-five (45) calendar days starting from the date of the submission of an invoice as per paragraph 1 above.
3. Payment shall be affected by means of cheque or bank transfer in accordance with the provision of the Financial Regulations.

Article 98. Delayed Payment

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

Article 99. Final Payment

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

Article 100. Direct Payments to Sub-Contractors

1. The provisions set forth in Articles 94 to 96 are applicable to sub-contractors, agreed upon in writing prior to or after the signature of the contract whose conditions of payments have also been approved, provided the sub-contractors are entitled to direct payments.
2. Advances shall be payable, at their demand, directly to sub-contractors on a pro rata basis in accordance with their share of the contracted work and subject to the contractor having put up the guarantee in cases where the contract makes provisions for payment of a surety to guarantee such advance.
3. Payments to the sub-contractor are made upon submission of documentation certified by the contractor, supplier or service provider. As soon as these documents are received, the procuring entity gives notice to the sub-contractor of the payments which have been approved by the contractor, supplier or service provider.
4. If the contractor, supplier or service provider does not approve the sub-contractor's payment request, the latter may appeal to the Procuring Entity, who notifies the contractor, supplier or service provider accordingly. The latter must promptly justify why it did not certify the sub-contractor's performance, failing which the Contracting Authority, will arrange for direct payment to the sub-contractor of the amount due.

Chapter XX - Pledging of the Contract

Article 101. Modalities for Pledging of the Contract

Where a supplier, contractor or service provider wishes to pledge its contract, the Contracting Authority delivers to the latter a certified true copy of the original of the contract provided with reference to "single copy delivered in view of pledging the contract" bearing a signature of the concerned authority in due form as on the original.

The pledge is the contract by which the holder of a contract gives to his creditor (generally a bank), for financing, the single copy of the contract issued to him by the Contracting Authority; the creditor notifies the pledge to the Contracting Authority, which pays him directly on presentation of the single copy, the amounts due for the performance of the contract in accordance with the terms and conditions of the contract.

The holder of the contract pledges to the credit institution the claim it holds against the Contracting Authority. The creditor perceives the payments due to the contract holder.



Chapter XXI - Contract Management

Article 102. Inspection, Monitoring and Auditing of Public Contracts

1. All contracts concluded by the WAPP shall be subject to technical inspections, performance monitoring, and audits in accordance with Article 18.
2. The User Department in collaboration with the Procurement Unit shall monitor and report to the Contracting Authority on the execution of the contract.

Chapter XXII - Termination and Suspension of Contracts

Article 103. Termination

1. A contract may be terminated according to the conditions stipulated below:
 - a. By the Contracting Authority in the following cases:
 - (i) the supplier, contractor or service provider's failure to perform its obligations;
 - (ii) due to the liquidation of the company or the interdiction by a court decision to pursue the activities, the bankruptcy of the supplier, contractor or service provider, unless the Contracting Authority accepts an offer made by its creditors;
 - (iii) death, civil or physical incapacitation of the supplier, contractor or service provider, except where the Contracting Authority agrees that the contract be completed by its heirs or successors or any person designated by a court of law;
 - (iv) for reasons duly justified by the Contracting Authority.
 - b. By the supplier, contractor or service provider,
 - (i) in case of delayed payments, in accordance with the contractual terms, and where such delays contravene the contractual deadlines or are prejudicial to the execution of the contract;
 - (ii) In case of a suspension of the contract decided upon pursuant to Article 104.
2. Any contract may be terminated if its execution becomes impossible due to "force majeure".
3. Except in the case of termination declared pursuant to this Article, the supplier, contractor, service provider or the Consultant is entitled to a termination compensation in the form of a percentage of the remaining part of the contract to be performed. This percentage is determined in the special Conditions of Contract governing each type of procurement.
4. Notwithstanding the reasons for the termination of a contract, the Contracting Authority shall, on the one hand, take an inventory of works or services performed and of supplies received with a view to effecting payment therefore and, on the other, value measures for their conservation. The deduction of the value of current performance from contract value shall be decided by the Contracting Authority who shall inform the contractor, supplier, service provider or Consultant accordingly by registered mail.

Article 104. Suspension

1. The Contracting Authority may suspend a contract under circumstance provided under articles 108, 109 and 112.

2. If for reasons related to a case of force majeure, there are circumstances that prevent temporarily the normal continuation of the contract, the Contracting Authority may suspend the execution of the contract before its term.
3. Where the duration of the suspension exceeds ninety (90) calendar days within the overall execution period of the contract, the supplier, contractor or service provider is entitled to terminate the contract.

PART IV: PROVISIONS RELATED TO ETHICS

Chapter XXIII - Fraud and Corruption

Article 105. Fraud and Corruption

The Funding can be suspended or canceled if corrupt practices of any kind are discovered at any stage of the award process or implementation of the contract and if the Contracting Authority is unable to remedy the situation.

Defines, for the purposes of this provision, the terms set forth below as follows:

1. *Corrupt practice*: is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
2. *Fraudulent practice*: is 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;
3. *Collusive practice*: is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
4. *Coercive practice*: is 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;
5. *Obstructive practice* is:
 - a. deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an 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
 - b. acts intended to materially impede the exercise of the WAPP inspection and audit rights.
6. More specifically, all tender dossiers and contracts for works, supplies and services must include a clause stipulating that tenders will be rejected, or contracts terminated if it emerges that the award or execution of a contract has given rise to fraud or corruption.

Article 106. Conflict of Interest

1. WAPP shall avoid both personal and organizational conflicts of interest.

2. The WAPP' procurement staff is prohibited from establishing and maintaining relationships of self-interest with any suppliers or potential suppliers.
3. WAPP shall avoid situations in which a supplier has interests that may impair either the supplier's objectivity or ability to perform satisfactorily on contracts.
4. The general rule is to strictly avoid any real or apparent conflict of interest in WAPP vendor relationships.
5. Definitions of Conflict of Interest are elaborated in the Procurement Manual.

Article 107. Unfair Competitive Advantage

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

PART V: COMPLAINTS PROCEDURES, SETTLEMENT OF DISPUTES AND SANCTIONS

Chapter XXIV – Contract Award Review

Article 108. Amicable Settlement and Administrative Review

1. Any disagreement between the supplier or contractor and the WAPP Secretariat arising out of the implementation or interpretation of this Code may be settled amicably. The parties shall make every effort to reach amicable settlement of the matter within a maximum of thirty (30) working days.
2. However, any supplier or contractor that claims to have suffered, or that may suffer loss or injury due to a breach of a duty imposed on the WAPP Secretariat by this Code may seek review in accordance with the provisions of Articles 108 to 110 of this Code.
3. The following however shall not be subject to the review provided for under paragraph 1 of this Article:
 - a) the selection of a method of a procurement pursuant to chapters VII and VIII of this Code;
 - b) the choice of a selection procedure pursuant to chapters VII to XII;
 - c) the limitation of procurement proceedings in accordance with Article 71 of this Code on the basis of ECOWAS citizenship;
 - d) a decision by the WAPP Secretariat under Article 73 to reject all bids and cancel the contracting process;
 - e) a refusal by WAPP Secretariat to respond favorably to an expression of interest in participating in the request for proposals proceedings pursuant to Article 48.
4. This protest shall be sent to Secretary General within ten (10) working days following the

publication of the decisions that are being contested. The Secretary General shall with the assistance of the relevant services review the protest.

5. After the submission of a protest, the Secretary General shall notify all competitors in the contracting proceedings to which the protest relates of its substance.

Article 109. Review by the Dispute Resolution Committee

1. If within ten (10) working days of submission of the protest to the Secretary General, the matter remains unresolved under Article 104, the Secretary General shall refer the matter to the Dispute Resolution Committee established under Article 111 of this Code, for decision, and shall inform the contractor and supplier accordingly. The Rules of procedure for the Dispute Resolution Committee shall be as provided for in the Procurement Manual.
2. Within ten (10) working days of the request submission the Dispute Resolution Committee shall issue a written decision, stating the reasons, and, if the complaint is upheld, indicating the corrective measures to be taken. All parties in the review proceedings shall be notified of the decision which shall also be published on the WAPP Website.
3. The Dispute Resolution Committee, unless it dismisses the request, may order the WAPP Secretariat to proceed in a manner conforming to this Code and/or Procurement Manual, suspend, in whole or in part, an unlawful act or decision made by the procuring entity, including the decision to award or conclude a contract. However, the Committee has no jurisdiction for awarding a contract in lieu of the process, or to substitute another bidder to the one chosen by the Procurement Committee.
4. The Dispute Resolution Committee shall, before taking any decision regarding a request for review, notify all parties in the procurement proceedings and shall take into account information and arguments received from such parties and from the procuring entity.
5. The Dispute Resolution Committee may also exercise the same powers over the procurement process in case it receives any substantial information even from a third party to the proceedings, on any irregularity or violation of the provisions of this Code committed during a procurement process.
6. The decision of the Dispute Resolution Committee is final unless further proceedings are instituted as provided for under Article 109 of this Code.

Chapter XXV - Contract Disputes

Article 110. Dispute Resolution

Failing the resolution of the complaint under Articles 104 and 108 of this Code the protest may be settled in the following manner:

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

Chapter XXVI – Entities Responsible for Dispute Resolution and Sanctions in Contracting Proceedings

Article 111. Dispute Resolution Committee

1. Within the framework of the implementation of this Code, the Secretary General shall establish a Dispute Resolution Committee which shall handle bid protests arising out of the execution of the procurement process.
2. The Dispute Resolution Committee conducts inquiries, investigates complaints and allegations of violations of this Code with a view to amicably settling the issues raised.
3. The Dispute Resolution Committee shall adopt procedure spelt out in the Procurement Manual, which shall be fair, transparent and guarantee an independent effective review mechanism.

Article 112. Sanctions Committee

1. Within the framework of the implementation of this code, the Secretary General shall establish a Sanctions Committee which pronounces sanctions, including temporary exclusions, according to the provisions of this Code against any natural person or legal entity in any contracting process, found in violation of any provisions of this Code or the Procurement Manual.
2. Sanctions and exclusions should be determined in an impartial and realistic manner and be proportionate to the gravity of the violation committed.

Article 113. Composition of the Dispute Resolution Committee and of the Sanctions Committee

1. The Dispute Resolution and Sanctions Committees are each composed of three (3) members nominated by the Secretary General; one designated by the Director of the Beneficiary department in the procurement process, the two (2) others shall be designated by the WAPP Secretary General, one of whom shall act as Chairperson of the Committee.
2. One of the persons so proposed by the Secretary General shall be an independent expert whilst the other shall be a WAPP professional staff. Both nominees should not have taken part in the concerned procurement process.

Article 114. Referral to the Competent Authorities

When there is prima facie evidence of a criminal offence on the part of any person, natural or legal, candidate or bidder, the Secretary General shall refer the matter to the competent authorities and inform the WAPP Executive Board.

PART VI: FINAL PROVISIONS

Article 115. Administrative dispositions

The WAPP Executive Board shall issue a Resolution adopting this Tender Code, which shall be published everywhere it is needed.

Article 116. Amendments

The provisions of this Code may be amended by the Governance and Human Resources Committee and approved by the WAPP Executive Board.

Article 117. Transitional Provisions and Entry into force

1. The present Code shall govern the procurement of goods, works and services, as of its coming into effect, when it is approved by the WAPP Executive Board.
2. Upon the coming into effect of this Code, all previous regulations or rules relating to public procurement shall cease to have any effect, power, function, authority or duty in relation to any procurement process of goods, works or services within the WAPP Secretariat.
3. Notwithstanding the above, any procurement proceedings initiated, or contract entered into before the coming into force of this Code shall be subject to the provisions of the previous Code.

Article 118. Language

This Code shall be published in the English and French.



ANNEXES

Annex 1 – Procurement Thresholds

Annex 2 – Advertisement of procurement opportunities

Annex 1 – Procurement and approval Thresholds*

Schedule 1: Goods, Works and non-consulting services

Nº	Estimated value PPM in USD	Procurement method	Entity in charge of procurement	Evaluation Entity	Entity responsible for provisional approval of the evaluation report	Responsible for final approval of the evaluation report
1	≤ 2,500	Request for quotation "simplified" **	Procurement Unit (PU)	Head of Procurement Unit	Chairman of WAPP Procurement Committee (WPC)	DAF
2	>2,501 and ≤ 35,000	Request for quotation	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	WAPP Procurement Committee (WPC)	≤5000 USD: DAF >5000 USD: SG
3	>35,001 and ≤ 100,000	Local Open bidding/regional open bidding/Restricted bidding	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	WAPP Procurement Committee (WPC)	>35,001 and ≤ 100,000 : Secretary General (SG)
4	>100,000	International Open bidding	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	WAPP Procurement Committee (WPC)	≤500 000 USD: SG >500 000 and ≤1 000 000 USD: Finance Committee >1 000 000 USD: Executive Council
5	Any amount except for direct contracting	Direct Contracting	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	WAPP Procurement Committee (WPC)	≤500 000 USD: SG >500 000 and ≤1 000 000 USD: Finance Committee >1 000 000 USD: Executive Council

*The procurement thresholds determine the procurement method (quotation, national bidding, international bidding); the approval threshold indicate the authority for approving the contract award (DAF, SG, Finance Committee and Executive Council). In all cases, the signing of the contract is the responsibility of the Contracting Authority (SG).

Request for quotation "simplified" ** as described in the procurement Manual.

Schedule 2: Consultants services

N°	Value estimated in USD	Procurement method	Public Contracting Officer	Evaluation Entity	Review Entity	Approving Authority
Individual Consultants						
1	≤ 150,000	Selection of Individual Consultant	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	Chairman of WAPP Procurement Committee (WPC)	≤ 50 000 USD: SG >50 000 and ≤100 000 USD: Finance Committee >100 000 USD: Executive Council
2	Any amount	Direct Contracting	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	Chairman of WAPP Procurement Committee (WPC)	≤ 50 000 USD: SG >50 000 and ≤100 000 USD: Finance Committee >100 000 USD: Executive Council
Consultant Firms						
3	≤ 50,000	<ul style="list-style-type: none"> Fixed Budget Selection (FBS) Least Cost Selection (LCS) Consultant Qualification (CQS) 	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	Chairman of WAPP Procurement Committee (WPC)	≤ 50 000 USD: SG
4	> 50,000 et ≤ 300,000	<ul style="list-style-type: none"> Fixed Budget Selection (FBS) Least Cost Selection (LCS) Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS) 	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	Chairman of WAPP Procurement Committee (WPC)	>50 000 and ≤100 000 USD: Finance Committee >100 000 and ≤ 300.000 USD: Executive Council
5	>300,000	<ul style="list-style-type: none"> Quality Based Selection (QBS) Quality and Costs Based Selection (QCBS) 	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	Chairman of WAPP Procurement Committee (WPC)	>300 000 USD: Executive Council

6	Any amount	Direct Contracting	Procurement Unit (PU)	Technical Evaluation Committee (TEC)	WPC	≤ 50 000 USD: SG >50 000 and ≤100 000 USD: Finance Committee >100 000 USD: Executive Council
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Annex 2 – Advertising of procurement opportunities

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

	Procurement Method	Form of advertising
1	Request for quotation	<ul style="list-style-type: none">• No further advertisement required.
2	Local Open bidding	<ul style="list-style-type: none">• Publication in one local, nationally distributed newspaper, electronic or printed• WAPP Website or Utilities Website• Publication on social media
3	Regional Open Bidding	<ul style="list-style-type: none">• WAPP Website, Utilities Website• Publication in one local, nationally distributed newspaper, electronic or printed• Publication in one local, nationally distributed newspaper in one or many Member State, electronic or printed• Publication on social media
4	Restricted bidding	<ul style="list-style-type: none">• Any advertisement
5	International Open bidding	<ul style="list-style-type: none">• WAPP Website or Utilities Website• Publication in one local, nationally distributed newspaper, electronic or printed• Publication in one local, nationally distributed newspaper in one or many Member State, electronic or printed• Publication on international tender Websites• Publication on social media

Schedule 2 - Advertising arrangements for procurement opportunities of Consulting Services

	Geography	Selection Method	Form of advertising
Individual Consultant			
1	Local	<ul style="list-style-type: none"> • Selection of Individual Consultant 	<ul style="list-style-type: none"> • WAPP Website or Utilities Website • Publication in one local, nationally distributed newspaper, electronic or printed • Publication on social media
2	Regional	<ul style="list-style-type: none"> • Selection of Individual Consultant 	<ul style="list-style-type: none"> • WAPP Website or Utilities Website • Publication in one local, nationally distributed newspaper, electronic or printed • Publication in one local, nationally distributed newspaper in one or many Member State, electronic or printed • Publication on social media
3	International	<ul style="list-style-type: none"> • Selection of Individual Consultant 	<ul style="list-style-type: none"> • WAPP Website or Utilities Website • Publication in one local, nationally distributed newspaper, electronic or printed • Publication in one local, nationally distributed newspaper of each Member State, electronic or printed • Publication on international tender Websites • Publication on social media
Consulting Firms			
4	Local Regional International	<ul style="list-style-type: none"> • Fixed Budget Selection (FBS) • Least Cost Selection (LCS) • Consultant Qualification (CQS) • Quality Based Selection (QBS) • Quality and Costs Based Selection (QCBS) 	<ul style="list-style-type: none"> • WAPP Website or Utilities Website • Publication in one local, nationally distributed newspaper, electronic or printed • Publication in one local, nationally distributed newspaper in one or many Member State, electronic or printed • Publication on international tender Websites • Publication on social media