INTRODUCTION

Procurement plays an essential role in enabling the EAC carry out its mandate within the realm of good governance and accountability as set out in Article 5 of the Treaty for the Establishment of the East African Community.

This Manual describes how the Community will manage and conduct its procurement activities. It borrows from procurement best practices around the world to establish the most appropriate policies and procedures that meet EAC needs.

Written for all the EAC staff, suppliers, development partners and stakeholders on the EAC procurement procedures, it is issued under the authority given to me by Regulation 37 (2) of the EAC Financial Rules and Regulations of 2006. It sets out the procurement procedures. It commits the EAC to transparency at all stages of procurement from the initial decision to buy, through the selection of a supplier, to disposal of assets.

Suppliers – be they individuals and companies prepared to meet the needs of the EAC for goods, services and works - have the right to seek EAC contract opportunities on a fair and open basis. They have the responsibility to comply with the requirements set by the EAC for participation in its procurement processes. They have the obligation, where they have been successful in obtaining an EAC contract, to carry out that contract to the highest professional standards.

Stakeholders – whether Partner States, international development partners, or members of the public whose tax money EAC spends – have the right to expect and demand that funds entrusted to the Community are spent for the purposes for which they are given. They have the responsibility to watch over the procurement activities of the EAC, to confirm and ensure the integrity of those activities. They have the obligation to work with the EAC, to ensure the continuing evolution and improvement of procurement practices.

This Manual is guided by and promotes the EAC core principles and values related to transparency and accountability. Thus all EAC staff, suppliers and stakeholders need to read, understand and comply with the provisions and procedures set out in this manual.

To ensure that the EAC is seen to be a leader in the quality and integrity of procurement, all EAC staff, and particularly the management team, are obliged to become familiar with this framework, and to incorporate its principles and guidance into their day-to-day activities.

Amb. Dr. Richard Sezibera
Secretary General - East African Community
FOREWORD

I was honoured and pleased to have the Secretary General task me as the custodian and champion of the EAC's procurement activities and practices, which are set out in this Manual.

It has been written for many audiences:

- EAC staff; to ensure that they are aware of their roles and responsibilities, and to provide ongoing guidance as to how they are to perform;
- Suppliers; so that they can understand how EAC procurement will be carried out, and make informed business decisions as to whether they wish to seek EAC contracts; and
- Stakeholders; so that they can assess the appropriateness of EAC procurement actions and hold the EAC accountable for its individual procurement actions and its procurement as a whole.

The Manual covers the full procurement cycle from program planning, initiation of procurement, final delivery or performance and contract completion, to asset disposal.

It will help to:

- make procurement activities more efficient and effective;
- encourage the best suppliers to seek to do business with EAC;
- serve as a training manual for EAC officers, and provide ongoing guidance based on best international practices; and
- provide a point of reference against which principles and practices can be evaluated.

The provisions and requirements in this Manual do not apply to employment contracts through which the EAC recruits, retains and compensates its full-time staff.

The Manual will be amended when the need arises, in circumstances including but not limited to:

- issuance of new Financial Rules and Regulations;
- policy changes accruing from Treaty amendments or Council decisions/directives;
- introduction of new improved practices, policies or procedures;
- removal of outdated practices, policies or procedures; or
- lessons gained from practical experience.

Where such changes are contemplated, and where they potentially affect how suppliers may deal with the EAC, the EAC will seek the input of the supplier community and
stakeholders by communicating the proposed change(s) on the Community website, to provide interested parties with the opportunity to make contributions.

The EAC must carry out its procurement activities with integrity and within the Procurement Audit Framework. Effective risk-based audit and consequent management reports are key to that, providing assurances to the EAC and stakeholders that appropriate fiduciary responsibilities are being exercised. The EAC shall document procurement activities comprehensively, so that independent observers can review work undertaken and confirm its excellence.

Dr. Julius Tangus Rotich

Deputy Secretary General (Finance and Administration)

East African Community
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**DEFINITIONS**

The terms used in this Manual have the following meanings assigned to them:

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<th>DEFINITION/DESCRIPTION</th>
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</thead>
<tbody>
<tr>
<td>Amendment</td>
<td>See Bid Amendment and Contract Amendment</td>
</tr>
<tr>
<td>Annual Procurement Plan</td>
<td>The annual statement of the EAC’s planned procurements for the upcoming fiscal year. It includes a short strategic outlook for the EAC, supported by high-level information on planned strategic and major procurements: used to consolidate EAC requirements into larger consolidated purchases, and to inform the supplier community of opportunities they may have to obtain an EAC contract.</td>
</tr>
<tr>
<td>Annual EAC Budget</td>
<td>The annual planned allocation of resources by the EAC, regardless of the source of funds, being the aggregate of the planned operating budgets of the EAC Organs and Institutions.</td>
</tr>
<tr>
<td>Asset/Assets</td>
<td>Tangible or intangible items that are purchased, constructed, developed or otherwise acquired by the EAC, held for use to achieve EAC objectives, and where ownership and control clearly rests with the EAC.</td>
</tr>
<tr>
<td>Asset Disposal</td>
<td>The process of removing an asset from the ownership and control of the EAC: may be by sale, transfer, donation or any other means.</td>
</tr>
<tr>
<td>Auction</td>
<td>The selling of any property in public by offering the property for sale, starting at a price possibly much below its value, seeking to persuade those present to make successively increased offers until it is knocked down (i.e. sold) to the highest bidder. The decision to sell is based only on price.</td>
</tr>
<tr>
<td>Bid</td>
<td>A proposal submitted by a bidder in response to a call for bids by the EAC.</td>
</tr>
<tr>
<td>Bid Amendment</td>
<td>A change made by the EAC to a call for bids that has been advertised/issued.</td>
</tr>
<tr>
<td>Bid Box</td>
<td>A secure locked container into which bids are deposited and kept confidential and secure until a specified time; may be supplemented by another venue for secure storage for bids that are too large to fit into the normal bid box.</td>
</tr>
<tr>
<td>Bid Document</td>
<td>The formal package of documents issued to bidders so that they can prepare a bid.</td>
</tr>
<tr>
<td>Bid Evaluation Criteria</td>
<td>The factors used to determine which bid best meets the requirements of the EAC. They are objective and measurable, and can be applied consistently to all bids received.</td>
</tr>
<tr>
<td><strong>Word or Term</strong></td>
<td><strong>Definition/Description</strong></td>
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<tr>
<td>Bid Modification</td>
<td>A change by a bidder to a bid that it has already submitted to the EAC. The change may change, add to or delete parts of the bid.</td>
</tr>
<tr>
<td>Bid Opening</td>
<td>The physical opening of a bid.</td>
</tr>
<tr>
<td>Bid Package</td>
<td>See Bid document.</td>
</tr>
<tr>
<td>Bid Repair</td>
<td>The provision of information by a bidder after the bid closing date that would change or enhance that bid.</td>
</tr>
<tr>
<td>Bid Security</td>
<td>A financial security provided by a bidder to guarantee that the bidder will not withdraw or refuse to honour its bid prior to award of contract.</td>
</tr>
<tr>
<td>Bid Solicitation</td>
<td>A call for bids.</td>
</tr>
<tr>
<td>Bidder</td>
<td>A supplier that has submitted a bid.</td>
</tr>
<tr>
<td>Blacklist</td>
<td>A list of suppliers from which an organization refuses to receive bids and to which the jurisdiction will not award a contract. See also ‘debarment’.</td>
</tr>
<tr>
<td>Call for Bids</td>
<td>A simultaneous invitation to more than one member of the supplier community to meet a procurement need of the EAC.</td>
</tr>
<tr>
<td>Clarification</td>
<td>Context sensitive: (i) during a bidding period, a request from a potential bidder that the EAC explain, expand on or perhaps change any element of a published call for bids; (ii) during the evaluation of bids, a request from the EAC to a bidder. See also Request for Clarification.</td>
</tr>
<tr>
<td>Commodity</td>
<td>A class or type of goods, services and works: unless otherwise specifies, includes anything and everything that may be procured by the EAC.</td>
</tr>
<tr>
<td>Community</td>
<td>Means the East African Community established by Article 2 of the Treaty.</td>
</tr>
<tr>
<td>Compliant Bid</td>
<td>A bid that meets all of the mandatory requirements of the technical evaluation criteria included in a call for bids. A bid must be ‘responsive’ (see ‘responsive bid’) before it can be found compliant.</td>
</tr>
<tr>
<td>Contract Amendment</td>
<td>A change to a signed contract that alters materially its terms and conditions: does not include technical changes e.g. a change to the contractor’s coordinates.</td>
</tr>
<tr>
<td>Consensus</td>
<td>An agreement or decision reached by a group as a whole. This is a general agreement: not all members of the group have to be in complete agreement, but all must be prepared to accept and implement the decision.</td>
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<tr>
<td><strong>WORD OR TERM</strong></td>
<td><strong>DEFINITION/DESCRIPTION</strong></td>
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<tr>
<td>Consultant</td>
<td>A supplier (individual or firm) with a particular area of expertise, that provides contract deliverables focusing on analysis, advice and recommendations. The term ‘consultant’ includes a wide variety of private and public entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, specialized agencies and other multinational organizations, investment and merchant banks, universities, research institutions, government agencies, nongovernmental organizations (NGOs), and individuals. The EAC may use consultants to help in a wide range of activities such as policy advice; institutional reforms; management; engineering services; construction supervision; financial services; procurement services; social and environmental studies.</td>
</tr>
<tr>
<td>Consultancy Services</td>
<td>The services of a consultant.</td>
</tr>
<tr>
<td>Contingency Fee</td>
<td>An amount paid to a representative person who has been successful in achieving a specified result, based on a percentage value of that result.</td>
</tr>
<tr>
<td>Contract</td>
<td>A legal agreement between the EAC and a supplier, through which the EAC will receive goods, services or works, and the supplier will be paid.</td>
</tr>
<tr>
<td>Contractor</td>
<td>A supplier who has been awarded and signed a contract with the EAC.</td>
</tr>
<tr>
<td>Cooling-Off Period</td>
<td>A period of time following their departure from the EAC in which former EAC staff must not engage in specified activities.</td>
</tr>
<tr>
<td>Council of Ministers</td>
<td>Means the Council of Ministers of the Community established by Article 9 of the Treaty for the Establishment of EAC.</td>
</tr>
<tr>
<td>Counsel to the Community</td>
<td>The senior legal officer to the EAC.</td>
</tr>
<tr>
<td>Day Rate</td>
<td>A fixed daily rate (can also be expressed in hours) for services or time of an identified individual or category of person (e.g. senior engineer).</td>
</tr>
<tr>
<td>Debarment</td>
<td>A decision of the EAC to refuse to deal with a supplier. See also ‘blacklist’.</td>
</tr>
<tr>
<td>Development partner</td>
<td>Means an organization or country that has availed resources either in the form of cash or in kind to the community for assisting the Community in its programs and operations.</td>
</tr>
<tr>
<td>Direct Contract</td>
<td>A contract with one supplier without any call for bids. May also be referred to as a Direct Purchase.</td>
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<tr>
<td><strong>Word or Term</strong></td>
<td><strong>Definition/Description</strong></td>
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<tr>
<td>Debrief or Debriefing</td>
<td>The provision of information to a bidder explaining the process leading to the evaluation results.</td>
</tr>
<tr>
<td>Cross-discounts</td>
<td>Conditional reductions in price(s) offered by a bidder if more than one contract or lot is awarded to the same bidder.</td>
</tr>
<tr>
<td>Due diligence</td>
<td>The careful identification and confirmation of all facts relating to a particular situation.</td>
</tr>
<tr>
<td>EAC Staff</td>
<td>All persons who work for the EAC, regardless of rank.</td>
</tr>
<tr>
<td>East African Community</td>
<td>Unless otherwise specified, all of the Organs and Institutions of the East African Community, including but not limited to: the Secretariat; the East African Legislative Assembly; the East African Court of Justice, the Lake Victoria Basin Comission, and the Civil Aviation Safety and Security Oversight Agency (CASSOA).</td>
</tr>
<tr>
<td>Envelope</td>
<td>An envelope, box or other form of packaging or wrapping in which a bid is submitted to the EAC.</td>
</tr>
<tr>
<td>Family Member</td>
<td>A person related by blood, adoption and marriage.</td>
</tr>
<tr>
<td>Final takeover</td>
<td>Used in works projects: the time at which all work required under a works contract has been completed and full payment to the contractor is due. Also known as Final Completion or Final Acceptance.</td>
</tr>
<tr>
<td>Good (goods)</td>
<td>Chattels, material, personal property, movable property, and other physical objects of every kind including items required to be manufactured, or which a labour or skill is required to be expanded before, upon or after delivery to a government funded body; includes services incidental to the supply of a good if the value of those incidental services does not exceed that of the good itself.</td>
</tr>
<tr>
<td>Fiduciary Responsibility</td>
<td>A legal relationship of confidence and trust: the providers of funds must have confidence, good faith, reliance and trust in the EAC, that those funds will be properly spend for the purposes for which they were provided.</td>
</tr>
<tr>
<td>Force Majeure</td>
<td>An unforeseen event beyond the control of a party to a contract that prevents that party from performing its obligations under the contract. Typically force majeure clauses cover natural disasters, or the failure of third parties - such as suppliers and subcontractors - to perform their obligations to the contracting party. It is important to remember that force majeure clauses are intended to excuse a party only if the failure to perform could not be avoided by the exercise of due care by that party.</td>
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<tr>
<td>Word or Term</td>
<td>Definition/Description</td>
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<tr>
<td>Framework Agreement</td>
<td>A formal agreement under which a supplier agrees to meet the needs of the EAC for a specified good or service, over a specified time, with agreed-upon terms and conditions.</td>
</tr>
<tr>
<td>Head of Procurement</td>
<td>The senior procurement officer of the EAC: head/manager of the Procurement Unit.</td>
</tr>
<tr>
<td>Holdback</td>
<td>See ‘retention’.</td>
</tr>
<tr>
<td>INCOTERMS</td>
<td>A set of internationally accepted definitions of trade terms (e.g. CIF, CIP and FOB) issued by the International Chamber of Commerce.</td>
</tr>
<tr>
<td>Invoice</td>
<td>A formal request for payment sent to a client by a contractor: includes a detailed accounting of goods shipped or services rendered; also known as an itemized bill.</td>
</tr>
<tr>
<td>Joint Venture</td>
<td>A legal agreement bringing together two or more parties for the purpose of carrying out a particular business undertaking or contract. All parties in the joint venture agree to share in the profits and losses of the enterprise – and all parties are liable for the completion of the contract.</td>
</tr>
<tr>
<td>Limited Call for Bids</td>
<td>A call for bids in which an invitation to bid is issued to all suppliers included in a Supplier Register.</td>
</tr>
<tr>
<td>Liquidated Damages</td>
<td>An amount of money agreed to by the parties to a contract, to be paid when one of the parties to the contract (normally the contractor) does not do certain things specifically mentioned in the contract.</td>
</tr>
<tr>
<td>Officer</td>
<td>An executive, manager, or professional employee of the EAC.</td>
</tr>
<tr>
<td>Originating Officer</td>
<td>An officer of the EAC having formal authority to initiate a procurement process; normally heads an Originating Unit.</td>
</tr>
<tr>
<td>Originating Unit</td>
<td>A Unit, Division, Directorate, Department, Project or Programme with responsibility to initiate procurement using EAC funds.</td>
</tr>
<tr>
<td>Payment Certificate</td>
<td>Used in the works/construction industry; usually, a statement from an architect overseeing a works project conforming the amount of money due to a contractor. For practical purposes, generally equivalent to an invoice (see Invoice).</td>
</tr>
<tr>
<td>Performance Guarantee</td>
<td>A financial security provided by a supplier or contractor to guarantee its performance under the terms of the contract.</td>
</tr>
<tr>
<td>Potential Bidder</td>
<td>A supplier that has the potential ability to bid for an EAC contract, depending on how that requirement is defined and other elements included in a call for bids.</td>
</tr>
<tr>
<td><strong>Word or Term</strong></td>
<td><strong>Definition/Description</strong></td>
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<tr>
<td>Policy</td>
<td>A statement of long term purpose, a goal to be pursued, or a declared objective, together with associated guidelines that the EAC will use to direct its actions.</td>
</tr>
<tr>
<td>Procurement</td>
<td>The acquisition of goods, works or services through purchase, lease or rental: may be used as a collective noun ('procurement') or to indicate a specific acquisition initiative procurement'.</td>
</tr>
<tr>
<td>Procurement Approval Plan</td>
<td>The detailed description of how the EAC proposes to carry out a specific procurement, to acquire specified goods, services or works: used to seek approval from the Procurement Committee to undertake a specific procurement action.</td>
</tr>
<tr>
<td>Procurement Unit</td>
<td>An established Procurement Unit at EAC, or an Officer or Officers bearing responsibility for procurement processing.</td>
</tr>
<tr>
<td>Project Consultant</td>
<td>An independent consultant, retained under contract by the EAC to participate in and/or manage elements of a project; use of such a consultant may be a condition of a development partner agreement.</td>
</tr>
<tr>
<td>Provisional Takeover</td>
<td>Used in works projects: the time at which the requirements of the contract have been largely met, such that the work is ready for use or occupation; some small elements of the contract remain incomplete, and there are usually items to be corrected. Also known as substantial completion.</td>
</tr>
<tr>
<td>Qualified Bid</td>
<td>A bid where the bidder has attached conditions not included in the call for bids.</td>
</tr>
<tr>
<td>Qualified Bidder</td>
<td>A bidder that has demonstrated that it meets the requirements of the EAC.</td>
</tr>
<tr>
<td>Ratification</td>
<td>Of approving an unauthorized action – normally, an action taken by a person without the formal authority to that action. It gives official sanction or approval to a formal document such as a contract amendment. In considering a request for ratification, the real approval authority obtains oversight and is in a position to identify the need for appropriate remedial or preventive actions.</td>
</tr>
<tr>
<td>Request for Clarification</td>
<td>A request to a bidder, during the evaluation of its bid, to clarify information included in the bid, to ensure that the evaluators understand and can properly evaluate the bid against the published evaluation criteria. Does not include or permit any changes to the content of the bid.</td>
</tr>
<tr>
<td>Repeat Commissioning</td>
<td>The practice of giving a series of small contracts to one supplier on a Direct Contract basis, without giving other suppliers the chance to obtain the work.</td>
</tr>
<tr>
<td><strong>Word or Term</strong></td>
<td><strong>Definition/Description</strong></td>
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<tr>
<td>Request for Information</td>
<td>A request to either the general supplier community, or less frequently to an identified group of suppliers, to provide relevant information about a possibly upcoming procurement. May be used to identify e.g. possible supplier interest in a particular call for bid, to establish approximate possible contract value, to assist in the definition of a requirement or the development of appropriate bid evaluation criteria. Often referred to as an RFI; shall not be used as part of a formal selection process.</td>
</tr>
<tr>
<td>Request for Quotation</td>
<td>A request to identified suppliers to propose a price to the EAC for a specified good, service or work, where there are limited fixed mandatory criteria to meet; and where the decision to award the contract will be based on the lowest proposed price quoted by a supplier who meets all of the mandatory requirements. Often referred to simply as RFQ.</td>
</tr>
<tr>
<td>Responsive Bid</td>
<td>A bid from a supplier that meets all of the administrative and legal requirements and obligations of the call for bids (e.g. bid closing time, marking of bids, inclusion of required materials).</td>
</tr>
<tr>
<td>Restricted Call for Bids</td>
<td>A call for bids in which the EAC determined which suppliers shall be eligible to bid: may be limited (see Limited call for bids) or selective (see Selective call for bids).</td>
</tr>
<tr>
<td>Retention</td>
<td>A fixed amount or percentage that may be held back from one or more payments to a contractor, to guarantee contract performance: the retention amount is paid to the contractor when the contract has been completed successfully.</td>
</tr>
<tr>
<td>Reverse Auction</td>
<td>A (usually electronic) process where suppliers bid against each other for contracts against a published specification and pre established mandatory criteria; the contract award decision is then based on the lowest proposed price. (Also known as an E-auction, online auction, or E-bidding).</td>
</tr>
<tr>
<td>Selective Call for Bids</td>
<td>A form of restricted call for bid in which the EAC at its own discretion identifies the suppliers that will be invited to bid.</td>
</tr>
<tr>
<td>Service (services)</td>
<td>Any object of procurement other than goods and works.</td>
</tr>
<tr>
<td>Shall</td>
<td>Explicit instruction by the Secretary General as to action that must be taken. See also Will.</td>
</tr>
<tr>
<td>Supplier</td>
<td>A company, partnership, individual or other legal entity that is in the business of selling goods, services or works in the marketplace.</td>
</tr>
<tr>
<td><strong>Word or Term</strong></td>
<td><strong>Definition/Description</strong></td>
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</tr>
<tr>
<td>Terms of Reference</td>
<td>The written description of a specific EAC requirement: set out in detail who the procurement is for; what is needed; why it is required; where a contract is to be performed; and when the contract is to be performed.</td>
</tr>
<tr>
<td>Transition Costs</td>
<td>The costs to the EAC of changing from one supplier to another. Such costs are normally incurred at the end of a contract, when a successor contract for the same or similar goods or services comes into force.</td>
</tr>
<tr>
<td>Transparency</td>
<td>The practice of providing information to stakeholders outside the EAC, in a timely manner that facilitates scrutiny of decisions made and actions taken.</td>
</tr>
<tr>
<td>Treaty</td>
<td>The Treaty for the Establishment of the East African Community, and any annexes and protocols thereto.</td>
</tr>
<tr>
<td>USD</td>
<td>United States Dollar: all dollar figures in this Manual are USD, and are net of taxes and duties.</td>
</tr>
<tr>
<td>Will</td>
<td>Unless otherwise indicated by the context in which the word appears, a statement of fact, commitment, action or result: slightly less directive and binding than ‘shall’ (see Shall),</td>
</tr>
<tr>
<td>Works</td>
<td>The construction, re-construction, extension, enlargement, repair, renovation, maintenance and improvement of a building, structure or works; includes improvements to leased property; includes professional services and services incidental to construction such as architectural design, engineering, drilling, mapping, and similar services provided pursuant to the procurement contract, if the value of those services does not exceed that of the construction itself.</td>
</tr>
</tbody>
</table>
# ACRONYMS AND ABBREVIATIONS

## Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>EAC</td>
<td>East African Community</td>
</tr>
<tr>
<td>BOQ</td>
<td>Bill of Quantities</td>
</tr>
<tr>
<td>CFR</td>
<td>Cost and Freight</td>
</tr>
<tr>
<td>CIF</td>
<td>Cost Insurance and Freight</td>
</tr>
<tr>
<td>CIP</td>
<td>Carriage and Insurance Paid</td>
</tr>
<tr>
<td>CTC</td>
<td>Counsel to the Community</td>
</tr>
<tr>
<td>D/SG</td>
<td>Deputy Secretary General</td>
</tr>
<tr>
<td>EOI</td>
<td>Expression of Interest</td>
</tr>
<tr>
<td>EXW</td>
<td>Ex-Works</td>
</tr>
<tr>
<td>FBS</td>
<td>Fixed Budget Selection</td>
</tr>
<tr>
<td>FOB</td>
<td>Free on Board</td>
</tr>
<tr>
<td>GCC</td>
<td>General Conditions of Contract</td>
</tr>
<tr>
<td>GRN</td>
<td>Goods Received Note</td>
</tr>
<tr>
<td>ISO</td>
<td>International Standards Organization</td>
</tr>
<tr>
<td>ITB</td>
<td>Instructions to Bidders</td>
</tr>
<tr>
<td>LC or L/C</td>
<td>Letter of Credit</td>
</tr>
<tr>
<td>LCS</td>
<td>Least Cost Selection</td>
</tr>
<tr>
<td>LOI</td>
<td>Letter of Invitation</td>
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CHAPTER 1: INTRODUCTION

1) This Procurement Manual (Abridged version) provides a summary framework of information, guidance, rules and procedures designed to guide and direct procurement activities of the East African Community (EAC).

2) The abridged version has been developed for ease of reference for those that are involved directly in the day to day procurement processes at the EAC.

3) For more detailed processes and information reference should be made to the principal.
CHAPTER 2: PROCUREMENT POLICY AND PRINCIPLES

Policies are the EAC statements of long term purpose relating to procurement. They include the goals we pursue, and the objectives we strive to reach.

EAC in its management of public funds is expected to comply with regulations, rules and public procurement principles. EAC- procurement activities are expected to be carried out with the highest level of fairness, transparency, integrity, economy and effectiveness.

PROCUREMENT AUTHORITY

1) The Secretary General is fully responsible and accountable for all areas and aspects of EAC procurement, including but not limited to approving all procurement activities, signing all contracts, and appointing all committees set forth in this Manual and is the authority for issuing and initiating revisions to this Manual.

REGULATORY FRAMEWORK AND PROCEDURES


2) EAC staff involved in carrying out procurement activities must ensure compliance with all relevant policies and procedures outlined in a number of relevant documents, which, in the case of inconsistency or ambiguity between them, shall prevail in the following order:
   • EAC Treaty
   • EAC Financial Rules and Regulations (2011)
   • EAC Procurement Manual (2011)

3) In the case of conflict between the EAC Procurement Manual and other EAC administrative instructions the matter of conflict shall be referred to the Counsel to the Community (CTC) for interpretation.

4) Procurement activities can be carried out according to procedures other than those set forth in the FRR and other applicable documents only when this is clearly stated in a funding agreement.

PROCUREMENT PRINCIPLES

1) The following general principles must receive due consideration when undertaking procurement activities:
   i. Value for Money;
   ii. Effective competition;
   iii. Fairness and Integrity;
   iv. Transparency;
   v. Accountability;
   vi. Interest of EAC and its stakeholders.

PROCUREMENT ETHICS

1) Ethics is the discipline relating to right and wrong, moral duty and obligation, moral principles and values, and to moral character.
2) In procurement, the guiding principles of ethical behaviour are impartiality, independence, and personal integrity, the last including honesty and consistency of actions, values, methods, measures, principles, expectations and outcomes.

3) EAC staff and suppliers seeking to do business with the EAC shall conduct themselves in accordance with the EAC Code of Conduct for Procurement.

2.1.1 CONFLICT OF INTEREST
1) The EAC shall ensure that all potential participants in a specific procurement or disposal action do not have any potential or actual conflict of interest.

2) In accordance with the basic principles of EAC procurement, where a potential or actual conflict of interest is identified, EAC staff members shall complete a written declaration of conflict of interest, and shall have no further involvement with the procurement or disposal.

2.1.2 CRIMINAL ACTIVITIES AND SANCTIONS
1) The EAC shall, whenever it suspects that criminal activities are taking or have taken place, refer the matter to the appropriate civil authorities. These activities include:
   i. bribery;
   ii. fraud;
   iii. coercion; and
   iv. collusion.

2) In addition to such actions as those authorities may take;
   i. any member of the EAC found to have committed or participated in these practices shall be dismissed; and
   ii. any supplier found to have committed or participated in these practices shall:
      if they are under contract, have that contract terminated immediately; and/or
      be barred from bidding on or receiving any future contracts from the EAC.

RELATIONSHIPS WITH THE SUPPLIER COMMUNITY

2.1.3 SUPPLIER ELIGIBILITY
1) The EAC shall entertain bids from, or award contracts to, suppliers who meet the legal, ethical and quality requirements of the EAC. This will require the ascertainment and confirmation by the EAC of the qualifications of suppliers or contractors at any stage of the procurement proceedings.

2) The EAC shall not enter into a contract for procurement with:
   i. An employee of the EAC, a Member of the East African Legislative Assembly or a Judge of the East African Court of Justice;
   ii. A Minister, public servant or a member of a board or committee of EAC Organs and Institutions, a department or agency of a Partner State; or
   iii. A person, including a corporation, who is related by marriage or ownership to a person described in paragraph (i) or (ii).

2.1.3.1 Compliance with Partner State and other Regulatory Requirements
1) Suppliers, contractors, or service providers wishing to participate in EAC procurement proceedings where such professional or other legal requirements exist shall be
required to register with the appropriate professional statutory body and to meet all other legal requirements in the country where the majority of the work shall be carried out before signing the procurement contract. Should these requirements have an associated cost, that cost is the responsibility of the bidder, supplier, contractor or service provider.

PARTNER FUNDED PROJECTS

1) The EAC is authorised by the Financial Rules and Regulations to comply with development partner requirements for the conduct of procurements being conducted with development partner funds, including (i) following the procurement procedures of the development partner, and (ii) obtaining approval of procurement actions in advance from the development partner.

2) Such procurement actions shall be approved by the Procurement Committee before they are submitted to the development partner for approval.

DOCUMENTATION

1) Procurement files are to be kept for 7 years after the completion of the last transaction of a procurement activity.

SECURITIES

1) The EAC shall use appropriate forms of security to protect its financial and operational interests before and during the performance of a contract.

2) Bid or performance security for requirements valued at less than $50,000 shall not be required.

2.1.4 RETURN OF SECURITIES

1) Bid security shall be returned immediately to all bidders once the relevant contract is signed and all conditions for contract effectiveness have been met;
2) Performance/contract security shall be returned once the contractor has discharged its obligations;
3) Advance payment security shall be returned when the value of the advance payment has been deducted from other payments to the contractor.

2.1.5 CALLED SECURITY

A called security shall be paid to the EAC to the credit of the appropriate Account Code to compensate for costs or losses due to the supplier’s non-performance.

PROCUREMENT-RELATED CORRESPONDENCE

1) All procurement correspondence and other communications issued by the EAC shall emanate only from the Secretary General, who may delegate this authority, in writing, as appropriate to ensure the efficient and effective flow of communications.

2) English shall be the language of communication in all procurement proceedings.

CANCELLATION OF A PROCUREMENT PROCESS

1) The Procurement Unit if it deems it necessary shall prepare a recommendation to the Procurement Committee for cancellation of a procurement process.
2) Reasons for cancellation may include, but shall not be limited to-
   i. lack of adequate funding;
   ii. a significant change in the circumstances of the procurement;
   iii. a significant change in the technical details of the requirement;
   iv. the circumstances giving rise to the need have changed significantly; or
   v. a lack of responsive bids.

2.2 SUPPLIER DEBRIEFING

1) Participants in an EAC call for bids have the right to a debriefing within 30 calendar days of the contract award.

2) Debriefings have two main purposes:
   i. to provide a bidder with feedback that will help it improve its bidding approach for future EAC calls for bids; and
   ii. to satisfy a bidder that its bid was properly evaluated using the published evaluation criteria.

2.3 DEBARMENT

1) The decision to debar (blacklist) a supplier shall be taken by the Complaints Committee, on recommendation of the Procurement Committee, and with the advice of EAC Legal Counsel.

2) Reasons for debarment/suspension may include:
   i. Failure to perform in accordance with the terms and conditions of one or more contracts;
   ii. Where the supplier is believed to have engaged in criminal activity (e.g., fraud);
   iii. Abusive, unethical or unprofessional conduct, including corrupt practices and submission of false information;
   iv. Genuine concern about the supplier’s ability to satisfactorily perform contractual obligations, such as filing for bankruptcy, or the company is in or has recently been in receivership;
   v. Where a supplier has been debarred or declared ineligible to be awarded a contract financed by a Partner State, an international monetary institution or funding organisation, or any other international institution;
   vi. Failure to comply with the ‘Mandatory condition of doing business with EAC.

3) Where the EAC inadvertently contracts with a debarred supplier, on discovery of the debarment the contract will be terminated as soon as possible, having due regard for the operational consequences for the EAC.

4) Where a supplier has been debarred by an EAC Institution, that shall extend to all EAC Institutions;

5) The decision taken by the Complaints Committee shall be final.

6) A list of suspended suppliers shall be uploaded on the EAC website.

2.3.1 RE-QUALIFICATION OF SUSPENDED/REMOVED SUPPLIERS:

Suspended suppliers may re-apply for re-qualification after the expiry of the period of the suspension by submitting documented or demonstrable evidence of corrective
actions taken to remedy the issue(s) that led to the suspension or removal from the EAC supplier database.

**SOLICITATION OR AWARDS IN VIOLATION OF THE MANUAL**

Any official of EAC or related Institution and Organ who wilfully purchases or causes to be purchased any goods, works and services contrary to the Financial Rules and Regulations and the provisions of this Manual shall be personally liable for the cost thereof.

**DISCIPLINARY ACTION**

Disciplinary procedures in accordance with the Staff Rules and Regulations may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Staff Regulations and Rules, the Financial Rules and Regulations and this Manual.
CHAPTER 3: INSTITUTIONAL FRAMEWORK

Effective procurement requires the participation and support of many people. It is important that all involved know and understand their particular roles and responsibilities: clearly what they are to do, but equally where their role starts and ends.

The key players are:

Secretary General: fully responsible and accountable for all areas and aspects of EAC procurement, including but not limited to approving all procurement activities, signing all contracts, and appointing all committees.

Originating unit/User department

Procurement Unit

Procurement Committee

Bid Opening Panel

Evaluation Committee

Complaints Committee

Board of Survey

Counsel to the Community

DELEGATION OF PROCUREMENT AUTHORITY

1) The SG may delegate as appropriate the required authorities to ensure the efficient and effective functioning of the procurement system. Pursuant to this, the SG has:
   i. assigned to the Deputy Secretary General, Finance and Administration, overall responsibility for EAC procurement;
   ii. delegated various managerial and financial authorities, including specifically the authority to approve and sign contracts, to various positions across the EAC, as set out in the delegation instrument at Appendix 2; and
   iii. delegated specific responsibilities and accountabilities for procurement activities as set out in this Manual generally.

2) The SG shall remain accountable for all decisions taken under the delegated authority.

3) Notwithstanding the above, the SG shall not delegate the following powers and functions-
   i. establishment and appointment of the members of the Procurement Committee;
   ii. investigation of a complaint by a bidder; and

4) On the advice of the Procurement Committee, the Secretary General may delegate any of the procurement functions to any other individual member of staff, department, Organ or Institution of EAC.
SEGREGATION OF DUTIES

1) Segregation of duties is an important basic principle of internal control and must be observed in all EAC procurement processes. The Secretary General, the Procurement Committee, the Procurement Unit and the Originating Unit shall each act independently in relation to their respective functions and powers.

2) These various phases of the procurement process should be carried out by separate individuals:
   i. Formulation of the procurement requirement/request;
   ii. Certification of availability of funds;
   iii. Processing of the request;
   iv. Solicitation of bids from suppliers;
   v. Receipt of bids;
   vi. Opening of bids;
   vii. Evaluation of bids;
   viii. Review and recommendation for award;
   ix. Award of purchase contract;
   x. Disbursement of funds.
CHAPTER 4: PROCUREMENT PLANNING

1) Procurement planning is the process of assessing and projecting the EAC’s procurement needs, in order to determine the best procurement strategy to apply. Developing a strategic approach to procurement through appropriate and timely procurement planning is a key element for successful procurement of goods, services and works.

2) Needs assessment, cost estimation and requirement definition are the first steps in the procurement process, and are essential components in the planning of a specific procurement activity.

ANNUAL PROCUREMENT PLAN

1) During the Budget preparation process, Originating Officers shall identify areas and activities where they will use procurement to achieve their objectives. When the EAC Budget is finalised, these are then brought together into the EAC Annual Procurement Plan. This plan is a mandatory feature of EAC procurement.

4.1.1 PROCUREMENT CONSOLIDATION

1) The Head of Procurement shall on an ongoing basis review EAC procurements to identify opportunities for consolidation. This takes two principal forms:
   i. Contract consolidation; and
   ii. Framework agreements.

DEFINING THE REQUIREMENT

1) Defining the requirements is a systematic approach aimed at clearly defining the need to be covered by the product to be procured. The originating officer is responsible for defining the requirements, however, the procurement individual responsible for the process in question shall evaluate the requirement and identify any issues that do not seem advisable from a procurement point of view (e.g. branding without justification, over specification, unrealistic required delivery dates, etc.).

4.1.2 TYPES OF REQUIREMENT SPECIFICATIONS

1) Requirements are specified in either:
   i. Technical Specifications;
   ii. Terms of Reference (TOR); or
   iii. Statement of Works (SOW)/Bill of Quantities (BOQ)/drawings and design.

4.2 TAXES AND DUTIES

EAC has diplomatic status and is not required to pay taxes and duties on its procurements.

PROCUREMENT REQUISITION

1) Procurement shall normally begin with a requisition by the user department for the purchase of a particular product – goods, services or works.

2) A requisition must at a minimum include:
   i. A detailed description of goods, works or services sought;
   ii. Confirmation of funds availability;
iii. Approval of the procurement requirement in accordance with FRR……
iv. Quantity to be procured;
v. Required delivery date or start up/completion date;
vi. Delivery location or location of works/services to be performed;
vii. Estimated price, and
viii. Any additional information (e.g. standardization, preferred method of shipment, etc.).

4.2.1 REQUISITION EVALUATION

1) The Head of Procurement shall evaluate the requisition received from the Originating Unit. All requisitions must conform to the following general principles:
   i. Value for Money;
   ii. Fairness, integrity and transparency;
   iii. Effective Competition;
   iv. The interest of EAC.
CHAPTER 5: SOURCING OF SUPPLIERS

MARKET RESEARCH

1) Market research is the first step in the sourcing process; it is used to survey a specific market or industry to ascertain qualified sources capable of satisfying the Originating Officer’s needs and to determine competition, capabilities or estimated costs with respect to a specific good or service sought by the EAC.

2) Market research is basically a function of the Procurement Unit. However, Originating Officers may conduct their own technical research.

3) Market research may be carried out through:
   i. Pre-qualification
   ii. Request for Expression Of Interest
   iii. Letter of Intent
   iv. Request For Information
   v. Advertisement of business opportunity
   vi. External sources
   vii. Internal sources

5.1 SUPPLIER REGISTER

1) EAC shall maintain a centralized electronic Register of Suppliers for sourcing the supply of goods, services and works.

2) The Register of Suppliers shall be published on the EAC web site.
CHAPTER 6: PROCUREMENT METHODS

1) The choice of procurement method is influenced by a number of factors, such as market conditions, complexity of the requirement, monetary value of the procurement, donor conditions and whether goods, works, or services are procured. Location and urgency may also have an effect on the choice of solicitation method, and the procedures applied.

2) A justification shall always be recorded explaining the chosen method or strategy.

3) Open competition shall be the preferred type. However, in circumstances where it is determined that open international competition is not feasible, depending on the nature and complexity of the procurement activity, EAC may use any of the competitive methods described below. It is essential to ensure that the selected type of competition is both economic and efficient and results in EAC obtaining “best value for money”.

4) The estimated value of the requirement shall be the main criterion for determining the choice of procurement method.

5) The following procurement methods shall apply:
   a. Open bidding: (threshold: equal or above $50,000)
   b. Restricted bidding: (threshold: $10,000 -49,999)
   c. Request for quotations: (threshold: $1,000 – 9,999)
   d. Request for proposals
   e. Direct procurement
   f. Micro-procurement

6.1 EMERGENCY PROCUREMENT

1) An emergency situation shall constitute circumstances that may determine the choice of procurement method, regardless of the estimated value of the requirement. As a general guide, the starting point for determining whether an emergency exists is a situation where delay in taking action would be injurious or prejudicial to the EAC and public interests.

2) An emergency situation shall include circumstances which are urgent, unforeseeable or a situation not caused by dilatory conduct where:-
   i. the country is seriously threatened by or actually confronted with a disaster, catastrophe, war or an act of God;
   ii. life or the quality of life or environment may be seriously compromised;
   iii. the conditions or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
   iv. an investment project is seriously delayed for want of minor items.
3) An urgent procurement requirement shall not constitute an emergency situation where the circumstances.

6.2 SELECTING THE TYPE OF COMPETITION

1) The choice of the competition shall depend on:
   i. the value of the procurement;
   ii. the market conditions; and/or
   iii. EAC knowledge of the market.

6.2.1 OPEN INTERNATIONAL COMPETITION AND OPEN REGIONAL COMPETITION

1) Open international or open regional competition shall be the preferred method of competition as it best satisfies the principles of best value for money, transparency and effective competition.

6.2.2 LIMITED INTERNATIONAL COMPETITION AND LIMITED REGIONAL COMPETITION

1) If an open international or regional competition cannot be held a limited international or regional competition may be carried out.

2) Limited competition shall be for short-listed suppliers selected in a non-discriminatory manner from rosters, pre-qualifications, expressions of interest, market research etc.

3) Regional competition shall be limited to suppliers in Partner States.
CHAPTER 7: BIDDING PROCESS

The method used to communicate a procurement requirement and request a bid from potential suppliers is referred to as the bidding process.

Standard bidding documents (SBDs) shall be used for purposes of soliciting for bids from potential suppliers.

No changes in the standard paragraphs of the solicitation documents, including the annexes, shall be made without prior clearance by the Procurement Committee and the CTC.

7.1 PUBLIC ADVERTISEMENT/INVITATION TO BID

The public advertisement/invitation to bid, called jointly the “bid notice”, is the information that shall appear on the EAC web site, and in the same or similar form in newspapers and other publications, to inform suppliers that the EAC has issued a request for bids.

7.2 TERMS OF REFERENCE

The most important element of a request for bids is the Terms of Reference (TOR). Terms of reference shall be drawn in such a way that they clearly inform potential bidders, and the potential contractor, of what types of goods, services or works need to be provided, when, and under what conditions.

7.3 PRE-BID CONFERENCES AND SITE VISITS

For technically complex acquisitions, a pre-bid conference between EAC and the suppliers could be held in addition to, or instead of, issuance of written clarifications. Such a conference may be in the form of a meeting or a site inspection.

7.4 BID EVALUATION CRITERIA

1) Bid Evaluation Criteria are the specific aspects, elements and dimensions in a bid that will be assessed by the EAC, in order to identify the bid that best meets the requirements.

2) There are two basic types of bid evaluation criteria, technical and financial, which are combined in various ways to provide the contractor selection process.

3) The evaluation criteria should enable an objective, measurable, and consistent assessment of competing proposals for the purpose of selecting the proposal(s) that best addresses the EAC’s requirement.

7.4.1 Mandatory criteria

1) Mandatory criteria are used to set acceptable minimum standards which must be met by a bidder to be considered by the EAC in response to a given request for bids. They are the characteristics, traits, qualities, levels of experience, etc. that are deemed by the EAC as absolutely necessary.

2) Mandatory criteria are the first screening stage for all proposals that have been considered responsive. They are measured on a “meets” or “does not meet” basis. If a bidder fails to meet any one of the mandatory criteria, its proposal is deemed to be non-compliant, and shall receive no further consideration.
7.4.2 Point-rated criteria
1) A bidder’s responses to the point-rated criteria shall be assessed and awarded a score dependent upon the extent to which the bidder demonstrated clearly in its proposal that it is competent and experienced in the factor being evaluated.

2) The Originating Officer shall decide the evaluation factors to be used, and how much weight or importance each will have.

7.5 CONTRACTOR SELECTION PROCESS
1) The bid package shall set out the contractor selection process to be used – that is, the way in which the technical and financial evaluations will be combined to establish the “best evaluated bidder”.

2) The bidding documents shall state clearly how contracts will be awarded (e.g. to the lowest priced, most technically acceptable bid, to the lowest priced substantially compliant bid or to the bid scoring highest overall), and which criteria will be applied in the evaluation to determine compliance or technical rating.

7.6 THE INTENDED CONTRACT
1) When the EAC issues a request for bids, it shall include in the bid package the full content of the contract that will be signed with the winning bidder. One of the key reasons for this is to avoid the situation where a full competitive process has been carried out and the contract is offered to the ‘winner’ - who finds in it provisions previously undisclosed, that the supplier cannot or will not comply with.

2) The contract contains a number of elements:
   i. the specific Contract Agreement, to be signed by both the EAC and the contractor;
   ii. from the materials in the bid package described in sections 6.1 through 6.8 above, it includes the Terms of Reference and Terms of Payment;
   iii. the General Terms and Conditions of the EAC; and.
   iv. special terms and conditions applicable to the particular procurement.

7.7 BID CLOSING DATE
1) The time and date by which bids must be received by the EAC in order to be considered. The time between the advertising of a request for bids, and the bid closing date, is the bidding period. A late bid shall be rejected.

2) Minimum bidding periods
   The minimum bidding period for each procurement method shall be as follows:
   i. open bidding: 45 calendar days;
   ii. restricted regional bidding: 15 calendar days;
   iii. restricted international bidding: 20 calendar days;
   iv. quotations and proposals procurement: 4 working days;
   v. direct procurement: no minimum period and
   vi. micro procurement: not applicable.

7.8 BID VALIDITY
1) This is the length of time for which the bidder must maintain and be prepared to honour its bid.
2) The EAC shall not award a contract against a bid that has expired.

3) The duration of bid validity shall be at least **90 calendar days** and shall be specified in the bidding documents. Bidders must confirm that they meet this requirement by signing the Bid Form submitted.

4) The bid validity period is calculated from the closing date of the bid submission and shall remain in force until the close of business on the last day of the validity period.

5) Where an extension to the bid validity period becomes necessary, a bidder shall be requested in writing, before the expiry of validity of their bid, to extend the validity for a specified minimum period.

6) In extending the validity of a bid, the bidder shall not be permitted to change the price or any other details of the bid.

7) A bidder shall be free to refuse to extend the validity of the bid, without forfeiting his or her bid security

### 7.9 INSTRUCTIONS TO BIDDERS

The Instructions to Bidders set out in detail what a bidder must do in order to have its bid considered by the EAC.

### 7.10 CONSULTANCY SERVICES

1) The request for bids for Consultancy Services shall whenever appropriate be a Request for Proposals; and shall be a two-stage process.

#### 7.10.1 TERMS OF REFERENCE (TOR)

1) TORs define clearly the objectives and scope of the assignment. In addition, they provide background information (including a list of existing relevant studies and basic data) to enable potential consultants to understand fully the circumstances in which the EAC is seeking these services.

2) The TOR shall:
   - describe the background to the assignment;
   - state the objectives of the assignment including:
     - the scope of the services;
     - the duration of the assignment;
     - a detailed list of the consultants’ duties and responsibilities
   - detail the required outputs, e.g.: reports, recommendations, draft laws etc. which the consultants will be required to produce (the “deliverables”);
   - set the time periods for the deliverables;
   - be as specific as possible in setting out relevant details such as (i) travel requirements, and (ii) specific interviews that must be carried out;
   - permit potential consultants to propose their own methodology and assignment of resources (and ensuring that the bid evaluation criteria will be able to assess such different approaches fairly and objectively);
   - list any services and surveys necessary to carry out the assignment;
   - include details of the services, facilities and counterpart staff to be provided by the EAC; and
   - specify detailed requirements when transfer of knowledge to or training for
the EAC is an objective, to allow bidders to estimate the required resources.

7.10.2 EVALUATION CRITERIA
1) The use of point-rated evaluation systems and two-stage bidding procedures are routine features in the procurement and selection of consultants.

2) The request for bids will normally require that bidders provide information on, and be evaluated against:
   i. experience relevant to the assignment;
   ii. understanding of the EAC requirement;
   iii. qualifications and experience of the key staff proposed to carry out the work;
   iv. proposed methodology;
   v. potential knowledge transfer to the EAC; and.
   vi. the bid price.

7.11 FORMAT OF BIDS
1) The solicitation documents shall contain instructions to bidders on-
   a) the format and documentation required in bids;
   b) the procedure for signing and authorizing bids; and
   c) the number of copies of bids to be submitted which shall be one original bid marked ORIGINAL and a specified number of copies, each marked COPY.

7.12 SUBMISSION OF BIDS
1) The bid documents shall provide clear instructions to bidders on the marking and sealing of the bids and the method of bid submission, which shall either be:
   a) the one stage-single envelope method, in which a bid is submitted in one sealed envelope, which is opened on the specified date and time in a single bid opening;
   b) the one stage-two envelope method, in which a bid is submitted in an outer sealed envelope, containing two separately sealed and labelled technical and financial bids, which are opened on different dates in separate bid openings;
   c) the two stage-two envelope method, in which-
      i) during the first stage, a bid is submitted in an outer sealed envelope, containing two separately sealed and labelled technical and financial bids, of which only the technical bid is initially opened and evaluated; and
      ii) during the second stage, a revised technical bid and a supplementary financial bid are submitted, which are opened and evaluated together with the original financial bid; or
   d) two stage method, in which-
      i) during the first stage, a technical bid only is submitted, opened and evaluated; and
      ii) during the second stage, a revised technical bid and a financial bid are submitted, opened and evaluated together.

2) All bids shall be deposited in the designated locked bid box or secured place in the case of bulky bids until the bid opening.

7.12.1 APPROVAL AND ISSUANCE OF BIDDING DOCUMENTS
1) The use of standard bidding documents is mandatory.

2) The bidding documents shall be pre-cleared by the Procurement Committee and CTC.
3) The bidding documents shall be issued and distributed simultaneously to all suppliers, by mail, courier, fax, or email, or be made available electronically on the internet, with a view to giving all potential bidders the same opportunity to respond.

7.12.2 APPROVAL OF SHORT LIST
1) When entities to be invited have been selected, the proposed shortlist shall be recorded, with reasons for the selection of each bidder, and submitted to the Procurement Committee for approval using the short list template prior to the issue of the bidding document.

7.12.3 CONDITIONS FOR THE SALE OF BIDDING DOCUMENTS

1) In case of sale of bidding documents, the sale price should not be too high so as not to discourage serious bids but not too low to ensure that the intended purpose is achieved. Such sale price shall be approved by the Procurement Committee.

2) If the documents are available electronically and a bid is submitted without prior payment by the bidder, the bidder shall be required before bid opening to make the required payment. If the bidder refuses or does not make the payment by the deadline indicated in the request, the bid should not be considered for further evaluation.

7.12.4 SINGLE SOURCING

1) A single source is where one bidder is selected from among a number who are able to meet the requirements of the procurement, such as in an emergency situation or for micro procurement.

2) A sole source is where only one bidder exists who is able to meet the requirements of the procurement, due to patents or a monopoly situation or any other reason.

3) The proposed single or sole source shall be recorded, with reasons for the selection of a single source or reasons why there is only a sole source, and submitted to the Procurement Committee for approval.

7.12.5 BID CLARIFICATIONS

1) A bidder may seek clarification of the bidding documents within a pre-determined period during the bidding process. Such a period shall extend up to no later than 14 calendar days before bid closing.

2) Each request for clarification shall be recorded. The Procurement Unit shall develop a response in consultation with the concerned Originating Unit.

3) The Procurement Unit shall respond to requests for clarification by posting an amendment to the bid documents on the EAC web site.

7.12.6 CHANGES TO SOLICITATION DOCUMENTS

1) At any time prior to the deadline for submission of bids, EAC may, either at its own initiative or in response to a request for clarification from a bidder, alter/modify/amend the solicitation documents by issuing an addendum. In certain cases amendments will justify an extension of the submission deadline.

2) The addendum, including any extension to the bidding period, shall be issued in writing and through publication on the EAC web site; and the same information shall
be provided to all bidders.

3) All addenda to solicitation documents shall be approved by the Procurement Committee prior to issue to bidders and shall be numbered sequentially.

7.12.7 RECEIPT OF BIDS

1) It is the responsibility of suppliers to ensure that the bids are submitted to EAC strictly according to the instructions in the bidding documents.

2) Bids shall be received either by
   i. use of a dedicated secured fax
   ii. use of a bid box (Tender Box)
   iii. registered mail or courier
   iv. a dedicated and secured e-mail address

3) Where a bid is delivered by registered mail or courier EAC shall not be held liable for risk of loss or delay in delivery.

4) The secured fax and email shall only be accessed by designated personnel not directly involved in procurement.

5) Bidding shall be closed at the precise time and date of the closing deadline.

6) Bids shall be rejected if:
   a) Received by any fax or email other than the secure fax/email specified in the solicitation documents, and/or;
   b) Received at any other location or by any person other than specified in the solicitation documents, and/or;
   c) Received after the deadline for submission of bids stated in the solicitation documents, and/or; (except if the bidder can supply evidence that every measure has been taken to submit the bid in time, but it did not reach EAC due to circumstances outside the bidder’s control (e.g. force majeure), and the bid opening has not taken place.
   d) Sent via the correct route after having been sent incorrectly.

7) Any bid received after the deadline for submission of bids shall be declared late, labelled as such, and returned unopened to the bidder and any late bid which is not labelled with the bidder’s name shall be left unopened and destroyed.

8) The bid receiving process shall be managed by at least one member of the Procurement Unit and shall be witnessed by a representative of the Procurement Committee, all of whom shall sign a designated form to confirm that bidding was closed at the precise time and date of the deadline.

9) A signed receipt shall be issued for each bid received stating the date and time received.

7.12.8 WITHDRAWAL, REPLACEMENT AND BID MODIFICATIONS

1) A bidder at any time prior to the stated bid closing date may:
   a) withdraw their bid;
   b) submit a replacement bid, with a covering letter stating clearly that any previous
bid is no longer valid; or

c) submit a modification document (clearly marked as such), which clearly indicates what part(s) of the original bid is/are being modified.

2) The deadline for withdrawal, replacement or modification shall be the same as the deadline for submission of bids.

7.12.9 UNSOLICITED BIDS

1) Unsolicited bids, i.e. submissions from suppliers that the EAC has not invited, shall be rejected. Such bids shall remain unopened and be forwarded to the Head, Procurement Unit.

2) In cases where submissions were made by parents, subsidiaries or other related business entities of the original invitees, due to their business and marketing arrangements in place, such submissions may be accepted upon documented and supporting evidence.

7.12.10 OPENING OF BIDS

1) Bid openings shall commence immediately after the deadline date and time for bid receipt, or at such other time as may be specified but in no case more than 48 hours after the deadline date and time.

2) The public opening of bids for a particular procurement shall be completed in one uninterrupted session.

7.12.10.1 Opening of quotations (RFQ – value less than USD 10,000)

No formal opening procedure is required

7.12.10.2 Opening of bids under open call for bids or restricted bidding

1) All bids shall be opened in public in the presence of such bidders or their representative as may choose to attend. The absence of one or more bidders, or all bidders, including their representatives, shall not be a cause to delay or postpone the bid opening.

2) Envelopes marked "WITHDRAWAL" shall be opened first and read out.

3) All other envelopes, including those marked "REPLACEMENT", shall be opened one at a time and the relevant details read out in accordance with the solicitation document.
CHAPTER 8: EVALUATION

1) Evaluation is the process of assessing and comparing bids in accordance with the evaluation methodology stated in the solicitation documents aimed at determining which bid best complies with the defined evaluation criteria, and thus, represents the best value for EAC.

2) The evaluation shall be conducted in accordance with the methodology and criteria stated in the solicitation document and a written evaluation report shall be produced.

3) Evaluation criteria as stated in the solicitation document SHALL under no circumstances be altered during the evaluation process.

4) Evaluation of bids and proposals shall be completed before the validity of the bids expires.

5) Bids or proposals must also be valid at time of contract issuance. In the event that these conditions are unlikely to be met, bidders shall be requested to extend the validity of their bid or proposal.

6) No change in the substance of bids including changes in price shall be sought, bided or permitted after the date and time of bid closing.

8.1 BID EVALUATION CRITERIA

1) Bid Evaluation Criteria are the specific aspects, elements and dimensions in a bid that will be assessed by the EAC, in order to identify the bid that best meets the requirements of the EAC.

2) Evaluation criteria shall not be drafted in a way that restricts competition, unless such criteria are required to meet the objectives of the procurement.

3) Where criteria are given scores or weighted, the maximum score or weight allocated shall be directly related to the importance of the criteria to the procurement.

8.2 EVALUATION METHODOLOGIES

1) The evaluation shall use one of the following evaluation methodologies:

   i. Quality and Cost Based Selection, (QCBS)
   ii. Quality Based Selection, (QBS);
   iii. Fixed Budget Selection, (FBS);
   iv. Least Cost Selection, (LCS); or
   v. Technical Compliance Selection, (TCS):

2) Evaluation under direct procurement shall always use Technical Compliance Selection.

8.2.1 QUALITY AND COST BASED SELECTION (QCBS)

1) Quality and Cost Based Selection is the evaluation methodology that takes into account both the quality and the cost of bids in a process under which technical bids are evaluated without access to financial bids.
2) Under this methodology a total score is obtained upon the combination of weighted technical and financial attributes of proposals. The suppliers’ offers are evaluated and points granted based on how well the offers meet the criteria defined in the bidding documents.

8.2.2 QUALITY BASED SELECTION (QBS)
1) The bidding document shall state the technical evaluation criteria and their maximum scores.
2) The highest technical score shall be the best evaluated bid and shall be recommended for award of contract, subject to negotiation of the financial bid.

8.2.3 FIXED BUDGET SELECTION (FBS)
1) Fixed Budget Selection is the evaluation methodology that recommends the bidder with the best technical bid, which is within the budget.
2) The highest ranked technical bid that is within the budget shall be the best evaluated bid and shall be recommended for award of contract.

8.2.4 LEAST COST SELECTION (LCS)
1) Least Cost Selection is the evaluation methodology that recommends the lowest priced bid, which meets all the requirements of EAC both commercial and technical.
2) The lowest priced bid which is eligible, compliant, responsive and meets the minimum qualifying technical mark shall be the best evaluated bid and shall be recommended for award of contract.

8.2.5 TECHNICAL COMPLIANCE SELECTION (TCS)
1) Technical Compliance Selection is the evaluation methodology that recommends the lowest priced bid, which is substantially responsive to the commercial and technical requirements of the EAC.
2) A bidder who has submitted the lowest priced bid, which is qualified, compliant and responsive, shall be recommended for award of contract, subject to any post-qualification or negotiations that may required.

8.3 EVALUATION PROCESS
1) Evaluation of bids must be conducted according to the evaluation criteria and method defined during the preparation of the bidding documents and clearly established in these documents.
2) Under no circumstances can new or revised evaluation criteria be introduced during the evaluation of bids nor can the method of evaluation be changed. This provides the basis for an objective and transparent evaluation process.

8.3.1 ESTABLISHMENT OF EVALUATION COMMITTEE
1) An Evaluation Committee is responsible for assessing the ability of the potential suppliers to meet EAC’s stated minimum requirements and provides a basis for determining the relative merits of competing bids and proposals based on predetermined evaluation criteria.
2) For each procurement within the threshold of Open and Restricted Bidding an evaluation committee consisting of at least three members shall be established for the purposes of carrying out the technical and financial evaluation of the bids.

3) A superior and subordinate shall not serve together on the Evaluation Committee.

4) Procurement Committee members cannot participate in evaluation.

5) Technical evaluation must be completed within a period of 15 calendar days after the opening of the bids.

6) Financial evaluation must be completed within a period of 5 working days from the time of completion of the technical evaluation.

8.3.2 MEETINGS OF THE EVALUATION COMMITTEE
1) A meeting shall not be held unless all members of the evaluation committee are present.

2) A decision of the evaluation committee shall be by unanimity, except where individual scores or marks are required in accordance with the evaluation methodology.

3) Where an evaluation committee is unable to agree on any part of an evaluation and the disagreement is significant and likely to substantially affect the results of an evaluation, they shall consult the Procurement Unit.

8.4 STAGES OF BID EVALUATION
The Bid Evaluation Committee carries out its mandate in three phases:
   i. Preliminary examination;
   ii. Technical evaluation; and
   iii. Financial evaluation.

8.4.1 PRELIMINARY EXAMINATION
1) The purpose of preliminary examination is to identify and reject bids that are incomplete, invalid or substantially non-responsive to the bidding documents and are therefore not to be considered further.

2) The Evaluation Committee shall carry out preliminary screening as a group.

3) A preliminary examination shall be conducted to determine-
   (a) whether a bidder is eligible; and
   (b) the administrative compliance of a bid to the basic instructions and requirements of the bidding document.

8.4.2 TECHNICAL EVALUATION
The technical evaluation criteria should reflect the requirements of the Specifications, TOR or SOW, and a successful technical proposal must satisfy these criteria.

1) A detailed evaluation shall be conducted to assess-
   (a) the commercial responsiveness of a bid to the terms and conditions of the bidding document; and
(b) the **technical responsiveness** of bids to the statement of requirements or the relative quality of bids received.

2) The detailed evaluation shall only be conducted on a bid that is determined to be eligible and compliant during the preliminary examination.

### 8.4.3 FINANCIAL EVALUATION

1) In addition to the technical evaluation criteria, bidders shall be evaluated on the basis of their proposed price/cost to perform the requirements of the contract.

2) A financial comparison shall be conducted to examine and compare financial bids and determine the best evaluated bid.

3) The financial comparison shall only be conducted on a bid that is:
   a) eligible and administratively compliant; and
   b) substantially, commercially and technically responsive or meet the required minimum technical standard or score.

### 8.4.4 DISCOUNTS

1) A bidder may offer a discount or reduction to the bid prior to the date and time for bid closing.

2) A bidder shall not be permitted and shall not be requested to bid any discount or reduction after the date and time for bid closing.

3) Bidding forms shall include specific areas in which a bidder can declare the level of discount applicable to the bid.

### 8.4.5 CLARIFICATIONS FROM SUPPLIERS

1) Where there is a requirement to clarify information provided by the bidder so that the bid can be properly evaluated, the Chairperson of the Bid Evaluation Committee shall request clarification, in writing, and the bidder shall be given a minimum of three working days to respond.

2) If there is no response from the bidder, or if the response does not provide the necessary clarification, the bid shall be evaluated on the basis of the available information.

3) The clarification shall not seek and the bidder shall not be permitted to:
   i. add or delete aspects of the bid, or otherwise modify any portions of the bid.
   ii. change the contents of their bid
   iii. change the price or substance of the bid except as required in order to allow for correction of arithmetic errors.

4) All requests for clarifications shall be copied to all bidders for information purposes only and noted in the evaluation report.

### 8.4.6 MATERIAL AND NON-MATERIAL DEVIATION

1) Bids should be rejected only and whenever deviation to the requirements is material. However, in order to achieve value for money, it is important not to disqualify bids solely for non-material (minor) deviation(s).
2) A material deviation is one that:
   i. would affect in any substantial way the scope, quality, or performance of the goods and related services specified in the contract; or
   ii. would limit in any substantial way, inconsistent with the bidding documents, EAC’s rights or the bidder’s obligations under the contract; or
   iii. if rectified would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

3) A non-material deviation may be waived, clarified by the bidder or corrected by the Evaluation Committee.

4) In classifying a deviation or omission as material or non-material, the following guidance shall apply:
   a) Material deviation, or omission shall include:
      i) unacceptable time schedules, where it is stated in the bidding document that time is of the essence;
      ii) unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; and
      iii) unacceptable counter-proposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty; and
   
   (b) A non-material deviation or omission shall include-
      i) minor differences in time schedules, where time is not of the essence;
      ii) the omission of minor items (e.g. missing documents - only historical or original versions of those documents that have already been provided - with the exception of those documents that must be supplied in original form by the bid receipt deadline; e.g. bid securities);
      iii) arithmetic errors;
      iv) minor amendments to contract terms and conditions, which are acceptable to the EAC.

5) Bidders shall be given a deadline within which to submit the required clarifications. If such a deadline passes without satisfactory response, the bid evaluation committee must reject the bid.

8.4.7 TIE-IN EVALUATION POINTS
1) After a complete bid evaluation, there may appear to be two or more ‘winners’ because two or more bids may be in a tie with respect to evaluation points awarded.

2) The bidders involved shall be informed as to how their bids were actually evaluated and shall be given 10 calendar days to propose any changes that would improve their chance of success. It is up to those bidders to decide where and how they will adjust their bids.

8.4.8 EVALUATION UNDER DIRECT PROCUREMENT
1) Evaluation under direct procurement shall be by technical compliance selection.

2) Financial evaluation under direct procurement shall:
   a) be done in the currency of the bid, without any conversions;
   c) undertake an analysis of value for money, through comparison with prices previously obtained through a competitive method or a breakdown analysis of
the costs of each component, taking into account the circumstances and value of the procurement.

3) The evaluation committee shall recommend whether:
   (a) the bid should be considered for contract award, subject to any negotiations required;
   (b) competition should be obtained, where possible, in order to ensure value for money or to meet the technical or other requirements of EAC; or
   (c) the requirement should be cancelled or redefined.

8.4.9 IDENTIFICATION OF THE WINNING BID
1) When using the Quality and Cost Based Selection, (QCBS), the highest total score shall be the best evaluated bid and shall be recommended for award of contract.

2) When using the Quality Based Selection, the highest technical score shall be the best evaluated bid and shall be recommended for award of contract, subject to negotiation of the financial bid.

3) When using the Fixed Budget Selection, the highest ranked technical bid that is within the budget shall be the best evaluated bid and shall be recommended for award of contract.

4) When using the Least Cost Selection, the lowest priced bid which is eligible, compliant, responsive and meets the minimum qualifying technical mark shall be the best evaluated bid and shall be recommended for award of contract.

5) When using the Technical Compliance Selection, a bidder who has submitted the lowest priced bid, which is qualified, compliant and responsive shall be recommended for award of contract, subject to any post-qualification or negotiations that may required.

8.5 NEGOTIATIONS
1) Negotiations are discussions with a potential supplier after selection of the supplier, but prior to award of contract, with the purpose of ensuring best value for money without compromising the principle of fair and equal treatment of all suppliers.

2) Negotiations may be required under the following conditions:
   i. for a Direct Contract;
   ii. in selection of consultant services where price is not an evaluation criterion: this will apply only to the Quality-Based Selection (QBS), Selection Based on Qualifications, or the Single-Source Selection methods and will follow the procedures specified in the Request for Proposals; or
   iii. where the price proposed by the winning bidder is significantly above the available budget.

3) Negotiations shall never take place with more than one bidder concurrently;

4) Negotiations may be undertaken with the winning bidder, under any method of procurement, before finalisation of the contract, relating to the following areas:
   i. a minor alteration to the technical details of the statement of requirements:
ii. reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the bidding documents;
iii. a minor amendment to the special conditions of contract;
iv. finalizing payment arrangements;
v. mobilisation arrangements;
vi. agreeing on the final delivery or work schedule to accommodate any changes required by the procuring entity;
vii. the methodology for staffing; or
viii. clarifying details that were not apparent or could not be finalised at the time of bidding.

5) Negotiations shall not be conducted:
   i. to substantially change the specification or details of the requirement, including tasks or responsibilities of the bidder, such that:
      a. the resulting contract would have significantly increased scope or value;
      b. significant elements of the contract would be removed entirely; or
      c. complete new areas of work would be added;
   ii. to materially alter the terms and conditions of contract stated in the bidding document;
   iii. primarily for the purpose of reducing the price, where the winning price is within the EAC contract cost estimate;
   iv. purely for the purpose of increasing prices in case of disposal of assets; or
   v. to substantially alter anything that formed a crucial or deciding factor in the evaluation of bids.

6) Where a competitive procurement method was used, but only a single bid was received, negotiations may relate to any aspects of the bid.

8.5.1 NEGOTIATION TEAM
The membership of a negotiation team shall be recommended by the Procurement Unit and membership shall be approved by the Procurement Committee.

8.5.2 FINAL EVALUATION REPORT
1) The Evaluation Committee shall combine the results of the Technical and Financial Proposal evaluations into the final report to be submitted to the Procurement Committee for approval.

2) All members of the Committee who participated in the evaluation shall sign the report, initialled on every page (except for historical annexes such as the RFQ/ITB/RFP, amendments, clarification notes etc.) by all members of the Committee and submit it to the Head of Procurement.

3) A combined evaluation report shall contain recommendations on:
   i. the best evaluated bidder and the evaluated price;
   ii. whether the recommended bidder should be subject to post-qualification;
   iii. whether negotiations should be held with the recommended bidder; and
   iv. the price of the proposed contract, subject to any changes following negotiations.
8.5.3 WITHDRAWAL AFTER THE SUBMISSION DEADLINE
1) Requests to withdraw a bid after the submission date and time shall not be honoured, and EAC shall duly register such a bid and evaluate it together with all the other bids. The bidder shall be informed in writing.
Where a bidder withdraws their bid after the bid closing date, but before the conclusion of the evaluation and award, that bidder shall forfeit its bid security.

8.5.4 CANCELLATION OF A CALL FOR BIDS AFTER OPENING
1) The Procurement Committee may cancel a call for bids after bid opening but prior to award of contract where:
   i. no valid bids were received;
   ii. the EAC requirement has changed significantly, such that it would not be fair or reasonable to complete the process;
   iii. there has been a significant change in the financial position of the EAC;
   iv. the price quoted is significantly above the EAC available budget.

2) After cancellation of the call for the bids, the Head of Procurement shall notify all bidders that the process has been cancelled and return any bid securities.

8.5.5 POST-QUALIFICATION
1) Where appropriate, a post-qualification may be undertaken to determine whether the best evaluated bidder has the capability and resources to effectively carry out the contract. Post-qualification shall be undertaken for the best evaluated bidder only.

2) Where the best evaluated bidder does not meet the post-qualification criteria:
   a) the bid shall be rejected; and
   b) a post-qualification shall be undertaken for the next best evaluated bidder.

8.5.6 ALTERNATIVE BIDS
1) Alternative bids are bids that do not comply with the exact requirements of the bids, or which may represent an improvement over the original bid in terms of exceeding the minimum performance parameters of the request, and are proposed by suppliers as an optional way of fulfilling the needs of EAC.

2) Alternative bids may be
   i. rejected;
   ii. considered only if they present an alternative to the lowest substantially compliant bid, as long as the bided price does not exceed that of the second lowest one.

3) Alternative bids are evaluated simultaneously with other original bids.

8.5.7 INAPPROPRIATE INFLUENCE ON EVALUATIONS
1) After the deadline for the submission of bids, proposals or quotations no person who submitted a bids, proposal or quotation shall make any unsolicited communications to the EAC or person involved in the procurement proceedings that might reasonably be construed as attempt to influence the evaluation comparison of bids, proposals or quotations; and no person who is not officially involved in evaluation and comparison of bids, proposal or quotations shall attempt, in any way, to influence that evaluation and comparison.
CHAPTER 9: PROCUREMENT REVIEW AND AWARD OF CONTRACT

1) The Procurement Committee shall review procurements with a contract value of $10,000 and above in order to ensure compliance with applicable regulations, rules, policies and procedures.

2) Award is the decision authorizing establishment of a contract with a selected supplier or individual contractor.

3) The bidding documents shall state the procedure for award of contract, which shall be: by placement of a written contract document.

4) A contract document, purchase order, or other communication in any form conveying acceptance of a bid that binds EAC to a contract with the provider, shall not be issued prior to:
   i. an award of a contract decision by the Procurement Committee;
   ii. review by the CTC for contracts of $50,000 and above.
   iii. the display of a notice of Best Evaluated Bidder;
   iv. the elapse of the period of the holding period (notice of best evaluated bidder);
   v. confirmation by the Head of Procurement that the procurement is not subject to any review by the Complaints Committee;
   vi. commitment of the full amount of the funding for the period of the proposed contract; and
   vii. approval by any other relevant agencies (e.g. Funders)

5) EAC shall not enter into a contract until the SG or an officer with delegated authority confirms in writing that the required funds have been committed for the proposed contract, except where:
   i. payment to a provider is to be effected in proceeding financial year;
   ii. for framework contracts, funds are committed at the time of issue of each specific call off order.

6) In respect of framework contracts, SG shall ensure that:
   i. the minimum payment guaranteed to the provider is committed prior to the award of contract;
   ii. sufficient funds are budgeted for in a financial year to cover the full cumulative costs of all call off orders anticipated for the year;
   iii. the funds required for each call off order are committed prior to its release.

7) Where only one responsive bid is received in response to a competitive process and where that bid has met all criteria set out in the bid documents the bid shall be considered for award of contract and measures shall be taken to ensure that fair value will be received.

9.1 REVIEW AND RECOMMENDATION TO SECRETARY GENERAL

1) The Procurement Committee shall review the procurement process to ensure compliance with the FRR, as well as other EAC policies, procedures, and instructions.
2) The Procurement Committee shall verify that appropriate funds are available to cover the cost of the proposed contract.

3) When the Procurement Committee is satisfied with the recommendations it shall approve the award of the contract to the successful bidder. However, if the Committee review discloses a serious flaw in the evaluation process, the Committee shall direct a re-evaluation of one or more bids, or cancellation of the procurement process, or other appropriate action, in all cases recording in the Minutes the justification for the decision.

4) The Procurement Committee shall have no discretion to award the contract to any other party other than the recommended successful bidder.

5) An award of contract decision by the Procurement Committee shall not amount to a contract binding EAC to a provider.

6) Procurement Committee review is not required when the funding source is from International Financial Institutions or Development Partners, depending on the funding agreement and if it has already reviewed the evaluation process, and awarded the contract in accordance with its internal procedures and provided in writing a “no objection”.

9.1.1 AWARD
1) Contracts shall be awarded by the Secretary General or his delegate, in this case the DSG (F&A), based upon recommendations by the Procurement Committee.

2) The Secretary General will either award or not award a contract to the selected supplier.

3) In cases where the Secretary General disagrees with the Procurement Committee he or she shall record the reason for such a decision.

9.1.2 HOLDING PERIOD/PUBLIC NOTICE OF BEST EVALUATED BIDDER
1) For every contract worth $50,000 and above there shall be a holding period of 14 calendar days after approval of the selected contractor by the Procurement Committee.

2) During this period, the best evaluated bidder shall be informed of its success (a letter of intent), but the contract shall not be signed.

3) A letter of intent shall not amount to a contract.

4) The results shall be displayed on the EAC website and be sent at the same time to all the unsuccessful bidders.

5) If no complaint from another bidder is received during the holding period, signature of the contact will proceed.

6) Where a decision to award a contract is changed after the publication of a notice of best evaluated bidder, a new notice of best evaluated bidder shall be displayed, prior to contract award or placement.
7) The “holding period” requirement shall not apply to micro procurement and procurement in emergency circumstances, irrespective of the procurement method used.

9.2 RETROSPECTIVE APPROVAL

1) Retrospective approval of contracts is not a procurement process, but an administrative procedure, which allows for review and possible ratification of actions which were not undertaken in full conformity with the above review and award processes.

2) Any irregularity in the procurement process identified in the retrospective review shall be the sole responsibility of the person/s that carried out the procurement and shall lead to disciplinary actions.

9.3 NO AWARD SITUATIONS

1) When a Bid Evaluation Committee has not been able to recommend a successful bidder because none has met the requirements of the call for bids, or otherwise recommends that no award be made, its report to the Procurement Committee shall so indicate.

2) Procurement shall not be cancelled and a new call for bids issued using the same specifications, bidding and contract documents and method of procurement solely for the purpose of obtaining lower prices.
CHAPTER 10: CONTRACTING

1) A contract is a legally binding document between EAC and the supplier, and defines, at a minimum, the nature of the product being procured, the quantity being procured, the overall contract and/or unit price, the period covered, conditions to be fulfilled, including the EAC General Conditions of Contract (GCC), terms of delivery and payment, and the name and address of the supplier.

2) A written contract shall always be issued by EAC for all procurement activities prior to any delivery of goods taking place, and/or the start up phase of works or services.

3) EAC model contracts shall always be used unless in the case of the donor funded procurements, such a donor imposes different templates, or in cases where other formats are routinely used in a specific industry (e.g. lease contract, contracts for electricity and water provision, etc.).

4) Modifications and/or additions to the EAC standard contract formats including annexes shall not be made without the approval of the CTC and Procurement Committee.

10.1 LEGAL EFFECT

1) All contracts shall be signed for the EAC by the Secretary General or any other officer authorised by the Secretary General.

2) When the contract has been awarded and approved by the EAC, the Procurement Unit shall send the contract to the proposed contractor for signature; the successful bidder shall be required to sign and return the contract document to the EAC within 14 calendar days from the date of dispatch.

3) Although the contract may have been signed by both parties, the giving of legal effect to the contract may be dependent on one or more conditions, such as:
   i. receipt by the EAC of a Performance Security;
   ii. receipt by the EAC of an Advance Payment Security;
   iii. receipt by the Supplier/Contractor of an Advance Payment; or
   iv. receipt by the Supplier/Contractor of an acceptable Letter of Credit.

4) If the bidder fails to provide the specified securities or refuses without good reason to sign the contract as requested, or fails to fulfil any other condition of contract effectiveness, the Head of Procurement shall refer the issue to the Procurement Committee to decide whether efforts to have the contract signed should continue, or the bidder’s bid security should be called, and the contract awarded to the next ranked bidder.

5) No work under the contract shall be started until the Procurement Unit has confirmed that the contract has legal effect.

6) The Procurement Unit shall concurrently send a formal notification of the signature of the contract to all unsuccessful bidders.

10.2 TYPES OF CONTRACTS

1) The various core types of contract are distinguished by:
   i. the allocation of risk for successful performance – where accountability lies for successful completion of the contract;
ii. the degree of expertise and marketplace knowledge required from the EAC; 

and 

iii. the degree of control that the EAC has over what the contractor does – and 

conversely, the freedom that the contractor has to decide how best to do the 

work.

2) EAC shall use any of the following bases of payment that constitute different types 

of contracts:

i. lump sum;

ii. time-based;

iii. ad measurement;

iv. framework;

v. percentage;

vi. cost reimbursable;

vii. target price;

viii. retainer;

ix. contingency or success fee; or 

tax. a combination of any of these types of contracts.

10.3 FRAMEWORK ARRANGEMENTS

1) A Framework arrangement is an agreement with one or more suppliers through 

which EAC needs for specified goods, services or works can be obtained quickly and 

easily on an ‘as and when required’ basis.

10.3.1 FRAMEWORK CONTRACTS

1) A framework contract is a formal agreement between the EAC and a supplier. In 

exchange for an up-front payment, a guarantee of a minimum order/minimum 

payment, or more generally that the EAC will meet all of its needs for a specific 

period through the contractor, the supplier agrees to meet the needs of the EAC 

over a specified time, with agreed-upon terms and conditions, and either (i) an 

agreed-to price, or (ii) a mechanism through which particular requirements 

(orders) will be priced.

10.3.2 FRAMEWORK AGREEMENT

1) A framework agreement (sometimes called a standing bid) is similar to a framework 

contract, except there is no up-front payment, and therefore a contract does not exist 

until the first time the EAC places an order. Until the contract comes into existence, 
either party may withdraw from the agreement without penalty.

2) Further, in a framework agreement the EAC makes no commitment at all to the 

contractor(s): there may or may not be significant (or any) business volume.

10.3.3 OPERATION OF FRAMEWORK ARRANGEMENTS

1) Following completion of the award, call-off or delivery orders shall be issued as a 

simple Purchase Order for specific requirements as and when needed during the 

period of the framework agreement. The Purchase Orders may be of any value, up 
to the limit (if any) of the total value of the framework agreement.

2) Payment shall be made on the basis of the works, services or supplies actually 
delivered or performed.

3) A framework contract may include fixed prices or price adjustment.
10.4 CONTRACT PRICING

1) EAC shall place a contract based on **fixed and firm prices** for a procurement requirement that is to be completed within **eighteen months** from the placement of a contract.

2) EAC may place a contract with price adjustment provisions for a procurement requirement that will not be completed **within eighteen months** from the placement of a contract.

10.5 PUBLICATION OF CONTRACTS ISSUED

1) In accordance with the principle of transparency, EAC shall post information about all contracts issued at a value of **USD 100,000** or more on the EAC website.
CHAPTER 11: CONTRACT MANAGEMENT

1) Contract management and administration is the process which ensures that both parties to the contract fully meet their respective obligations as efficiently and effectively as possible, delivering the business and operational outputs required from the contract and mitigating attendant risks.

It includes monitoring contract relationship, addressing related problems, incorporating necessary changes or modifications in the contract, ensuring both parties meet or exceed each other's expectations, and actively interacting with the contractor to achieve the contract's objective(s).

2) There are two major activities under this phase in the procurement process:
   i. Contract Management, and
   ii. Financial Management/Payments

11.1 CONTRACT MANAGEMENT

1) After a contract has been placed, contract management, except the capacity to amend or terminate, shall pass from the Procurement Unit to the Originating Unit.

2) An Originating Unit shall promptly provide the following information to the Procurement Unit:
   a) any departure from the terms and conditions of a contract; and
   b) any alterations to the conditions of a contract, either before or during the course of implementation, that in effect could have impacted on the evaluation and rankings of the bid and the choice of provider.

3) A contract manager shall be nominated by the relevant User department and shall:
   a) provide both technical oversight and direction.
   b) ensure that the provider performs the contract in accordance with the terms and conditions specified in the contract and address any performance deficiencies.
   c) manage the obligations and duties of the EAC specified in the contract.
   d) Keep contract management records.

11.2 POST-AWARD MEETING

1) A Post-Award meeting (also known as a “kick-off” meeting) is a conference of the principals responsible for administering the contract held immediately upon award of a contract. It is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions and the respective responsibilities of the parties.

11.3 REJECTION OF GOODS OR SERVICES

1) If performance, goods or services do not meet the contract requirements, the Contract Manager shall identify the deficiencies and advise the contractor and the Head of Procurement in writing, so that remedial action can be taken immediately.
2) Upon receipt of a rejection notice, the Head of Procurement shall immediately contact the supplier to ascertain what corrective actions the supplier is taking to correct the deficiency and assure that future deliveries/performance meet the contract requirements.

3) Suppliers shall be given an opportunity to correct or replace non-conforming goods or services when that can be accomplished within the delivery schedule.

4) Correction or replacement shall be at no extra cost to EAC.

5) Additionally, supplier performance shall be well documented in order to provide a historical record that can be used in making future contract evaluation/award decisions.

6) Any rejected goods are to be removed by the supplier within the shortest time possible. If the goods are not removed, and it is specified in the contract, the supplier may be charged a penalty for delay.

11.4 DISPUTE RESOLUTION

1) The preferred means of dispute resolution shall be “negotiation”.

2) Should the EAC project/contract manager and the contractor’s contract manager be unable to resolve a dispute, the contractor may within 14 calendar days submit to the EAC a formal notice of dispute requesting formal negotiation. This notice must specify the issue(s) in contention, and reference the appropriate provision(s) of the contract.

3) Notwithstanding that such a notice is anticipated or submitted, the contractor shall continue to carry out the work as required by the contract; this performance will not, however, prejudice any claim that the contractor may have.

4) Within 7 calendar days of receipt of such a notice, the parties shall commence formal negotiations in order to resolve the dispute.

5) If the two parties are unable to resolve some or all of the issues which are the subject of the negotiations within 14 calendar days, the parties shall refer the remaining issues which are in dispute for negotiation between the Deputy Secretary General (Finance and Administration) and an appropriate contractor’s executive.

6) The Deputy Secretary General (Finance and Administration), shall invite the Contractor to a formal meeting to be held within 7 calendar days, to seek agreement on a solution acceptable to both parties:
   i) the Head of Procurement shall act as secretary to the meeting;
   ii) if an agreement is reached which changes any of the conditions of the contract, in this circumstance only the Deputy Secretary General (Finance and Administration) has the authority to direct that those changes be made without further consultation with the Procurement Committee as appropriate;
   iii) the Procurement Unit shall prepare any necessary addendum to the contract, for review and approval by Counsel and signature by the Deputy Secretary General (Finance and Administration).
7) If the parties concerned with negotiations are within a period of 14 calendar days after the first meeting convened under section (h) above unable to resolve the outstanding issues, the supplier may request that the matter proceed to the Complaints Committee for consideration.

11.5 RETURN ITEMS

1) When it is necessary to return items to a supplier, the Head of Procurement shall issue a “Return to Supplier” notification.

2) The “Return to Supplier” form shall include:
   a. A reference to the original Purchase Order number;
   b. A description of the item to be returned;
   c. The value of the items as shown on the Purchase Order;
   d. An indication of the reason for the returned items;
   e. Additional remarks, if required, to explain the reason(s) for the returned items;
   f. Instruction to Supplier on the action required by EAC (i.e., replacement of the returned material or the issue of an appropriate credit or refund in respect of its value;
   g. The shipping method by which the item is returned to the Supplier, and whether the cost is to be borne by EAC or the Supplier; and

3) The “Return to Supplier” form shall be distributed as follows:
   a. The original copy to the Supplier;
   b. One copy to the relevant Originating Unit;
   c. One copy to the Accounts;
   d. One copy to the appropriate case file.

11.6 CONTRACT AMENDMENTS

1) A contract amendment is any change to the price, time frame, deliverables or any other aspect of a contract that could not reasonably have been anticipated during the original development of the procurement. In order for a contract to be amended in any regard that would affect its scope, the amendment must remain within the stated intent of the contract, as published in the original request for bids.

2) A contract amendment shall not be issued to a provider prior to:
   a. obtaining approval from the Procurement Committee;
   b. commitment of the full amount of funding of the amended contract price over the required period of the revised contract; and
   c. obtaining approval from other concerned bodies including the CTC after
   d. obtaining the approval of the Procurement Committee.

3) A contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract.
   No individual contract amendment shall increase the total contract price by more than 15% of the original contract price.

4) Where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25% of the original contract price.
11.7 CONTRACTOR PERFORMANCE APPRAISAL

1) The Procurement Unit shall maintain a system for monitoring the performance of suppliers against the specifications or contractual obligations based on the evidence recorded in contract files.

2) Where after being informed of performance problems, suppliers in subsequent contracts with the EAC fail to improve their performance to the satisfaction of the EAC:
   i. those that are on a Supplier Register shall with the approval of the Procurement Committee be removed from the Register;
   ii. those that are not on a Register shall be reported to the Procurement Committee, which may according to the circumstances issue a notice of debarment from EAC procurement for a specified period of time.
   iii. Supplier performance evaluation shall be mandatory for all procurement activities.
   iv. When the last payment under a contract has been made, and there are no more pending claims, the supplier performance evaluation form shall be completed and kept in the procurement file.

11.8 REMEDIES

A breach of contract may entitle the non-performing party to certain remedies namely,
   i. Termination
   ii. Liquidated Damages
   iii. Specific performance

11.9 FINANCIAL MANAGEMENT AND PAYMENTS

Financial management and payment refers to the timely processing of invoices for payment, according to the terms of the contract as well as the review of financial implications of contract changes, and the liquidation of financial securities (i.e. release of performance and advance payment securities) once the reason for requesting them no longer exists.

11.9.1 PRICE ADJUSTMENT

1) A price adjustment provision may be included in a contract extending beyond eighteen months, where it is more economical for EAC to accept the inflation risk than to pay an additional cost for the supplier to accept the risk.

2) Where no industry standard or other appropriate formula is available, a price adjustment formula may be applied.

11.9.2 PAYMENTS

1) EAC contract managers shall ensure that the terms and conditions of payment are consistent with the ones specified in the contract document.

2) Bidding documents and the resulting contracts shall specify the payment terms that shall apply to a contract and these shall include:
   i) payment method;
   ii) payment structure;
   iii) payment documents;
   iv) payment period; and
   v) payment currency.
3) The method of payment shall be comprehensively defined in a contract and shall indicate the person who pays any costs associated with the agreed method.

   i. No payment shall be made to a supplier without an ORIGINAL invoice from the provider certifying the payment due.

   ii. Payments shall only be made in the name of the entity contracted as stated in a contract.

4) EAC shall not make any payments to any other entity unless the provider requests and confirms in writing the details of the recipient of a payment.

5) All payment requests shall be submitted directly to the Finance Department.

11.9.3 TAXES

EAC is exempt from direct taxes such as income tax, and is entitled to exemption/reimbursement of indirect taxes, such as sales tax and VAT.

11.9.4 PAYMENT CURRENCY

1) Payment shall be made in the currency stated in the contract.

11.10 CONTRACT COMPLETION AND FILE CLOSE-OUT

1) Contract completion entails the confirmation that all obligations have been met, identification of any residual obligations and how they will be fulfilled, settlement of final payments, assessment of contractor, and the administrative closing of files.

2) The Procurement Unit shall verify the following key steps in order to close a contract:

   i. All products and/or services required have been provided.

   ii. Documentation in the contract file adequately shows receipt and formal acceptance of all contract items.

   iii. No claims or investigations are pending on the contract.

   iv. Any EAC furnished property has been returned to EAC and discrepancies in number and condition resolved.

   v. All actions related to contract price revisions and changes have been concluded.

   vi. All outstanding subcontracting issues have been settled.

   vii. If a partial or complete termination was involved, action is complete.

   viii. Original copies of all warranty documentation, including expiration dates, responsibilities and procedures to follow are finalised.

   ix. Any required contract audit has been completed.

   x. The final invoice has been submitted and paid.

3) File close-out is the responsibility of, and is initiated by, the Head of Procurement. The process shall be completed within 60 days after the Head receives evidence of physical completion of the contract.
CHAPTER 12: PROPERTY DISPOSAL

1) Assets shall be disposed off under the following conditions:
   i. If the asset has become unserviceable and repair is either not possible or not cost-effective;
   ii. If the asset is surplus to EAC requirements; or
   iii. If the asset has become obsolete such that maintenance and repair is no longer cost-effective.

2) The Board of Survey shall review such items and recommend to the Procurement Committee for disposal.
CHAPTER 13: COMPLAINTS REVIEW MECHANISM

1) An unsuccessful bidder who believes that the procurement process was conducted in violation of relevant rules and regulations must have access to review and remedies. The Complaints Review Mechanism is intended to provide effective remedies for aggrieved bidders. In particular, the system must provide aggrieved bidders with rapid, effective, transparent, and non-discriminatory review and remedies.

2) The EAC Complaints Committee provides suppliers who believe that the EAC or other suppliers have not conducted themselves in accordance with the requirements of this Manual with an independent forum where their complaints shall be heard and dealt with objectively.

13.1 FUNCTIONS OF THE COMPLAINTS COMMITTEE

1) The Complaints Committee shall:
   i. handle complaints from suppliers and any other interested party;
   
   ii. receive and consider recommendations from the Procurement Committee for debarment of suppliers;
   
   iii. receive and consider applications from debarred suppliers for reinstatement.

13.2 IMPLEMENTATION OF COMMITTEE DECISIONS

1) The decisions of the Complaints Committee shall be binding on the EAC.