



**Cote d'Ivoire – Liberia – Sierra Leone – Guinea (CLSG)
Transmission Company**

TRANSCO CLSG TENDER CODE

Revision of October 2023

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PREAMBLE

This Tender Code defines the principles and rules that shall govern the acquisition of goods, services and works by TRANSCO CLSG from its own funds. It is largely inspired from the WAPP Secretariat Tender Code and from the procurement guidelines of TRANSCO CLSG financing entities.

These principles and rules are based on transparency, equity, fair competition and best governance within all the procurement processes in order to ensure an effective and rational management of TRANSCO CLSG funds.

The Tender Code should be updated from time to time and as needed to improve procurement practices of TRANSCO CLSG, subject to approval by TRANSCO CLSG Board.

TITLE 1: General Provisions

Chapter I: Definitions, Principles and Scope of Application

Article 1: Definitions

In this Code, the following definitions shall apply:

"Bid" means the technical and financial submissions made by a supplier, contractor, or service provider in response to the terms of TRANSCO CLSG's invitation;

"Bidder" means a natural or legal person submitting a bid;

"Bidding documents" means the documents provided by TRANSCO CLSG to bidders as a basis for preparation and submission of their bids;

"Bid/Performance Security" means an amount to secure the fulfilment of obligation of a contractor or supplier, which may take the form of a financial deposit, bond, irrevocable letter of credit or bank guarantee.

"Candidate" means a natural or legal person invited to take part in public contracting or seeking to be so invited;

"Consultant" means a natural or legal person under contract with TRANSCO CLSG to provide consulting services;

"Contracting" means the purchasing, hiring, obtaining or otherwise by any other contractual means of goods, works and services including consulting services by TRANSCO CLSG;

"Co-contracting" refers to a situation where TRANSCO CLSG enters into a contract with several suppliers, contractors and service providers who shall be jointly responsible for the delivery of goods and services;

"Contracting Authority" means the Officer authorized by virtue of the Article 16 of TRANSCO CLSG Articles of Association;

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

"Framework agreement" means the contractual arrangement described under Article 67.

"General Manager" means the head of TRANSCO CLSG

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

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"Member" means a Power Utility which is a shareholder of TRANSCO CLSG.

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

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

"Procurement Committee" means the entity responsible for the opening of bids, review of the evaluation of bids, proposals and quotations done by the Evaluation Sub-Committee, as well as the proposal of award of contracts to the Contracting Authority according to thresholds as set out in the Procurement Manual;

"Procuring Entity" means the unit or department of TRANSCO CLSG that has expressed the need to procure goods, services or works, which are subject to a procurement process;

"Procurement Manual" means the enabling rules and procedures developed by TRANSCO CLSG for the implementation of this Code;

"Procurement Plan" means the annual procurement plan as defined in Article 20 of this Code, which is established by TRANSCO CLSG before the beginning of each fiscal year and approved by the General Manager, in consistence with TRANSCO CLSG annual budget approved by TRANSCO CLSG Board, and which may be updated during the fiscal year as needed.

"Procurement Unit" means the structure in TRANSCO CLSG that shall have the responsibility of coordinating the implementation of the overall procurement process;

"Public Contract" means a written contract for pecuniary interest entered into by TRANSCO CLSG and a contractor or contractors for the supply of goods, and the execution of works or services;

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

"Public service contracts" means public contracts other than public works or supply contracts;

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

"Public works contracts" means public contracts having as their object either the

execution, or both the design and execution of works or the implementation by whatever means of works corresponding to the requirements specified by TRANSCO CLSG;

"Request for proposals" means the method of contracting used by TRANSCO CLSG to invite submission of proposals from a service provider or consultants;

"Resolution" means the official decision taken by TRANSCO CLSG Board for the implementation of this Code.

"Services" means any object of contracting other than goods and works;

"Standstill period" means the period of time between the notification of contract award and the contract signature, as described in Article

"Terms of reference" means the statement issued by TRANSCO CLSG giving the definition of the objectives, goals and scope of consulting services, including where applicable the means to be used;

"Works" means all works associated with the construction, reconstruction, demolition, repair or renovation of infrastructure facilities, including site preparation, excavation, erection, construction, installation of equipment and materials, decoration, as well as services incidental to construction, such as drilling, mapping, satellite photography, seismic and geotechnical investigations and similar services provided the value of those services does not exceed that of the works themselves.

Article 2: Principles

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

- a) Fair and open competitive bidding procedures including effective publication of invitations to bid, objective evaluation criteria, public opening of bids and the use of electronic communication methods;
- b) International standards of transparency, fairness, equity and economic efficiency;
- c) Contracting process integrity, high ethical standards and absence of conflict of interest;
- d) Candidate's and Bidder's right to file bid complaints;
- e) Provision of dispute resolution mechanisms and the timely resolution of disputes;
- f) No discrimination whatsoever in the contracting process and the contract conditions between bidders in relation to their nationality, being either from the private or the public sector, including State owned companies, except as provided for in Article 55 of this Code;
- g) Allowing private, mixed or State owned companies to benefit from the same economic

and commercial advantages, notably in terms of formalities, credit, tax, custom duties; procuring entities shall guarantee during the contracting process that any advantage detrimental to the competition is taken into consideration in the evaluation of the bids.

Article 3: Scope of Application

1. The provisions of this Code are applicable to all contracts using TRANSCO CLSG funds;
 - a) the general budget of TRANSCO CLSG;
 - b) any other special funds;
2. The provisions of the CLSG International Project Agreement under Article 5.3 “Procurement of Contractors” and Annex 3 “Procurement and Contractor Selection”, shall have precedence over the provisions of this Code.

Article 4: Public Access

This Code, the Procurement Manual, the Standard Bidding Documents and the related TRANSCO CLSG Board Resolutions approving this Tender Code shall be made accessible to the public, including through electronic means of communication and publication on TRANSCO CLSG Website.

Article 5: Thresholds per Types of Procurement Process

The thresholds per types of procurement process are as set out in the Procurement Manual and shall be revised if the need arises, subject to TRANSCO CLSG Board approval.

Chapter II: Responsibilities for Procurement Processes and Contract Awards

Article 6: Contracting Authority Functions and Contract Awards

1. Procurement processes and contract awards by TRANSCO CLSG shall be carried out in accordance with the provisions of this Code.
2. The Contracting Authority shall be TRANSCO CLSG General Manager. He/She shall assume the following duties:
 - a) Oversee the proper application of procurement procedures by the Procurement Committee;
 - b) Oversee the preparation of bidding documents including the invitation for bids and their advertisement when needed.
3. The Contracting Authority is entrusted to approve the Procurement Committee reports and sign the contracts, within the limits established by the Board, as per Article 7 of TRANSCO CLSG Articles of Association.

4. The Awarding Authority is the Procurement Committee through processes specified in this Code for the award of a contract.
5. The Contracting Authority may delegate its functions but the Awarding Authority shall not delegate its functions.
6. No Department, Division or Unit of TRANSCO CLSG shall publish an invitation or request for bids, proposals or quotations unless authorized by the Contracting Authority. No Department, Division or Unit shall award or finalize any public contract if the procurement process stipulated in this Code is not followed.

Article 7: TRANSCO CLSG Procurement Committee

1. TRANSCO CLSG shall establish a Procurement Committee.
2. The TRANSCO CLSG Procurement Committee shall consist of Five (5) persons and be composed as follows:
 - a) Director of Administration and Finance -Chairperson;
 - b) Technical Director;
 - c) Commercial Director – Member
 - d) Qualified staff designated by the General Manager– Member
 - e) Senior Procurement Specialist and Contract Manager - Member and Committee Secretary
3. The Procurement Committee shall be responsible for the opening and evaluation of bids, proposals and quotations and for recommending the award of contracts to the Contracting Authority.
4. Upon the recommendation of the Procurement Committee, the TRANSCO CLSG Contracting Authority or his/her authorized representative shall endorse and sign contracts.
5. The Procurement Committee will, after the opening of bids and proposals, appoint an evaluation sub-committee to review and evaluate the bids or proposals. The evaluation subcommittee shall comprise of at least two members of the Procurement Committee, one of whom shall chair the sub-committee, and at least one other expert specialized in procuring goods, services or works being procured, from TRANSCO CLSG or its member utilities, or other external experts. The evaluation subcommittee shall submit a report on the technical and financial evaluation of the bids within the time limit provided in Article 57 of this Code. Based on the technical sub-committee's evaluation report, the Procurement Committee makes recommendations to the Contracting Authority for the award of contract.

Article 8: Record of Processes

The Head of TRANSCO CLSG Procurement Unit shall maintain records of public contracting processes in sufficient detail to allow control and verification by relevant parties. The contents of the records shall be as prescribed in the Procurement Manual.

Chapter III: Dispute Resolution and Sanctions in Contracting Processes

Article 9: Dispute Resolution Committee

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

Article 10: Sanctions

1. Within the framework of the implementation of this code, the General Manager shall propose to TRANSCO CLSG Board to apply sanctions, including permanent or temporary exclusions, against any natural person or legal entity in any contracting process, found in violation of any provision of this Code or the Procurement Manual.
2. Sanctions should be determined in an impartial manner and be proportionate to the gravity of the violation committed, as per provisions established in the Procurement Manual.

Article 11: Composition of the Dispute Resolution Committee

1. The Dispute Resolution Committee shall be composed of three members nominated by the General Manager; one shall be designated by the Director of the Beneficiary department in the procurement process, and the other two by the General Manager, one of whom shall act as Chairperson of the Committee.
2. One of the two persons designated by the General Manager shall be an independent expert while the other person shall be a TRANSCO CLSG professional staff. The Dispute Resolution Committee designated members should not have taken part in the related procurement process.

Article 12: Referral to the Competent Authorities

If there is prima facie evidence of a criminal offence on the part of any person, natural or legal, candidate or bidder, the General Manager shall refer the matter to the competent authorities and inform TRANSCO CLSG Board.

Chapter IV: Eligibility and Qualification of Candidates and Bidders

Section I: General Eligibility

Article 13: Exclusions from Contracting Process

1. The following candidates, whether a natural person or a legal entity, are excluded from entering into a contracting process or a contract with TRANSCO CLSG:
 - a) Any candidate found to be in violation of any provision of this Code and the Procurement Manual;
 - b) Any candidate that is insolvent, in receivership, bankrupt or being wound up, or whose business activities have been suspended;
 - c) Any candidate whose administrators or directors have been convicted of a criminal offence or have been found to be in violation of a tax law;
 - d) Any candidate who has been a subject of a contract termination by reason of default or negligence in the execution of an earlier contract awarded by TRANSCO CLSG;
 - e) Any candidate who in the past five years preceding the beginning of the contracting process was temporarily excluded from participating in any public contracting process pursuant to a decision rendered by TRANSCO CLSG Board;
 - f) Any candidate blacklisted and/or debarred from taking part in public contracting in any country, by an international organization on grounds of fraud or corruption;
 - g) Any candidate in which any member of the Procurement Committee or TRANSCO CLSG Board or Management has a financial or personal interest.
2. The above provisions shall also apply to natural or legal persons acting as sub-contractors to the main contractors.
3. The exclusion of any candidate from the procurement process and the period of exclusion shall be determined by the Procurement Committee.

Article 14: Rejection of Bids and Quotations

1. TRANSCO CLSG shall reject a bid, proposal or quotation if it is found that the bidder has directly or indirectly made an offer of an inducement to any person involved in the procurement process.
2. Such rejection and the reasons thereof, shall be included in the record of the procurement process and duly communicated to the bidder who may file for review of the rejection under the provisions of Articles 84 and 85 of this Code.

Section II: Qualification of Candidates and Bidders

Article 15: Technical and Financial Qualifications

1. In order to participate in contracting processes, each candidate or bidder shall demonstrate legal capacity to enter into the contract. All bidders in addition to requirements contained in any solicitation document shall:
 - a. possess the necessary:
 - i. professional and technical qualifications;
 - ii. financial capability;

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- iii. equipment and other relevant infrastructure;
 - iv. personnel.
 - b. accompany every bid with an affidavit disclosing whether or not any member of the Procurement Committee or TRANSCO CLSG Board or Management is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that the information presented in their bid is true and correct in all respects.
2. Prior to awarding the contract, bidders must also demonstrate that they have fulfilled their fiscal and social security obligations.
3. Evidence of the bidders' qualifications shall be verified by the Procurement Committee on the basis of the following supporting documents to be submitted by the bidders:
 - a. All documents showing evidence of the technical capability and solvency of enterprises, and qualifications of their staff;
 - b. An attestation giving information on the candidates or bidders, in accordance with a model established in the bidding documents.
4. The documents required under the terms of paragraph 2(a) above must include at least:
 - i. a statement on the enterprise's technical facilities;
 - ii. a description of the manpower (number and qualification) available to the enterprise;
 - iii. financial statements, including a balance sheet, income statement and cash flow statement for the last three years;
 - iv. a statement of all similar contracts ongoing or completed by the applicant.
5. Misrepresentation in relation to the information required under this Article may lead to the disqualification of a bidder or the immediate cancellation of the contract, at the risk and expense of the contractor without prejudice to the imposition of sanctions applicable in such cases under this Code. This decision shall be subject to the same recourse set out in Articles 84 and 85 of this Code.

Article 16: Registration of Enterprises

The Procurement Unit of TRANSCO CLSG shall establish a register of enterprises to be used in the transparent and objective choice of short-lists, purely by merit, in requests for quotations, restricted bidding or direct contracting. The modalities for establishing this register shall be set out in the Procurement Manual.

Chapter V: Sub-contracting and Joint Venture Contracts

Article 17: Subcontracting

1. The successful bidder may sub-contract parts of the contract up to a maximum of **30 percent** of the contract value, subject to the approval of TRANSCO CLSG.
2. Bidders should indicate in their bid the references of any sub-contractors they intend to use as well as the part and value of the main contract they intend to sub-contract.

Article 18: Joint Venture Contracts

1. Several suppliers, contractors, service providers or consulting firms may be jointly and severally responsible for the execution of a contract. In such a case, they must appoint one of them as their designated representative.
2. Where the contract is not divided into lots, all partners are jointly and severally liable for the execution of the entire contract. Where the contract is divided into lots, each partner may be liable only for its share of the contract, except otherwise established in the bidding documents.

TITLE II: Procurement Processes

Chapter 1: Procurement Planning

Article 19: Identification of Needs

1. Identified goods, works and services shall meet the needs of the procuring entity and be included in the annual Procurement Plan.
2. The procuring entity shall determine the project components, the quantities and specifications of the goods, works or services to be procured prior to initiating the procurement process.
3. The technical standards and specifications set out in the bidding documents shall not make reference to trademarks or catalogue numbers except as specified in this Code or the Procurement Manual. If it is justified to specify a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words 'or equivalent' shall be added after such a reference to permit the acceptance of offers for goods that have characteristics and performance substantially equivalent to those specified.
4. In the case of international competitive procurement, the bidding documents should specify internationally accepted standards with which the equipment, goods or workmanship shall comply. When such international standards do not exist or are inappropriate, national standards may be specified.
5. No contract shall be awarded if the needs to be met are not specified in the annual

Procurement Plan of TRANSCO CLSG.

6. Prior to any tender, TRANSCO CLSG will prepare a confidential estimate of the price of goods, works or services to be procured.

Article 20: Procurement Plan

1. All Departments, Division and Sections of TRANSCO CLSG shall prepare an annual work program and related budget. The procurement needs shall be captured in a general Procurement Plan prepared for TRANSCO CLSG by the Procurement Unit and submitted for approval of the General Manager along the following lines:

- a) Prepare the needs assessment;
- b) Identify the goods, works or services required;
- c) Take into consideration market and other appropriate data and on this basis prepare an analysis of the cost implications of the proposed procurement;
- d) Whenever possible, aggregate requirements of the Departments, Divisions and Units within TRANSCO CLSG, to obtain economies of scale and reduce procurement costs;
- e) Include the approved procurement expenditure into TRANSCO CLSG annual budget;
- f) Recommend appropriate methods for effecting the procurement processes, in compliance with the corresponding provisions under this Code;

2. The Procurement Plan shall be submitted to the Procurement Committee for validation, prior to its approval by the General Manager, and should be reviewed and updated as necessary on a quarterly basis.

3. No contracting requirements for a given quantity of goods, works or services shall be split with the intention of avoiding a contracting method established in this Code. Any staff involved in a procurement process found to be in breach of this provision against such splitting of contracting requirements shall be sanctioned according to TRANSCO CLSG Staff Rules.

Article 21: Allotment

1. Where TRANSCO CLSG Procurement Unit determines that allotment of a contract is technically justified and should result in reducing the cost of the awarded contract, the contracting of works, goods or services shall be divided into lots that may be awarded to different bidders.

2. The instructions to bid shall determine the number and nature of the lots. It shall also indicate how bids for one or more lots may be submitted, and the basis for bid evaluation and contract award. TRANSCO CLSG shall award the contract to the lowest evaluated responsive combination of bids. The bidders should be required to present separate bids for each lot.

3. Where one or more lots have not been awarded, TRANSCO CLSG may engage in a new procurement process after modifying the scope of the remaining lots.

Chapter II: Methods of Procurement

Section 1: General Provisions

Article 22: Methods of Procurement

1. In accordance with the provisions of this Code, TRANSCO CLSG may conclude works and supplies contracts by means of open public tendering (International, Regional or Local), restricted tendering (International, Regional or Local), Request for Quotations, Direct Contracting and other Specific Procurement Methods as mentioned in the Procurement Manual.

2. Procurement of consulting services shall be carried out based on Quality and Cost Based Selection, Quality Based Selection, Consultant's Qualification, Selection under Fixed Budget, Least Cost Selection or Direct Contracting.

Article 23: Languages and Currency

1. All documents written, published and provided to bidders or produced by them shall be prepared in one of the working languages of TRANSCO CLSG.

2. The bidding documents shall indicate that candidates or bidders shall quote the price of their bid in the currency of a TRANSCO CLSG country for inputs provided from that country and may quote the price of their bid in up to three foreign currencies for inputs provided from outside TRANSCO CLSG countries.

Article 24: Advertisement

1. TRANSCO CLSG shall, subject to the method of procurement, publish invitations to bid on its Website and at least one daily newspaper of daily circulation in TRANSCO CLSG States. Every invitation to bid or request for proposal shall be published in accordance with the format of TRANSCO CLSG standard bidding documents. The nature of publication (national, regional and/or international) will depend on thresholds specified in the Procurement Manual and determined on the basis of criteria such as the nature of the contract, its estimated cost, and its complexity.

2. In the case of open international competitive procurement, TRANSCO CLSG shall always publish the invitation to bid in an international newspaper or publication of wide circulation.

Article 25: Selection Process

1. The selection process comprises the selection of the lowest evaluated responsive bid which has, without negotiation or changes in its bid, met all requirements set forth in the bidding document.

2. After the selection of the successful bidder, post qualification may be undertaken to assess its technical, professional and financial qualification.

3. Bidding may be open or restricted. Open competitive bidding is a process open to all bidders, subject to the exclusions and qualifications set forth respectively in Articles 13 and 15 of this Code. Open competitive bidding may be preceded by a prequalification process. Restricted bidding shall be subject to the provisions of Article 39.

Article 26: Open Competitive Bidding without Prequalification

1. Invitations to bid shall be published according to the modalities defined in Article 24 of this Code.

2. Each invitation for public bidding shall define at least the following information and requirements:

- i. the object of the contract;
- ii. the source of financing;
- iii. the number and nature of lots, and, where necessary, the minimum or maximum number of lots for which a bidder may submit bids;
- iv. the location where the bidding documents may be inspected and the procedure for obtaining these documents;
- v. the location, date and time limit for the receipt of bids;
- vi. the time frame during which bidders are bound by their bids; this period may not be less than ninety days from the date of the deadline for the receipt of bids;
- vii. the amount required as bid security, if applicable;
- viii. the criteria for the bidders' qualification, technical capability and solvency;
- ix. where applicable, any other conditions as TRANSCO CLSG may consider necessary.

Article 27: Submission of Bids

1. The deadline for the submission of bids must grant prospective bidders sufficient time to prepare and submit competitive bids in line with international best practices as provided for in the Procurement Manual.

2. All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other information as established in the tender documents, contain all the information related to the bidder, the administrative documents required, the bid security and separately the technical and financial offers signed by an official authorized to bind the bidder to a contract and placed in sealed envelopes.

3. Bids may be sent by public or private mail services, or by hand and should remain sealed until the bid opening.

4. All submitted bids shall be deposited in a secured tamper-proof bid box.

5. All bids submitted shall be in the language requested in the bidding documents.

6. TRANSCO CLSG shall issue a receipt showing the date and time the bid was delivered. Upon receipt, the envelopes shall be recorded by order of arrival in a special register.

7. Bid opening will take place on the same working day of the deadline for bid submission.
8. Any bid received after the deadline for the submission of bids shall not be opened and will be returned to the bidder.
9. No communication other than as provided in this Code shall take place between procuring entities and any bidder after the publication of a bid solicitation

Article 28: Requests for clarifications

Bidders might submit any request for clarifications to the bidding documents not later than 28 days (for International bidding processes) prior to bid submission date, which TRANSCO CLSG will answer not later than 10 days after receipt of such clarification requests. And not later than 15 days (for National bidding processes) prior to bid submission date, which TRANSCO CLSG will answer not later than 5 days after receipt of such clarification requests.

Article 29: Extension of bid submission deadline

TRANSCO CLSG might decide on its own or upon request from one or several bidders, to extend the date of bid submission deadline, if TRANSCO CLSG believes that there is a significant risk of not receiving a sufficient number of bids to ensure appropriate competition by the end of the submission deadline. There will not be more than one extension of bid submission deadline for any tender.

Article 30: Opening of Bids

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

Article 31: Evaluation of Bids

1. The Procurement Committee shall evaluate bids through the designated evaluation sub-committee and according to the provisions of this Code and the Procurement Manual within a reasonable time.
2. The Procurement Committee shall reject the bids that are not responsive to the provisions of the bidding documents. Following the detailed evaluation by the sub-committee, it shall recommend the contract award to the evaluated substantially responsive bidder that submitted the lowest price and submit the recommendation report to the Contracting Authority (General Manager) for signature.
3. Alternative bids may be taken into consideration, if foreseen in the provisions of

the bidding documents.

Article 32: Information to Bidders

1. Within three (3) working days after the approval of the evaluation report by the competent authority, the General Manager shall inform the successful bidder that its bid has been accepted and other bidders that their bids have been rejected, and TRANSCO CLSG will publish on its Website the result of the tender, including the price of the lowest evaluated bid, the name of the successful bidder and the duration of the standstill period.
2. The General Manager shall, within five working days of a request, inform any unsuccessful bidder of the reasons for the rejection of its bid.

Article 33: Bid Validity

Any bidder may choose not to accept an extension of the bid validity after the original validity period has expired without forfeiting his bid security. If a bidder receives the award notification after the expiry of such period, he may also choose not to accept to sign a contract without forfeiting his bid security.

Article 34: Standstill Period before Contract Signature

The contract shall be signed between TRANSCO CLSG and the awarded bidder not before the end of a standstill period of not less than **ten** days from the notification of the award of the contract to all competitors by the General Manager, to allow sufficient time for any complaint in relation with the award of the contract, as specified in Articles 84 and 85 of this Code.

Section II: Bidding Preceded by a Pre-qualification Process

Article 35: Conditions for a Pre-qualification Process

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

Article 36: Notice of Invitation

The prequalification notice shall be published in the same manner as the invitation to bid referred to in Article 24 of this Code.

Article 37: Evaluation of Pre-qualification Applications

1. The Procurement Committee shall review the applications and retain those satisfying all and exclusively the pre-qualification criteria set forth in the pre-qualification documents.
2. The General Manager shall notify each supplier, contractor or service provider submitting an application to pre-qualify whether or not they have been pre-qualified and shall make available to any of them, upon request, the names of all suppliers or contractors that have been pre-qualified.
3. Only suppliers, contractors or service providers that have been pre-qualified are entitled to participate in the subsequent contracting process.
4. The General Manager shall upon request communicate to suppliers, contractors and service providers that have not been pre-qualified the grounds for their rejection.
5. TRANSCO CLSG may require a supplier, contractor or service provider that has been prequalified and is awarded a contract to demonstrate again its qualifications in accordance with the same criteria used for pre-qualification, before concluding a contract.

Section III: Two-Stage Bidding

Article 38: Conditions and Procedures for two-stage bidding

1. TRANSCO CLSG may engage in contracting by means of two-stage bidding in order to obtain the most satisfactory solution to its procurement needs, when, as a result of the complex nature of the procurement or the need for performance criteria, it is not feasible to formulate detailed technical specifications for the goods or works or, in the case of management or other similar services, to define precisely their characteristics.
2. Two-stage bidding may be preceded by a prequalification process conducted in accordance with Articles 35 to 37 of this Code.
3. In the first stage of the two-stage bidding, bidders are invited to submit their technical proposals on the basis of a conceptual design or of performance specifications. The evaluation of the technical bids may require TRANSCO CLSG contracting unit to revise the cost estimate and specifications of the project. In the second stage of the two-stage bidding, bidders meeting the qualification criteria and whose bid was found technically acceptable at the first stage, are invited to present their final technical and financial proposals on the basis of the bidding documents revised as needed and approved by the General Manager.

Section IV: Restricted Bidding

Article 39: Conditions for Restricted Bidding

1. Restricted bidding is a procedure open only to bidders who have been directly invited by the General Manager to submit a bid.
2. Under restricted bidding, only those candidates who have been selected on the basis of their references, according to the procedure referred to in paragraph 1 of Article 37 of this Code, are permitted to submit bids. All other provisions governing open competitive bidding apply.
3. Restricted bidding may be conducted when the goods, works or services in question are available only from a limited number of entities, provided that the General Manager solicits bids from all those suppliers, contractors or service providers meeting the criteria determined by the procuring entity. In order to guarantee an effective competition, a minimum of three candidates should be selected.

Section V: Request for Quotations

Article 40: Conditions and procedure for Request for Quotations

1. Where the estimated value of the contract for goods, works or services is less than a specific amount set forth in the Procurement Manual, the procurement processes may be conducted on the basis of a request for quotations from selected persons or entities; in that case, at least three quotations will be requested from suppliers chosen from TRANSCO CLSG's list of suppliers, according to the procedures referred to in Article 37 of this Code.
2. The method and criteria used for selection shall conform to the relevant provisions contained in Chapter 4 of this Code.
3. The request shall contain a clear statement of the requirements of TRANSCO CLSG as to quality, quantity, terms and time of delivery, terms and schedule of payments, validity provisions of quotations, as well as other special requirements and elements that must be included in the quoted price.
4. The contract is awarded to the candidate who meets the requirements of TRANSCO CLSG, as stipulated in paragraph (2) of this Article, and who quotes the lowest price unless that price exceeds, by a significant margin, TRANSCO CLSG's price estimate established prior to the request for quotations, on the basis of the price of similar items available on the market.
5. TRANSCO CLSG shall not divide its procurement into separate contracts for the purpose of invoking the application of paragraph (1) of this Article.
6. Each supplier, contractor or service provider is permitted to give only one price quotation and is not permitted to change its quotation after submitting it.

7. No negotiations shall take place between TRANSCO CLSG and a supplier, contractor or service provider, with respect to a quotation submitted.

Section VI: Direct Contracting

Article 41: Conditions and Procedures for Direct Contracting

1. In the circumstances listed below, the Department, Division or Unit of TRANSCO CLSG may, after being duly authorized by the General Manager and after appropriate market research, enter into a direct contract with a qualified supplier or contractor:

- i. when there is an urgent need to replace a defaulting contracting party;
- ii. in cases of extreme urgency, provided the circumstances which gave rise to the urgency were neither foreseeable by the procuring entity nor the result of negligence on its part;
- iii. where a company is the only one that possesses particular qualifications or has a unique experience for the assignment concerned;
- iv. when goods or works are available only from a particular entity that holds a patent, a license or exclusive rights.

2. When the procuring entity engages in direct contracting, it shall prepare a description of its needs and any special requirements as to quality, quantity, terms and time of delivery.

3. Direct contracting may only be used when suppliers, contractors or service providers accept to be subjected to price verification during the execution of the contract. The contract indicates the financial statements and costing procedure of the contractor, such as the requirement to present balance sheets, schedules of assets and liabilities, and project accounts. If project accounts are not available, all the documents allowing the verification of the price breakdown should be submitted.

4. When using the direct contracting procedure, the General Manager shall contract without using a competitive bidding process - with a sole provider or contractor. TRANSCO CLSG shall then select a qualified offer, according to the procedures provided by Articles 27, 30, 31, 52 and 53 of this Code.

Section VII: Provisions Applying to Consulting Services

Article 42: Request for Proposals

1. Where TRANSCO CLSG requires to recruit Consulting Services, it shall issue a request for proposals, which might be preceded by a request for expressions of interest in order to pre-qualify candidates. This invitation shall comply with Articles 24 and 27 of this Code.

2. Where the request for expressions of interest procedure is used, a shortlist of at least four candidates, based on their capacity to perform the required services, is established

in order to ensure adequate competition in line with the provisions of Article 37 of this Code. The candidates' capacity should be evaluated exclusively on the basis of the documents submitted in their expression of interest.

3. TRANSCO CLSG shall establish criteria to evaluate the proposals of shortlisted candidates and determine the relative weight to be given to each criterion and the manner in which they are to be applied in the evaluation of proposals. The criteria shall be defined in the request for proposals document and may only be applicable to the following:

- i. The relevant experience and managerial and organizational capabilities of the candidates for the assignment;
- ii. The qualifications and experience of the personnel to be involved in providing the services;
- iii. The responsiveness and quality of the technical approach, methodology and work plan of the proposal to the requirements of TRANSCO CLSG, as indicated in the Terms of Reference;
- iv. The scope and respective weight of the technical proposal and the financial proposal;
- v. The extent of required participation by local staff;
- vi. Any other requirements, for instance in relation with training and transfer of knowledge.

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

Article 43: Methods of Selection

The following methods for the selection of consulting firms shall be considered by the Procurement Unit and the Procurement Manual shall provide guidance on their respective applicability:

- a) **Selection based on quality and cost:** this selection method shall be considered in priority to other methods. The selection of the successful firm takes into account the quality of the proposal and the cost of the services. The minimum score for the technical proposals shall not be lower than 75 points. The relative weight of the financial proposal shall not be higher than 30 percent.
- b) **Selection based on a fixed budget:** The selection will be based on the best technical proposal for a cost that shall not exceed a fixed budget. This method is appropriate for services that can be precisely defined with a cost that can reasonably be estimated.
- c) **Selection based on quality:** this method of selection shall be applied for complex or highly specialized assignments, for which TRANSCO CLSG is expecting the candidate

firms to demonstrate innovation in their proposals. Candidate firms shall submit only technical proposals. The firm with the highest-ranked technical proposal is then invited to submit a financial proposal for negotiations.

- d) **Selection based on the qualifications of consulting firms:** this method is appropriate for small assignments or emergency situations for which the request of competitive proposals is not justified. At least three qualified firms shall be requested to provide information about their relevant experience and qualifications. TRANSCO CLSG will select the firm with the best qualifications and relevant experience and invite it to submit its technical and financial proposals for negotiations.

Article 44: Direct selection

1. Direct selection of consulting services can be considered under the following cases:
 - i. Extension of an existing contract when additional services are of a similar nature, no advantage may be obtained by competition and the firm is performing satisfactorily under its ongoing contract;
 - ii. For tasks that represent a natural continuation of previous work carried out satisfactorily by a consultant during the last two years;
 - iii. When the estimated cost of the contract is lower than USD 100,000;
 - iv. In response to emergency situations; or,
 - v. When only one firm is qualified or has experience of a unique nature or of exceptional worth for the assignment.
2. In all instances of direct selection, TRANSCO CLSG shall ensure fairness and equity, and shall have in place procedures, as specified in the Procurement Manual, to ensure that the prices are reasonable and consistent with the market rates for services of a similar nature and that the required consulting services are not split into smaller-size procurements to avoid a competitive process.

Article 45: Selection procedures

1. The opening of technical proposals shall take place on the working day immediately after the deadline for bid submission. The opening and evaluation of proposals are executed in two stages where, in the first stage, technical proposals are only evaluated according to the method above described, and in the second stage, only financial proposals of the consultants who meet the minimum qualification criteria and the technical requirements are opened; other financial proposals are returned to the non-qualified consultants unopened. The opening of the financial proposals is a public opening and the qualified consultants, whose proposals passed the technical evaluation, are invited to be present if they choose to do so.
2. Contracts are awarded to the best evaluated proposal on the basis of a combination of

the technical and financial criteria according to the method of evaluation chosen by the Procurement Unit and specified in the request for proposals. TRANSCO CLSG will then invite the successful firm or consultant for negotiations.

3. Negotiations shall include discussions of the organization and timing of intervention of the consultant. TRANSCO CLSG's inputs shall not alter the original terms of reference or the terms of the contract, nor the unit price proposed by the consultant.

4. When negotiations are concluded and the contract duly signed, the other qualified consultants are informed that their bids were unsuccessful.

5. If negotiations with the best evaluated firm are unsuccessful, TRANSCO CLSG will consider inviting the second-best evaluated firm to negotiations.

Article 46: Individual consultants

1. Individual consultants are selected, either directly or through a consulting firm, for assignments for which:

- a) a team of experts is not required;
- b) no additional professional support is required; and
- c) the experience and qualifications of the individual consultant are of paramount requirement.

2. In all cases, individual consultants selected by TRANSCO CLSG shall be the most experienced and best qualified among the candidates and shall be fully capable of carrying out the assignment. The evaluation shall be based on the relevant qualifications and experience of the individual consultant.

3. If TRANSCO CLSG does not have knowledge of experienced and qualified individuals, or if the services to be procured are complex, TRANSCO CLSG will publish a request for expressions of interest from individual consultants.

4. When TRANSCO CLSG has knowledge of experienced and qualified individuals, it may invite directly those individual consultants to express their interest to provide the required consulting services. The terms of reference of the consulting services shall be sent with the invitation.

5. Individual consultants may be selected directly under the following circumstances:

- i. tasks that are a continuation of previous work that the individual consultant has carried out after being selected competitively;
- ii. assignments with a total expected duration of less than six months;
- iii. emergency situations; or
- iv. when an individual consultant has relevant experience and qualifications of exceptional worth to the assignment.

Section VIII: Electronic Communications

Article 47: Electronic Communication Procedures

Communications with candidate firms or consultants, as required by this Code, may be conducted by electronic means in accordance with the guidelines set forth below:

- i. The bidding documents or request for proposals may be communicated to bidders by electronic means;
- ii. Unless it is otherwise provided for in the notice of invitation, the bids, proposals or quotations may be submitted by electronic means according to the provisions specified in the Procurement Manual.
- iii. The provisions of this Code referring to the methods of written communication do not preclude the use of electronic communication.

Chapter III: Bidding Documents and Security Requirements

Section 1: Bidding Documents

Article 48: List of Bidding Documents

The list of the documents required in the invitation to bid, with or without prequalification, and the table of contents of the bidding documents themselves, shall be specified in the Procurement Manual. TRANSCO CLSG will use standard bidding documents for each type of procurement process, which will be attached to the Procurement manual and published on TRANSCO CLSG Website.

Article 49: Availability of Bidding Documents

TRANSCO CLSG shall provide bidding documents, including a form of the contract, immediately after first publication of the bid notice to all suppliers, contractors or service providers who may respond to the invitation to bid, upon payment of a non-refundable fee for which a receipt shall be given.

Section II: Bid Security

Article 50: Conditions Related to Bid Security

1. TRANSCO CLSG should include in the bidding documents a condition that bids must be accompanied by a bid security in the form of an irrevocable letter of credit, certified cheque, bond or bank guarantee which should be issued by a reputable bank acceptable to TRANSCO CLSG. This bid security is mandatory for estimated contract amounts above a threshold stipulated in the Procurement Manual. Such bid security is not required for the contracting of consulting services.
2. A bid security issued by a reputable foreign bank shall not be rejected by the procuring entity, if the bid security and the issuer otherwise conform to requirements set forth in the bidding documents.

3. Bidding documents should specify the amount of the bid security. The amount of such security shall be between one and two percent of the contract cost estimate, and shall remain valid for 45 days following the expiry of the bid validity.

4. Bid security will be forfeited if a bidder withdraws its bid after submission and within the validity period or, in the case of a successful bidder, if the bidder fails to sign the contract or to furnish a performance security, if so required by TRANSCO CLSG.

Article 51: Return of Bid Security

TRANSCO CLSG shall have no claim on the bid security, other than in the cases listed in Article 50, and shall promptly return the bid security original document, after the occurrence of any of the following events:

- i. The expiry of the bid security;
- ii. The entry into force of a contract with the selected bidder, including the provision of a performance bond, if such security is required in the bidding documents;
- iii. The cancellation of the bidding process;
- iv. The withdrawal of the bid prior to the deadline for the submission of bids.

Chapter IV: Evaluation of Bids

Article 52: Evaluation Process

1. A quorum for a meeting of the Procurement Committee requires the presence of a majority of its members, one of whom shall be the chairperson of the Procurement Committee or his/her representative, and the Director of the procuring department or his/her representative. The evaluation sub-committee work require the participation of all its members in the evaluation tasks and in the subcommittee meetings.

2. At the meetings and for the preparation of the proceedings of the Procurement Committee, the Chairperson shall ensure compliance with the provisions of this Code. The deliberations and recommendations of the Procurement Committee and its evaluation subcommittee shall be treated as fully confidential.

3. TRANSCO CLSG may ask bidders in writing for clarifications on their bids, if they are necessary for the fair evaluation of bids. No change in the substance of the bid, including changes in price, or changes aimed at making an unresponsive bid responsive, shall be sought, offered or permitted.

Article 53: Conformity to Requirements

1. Subject to the provisions of Articles 13 to 17 of this Code, TRANSCO CLSG shall retain any bid that conforms to the requirements set forth in the bidding documents.

2. Bidders may also submit a bid including an option, if such option has been expressly authorized in the bidding documents. However, bid evaluation shall only consider the base

bid, without the option.

Article 54: Evaluation Criteria and Report

1. The Evaluation Subcommittee shall evaluate responsive bids in order to determine the best evaluated bid, in accordance with the provisions of Article 25 of this Code.
2. The evaluation criteria shall be objective and quantifiable and shall be stipulated in the bidding documents or request for proposals.
3. The Evaluation Subcommittee shall prepare a detailed report on the evaluation of bids and the recommendation for award. The format and contents of the evaluation report shall be specified in the Procurement Manual.

Article 55: Preference

1. Candidates and bidders residing in an ECOWAS Member State may enjoy a preference in public procurement processes conducted by TRANSCO CLSG. Any preference shall be expressed as a percentage of the price of the bid and shall not exceed ten percent of the offered price for works and five percent for goods and services including consultancy services. No preference can be invoked if it is not so provided in the bidding documents.
2. Citizens of ECOWAS and legal persons incorporated in ECOWAS Member States may be granted a margin of preference as provided for in paragraph 1 above only if they meet the following criteria:
 - a) if they are ECOWAS member State citizens and tax residents in one of these States; and
 - b) for legal persons,
 - i. if they are incorporated or registered in an ECOWAS member State and are tax resident in that State;
 - ii. if, at least fifty-one percent of the authorized capital of the company is owned by ECOWAS Member State nationals, and its board of directors is controlled by nationals of these States;
 - c) for both natural and legal persons if,
 - i. for contractors, at least fifty percent of inputs from ECOWAS are being used and seventy percent of their technical executive and staff on the construction site are ECOWAS member State nationals;
 - ii. for suppliers, at least fifty percent of the total value of the goods are made or manufactured in an ECOWAS member State;
 - iii. for service providers, at least fifty percent of their services are provided by ECOWAS member State nationals;
 - iv. if they do not subcontract more than twenty percent of the contract, excluding advance payments, to foreign suppliers, contractors or service providers;
 - v. if there is no arrangement whereby more than thirty percent of the net profits or other tangible benefits of the ECOWAS member State company will accrue or be paid to persons that are not nationals of that state or to entities which would not be eligible under this Article.

- d) In case of a partnership or joint venture agreement with a foreign partner, the preference shall be granted to the bidder where the minimum domestic content is not, in total, less than the one applicable in the case of a single contractor, and is provided by a national of an ECOWAS State, in compliance with paragraphs b and c of the present Article.

Article 56: Unsuccessful Bids and Cancellation of Contracting Process

1. An invitation for bids shall be declared unsuccessful and the contracting process should be cancelled in the following cases:
 - i. where no bid is received;
 - ii. where there is insufficient competition; however, even when only one bid or proposal is received, the process may be considered valid if the procurement was satisfactorily advertised, the qualification criteria were not unduly restrictive and the prices of the bid or proposal are reasonable in comparison to market values;
 - iii. where no bid is deemed acceptable after evaluation;
 - iv. where all the bids are for an amount substantially higher than the estimated cost or available budget for the contract to be procured; however, in this case, TRANSCO CLSG may negotiate with the best evaluated bidder a reduction in the scope of the contract, provided said reduction is not substantial.
2. In the case of an abnormally low or unbalanced bid or proposal, which raises concerns about the bidder's capability to perform the contract for the offered price, TRANSCO CLSG shall seek clarifications from the bidder and conduct price analyses; if on that basis, TRANSCO CLSG determines that the bidder has failed to demonstrate its capability to deliver the contract for the offered price, TRANSCO CLSG shall reject the bid.
3. When a contracting process is cancelled, the bidders shall be informed accordingly and their bid security returned to them.
4. Thereafter, TRANSCO CLSG shall review the causes justifying the cancellation of the contracting process and make appropriate adjustments in the bidding documents before requesting new bids.
5. The conditions for cancellation of the contracting process and for proceeding with a new invitation to bid shall be specified in the bidding documents.

Chapter V: Approval and Notification of Award, Entry into force of the Contract

Article 57: Approval of Award

1. The Procurement Committee shall propose the award of contracts on the basis of the recommendations of the evaluation subcommittee referred to under Article 7 of this Code. The evaluation report submitted by the evaluation subcommittee to the Procurement Committee for approval of award recommendations shall be reviewed within ten working days of its submission. The Procurement Committee may either:

- a) approve the recommendation and award the contract in the form specified in the bidding documents or request for proposals or quotations; or
 - b) refuse such approval and refer the evaluation back to the evaluation subcommittee with specific comments or instructions, on the basis of the provisions of this Code.
2. The said comments or instructions by the Procurement Committee shall either provide the evaluation subcommittee with new information or specify the factual or legal grounds supporting a different interpretation to be made of the terms and conditions of invitation, the analysis of the responsive bids, proposals or quotations, or the recommendation for award. The evaluation subcommittee will revise the evaluation report not later than 5 days after receiving the comments or instructions of the Procurement Committee.
 3. The General Manager shall endorse and sign contracts awarded by the Procurement Committee within ten working days of the submission of the recommendation report from the Procurement Committee.
 4. No TRANSCO CLSG contract shall enter into force before the process specified in this Article is followed and completed.

Article 58: Notification of Award

1. Where award is in accordance with Article 57 of this Code, the successful bidder shall be notified and upon acceptance, will be bound to the terms and conditions of the award.
2. The General Manager shall communicate the award to the successful bidder not later than five days after the approval referred to in Article 57 of this Code.

Article 59: Signature and Entry into Force of the Contract

1. Subject to the approval prescribed in Article 57 of this Code, where a bid, proposal or quotation has been accepted, TRANSCO and the person whose bid, proposal or quotation has been accepted shall enter into a formal contract for the supply of goods, or the undertaking of works or services, as the case may be.
2. The contract shall be in such form and shall contain such terms, conditions and provisions as contained in the bidding documents or request for proposals or quotations.
3. Bidders shall not be requested to modify their bids as a condition for award, nor to undertake responsibilities not stipulated in the bidding documents, nor to change their prices.
4. Except in the case of consulting services, direct or single source contracting, optional bid is allowed, no negotiations shall take place between TRANSCO CLSG and a contractor, supplier or service provider, with respect to a submitted bid or proposal.
5. Contracts shall be signed by the authorized representative of the successful bidder within the time frame prescribed under Article 34 of this Code.
6. The contract shall enter into force either upon signature by both parties or upon the subsequent occurrence of events specified in the contract.

7. After notification, the contractor, supplier or service provider, where required, shall register the contract with the relevant authority in the country where the contract is to be executed.

8. Contracts which are not approved and signed in accordance with the provisions of this chapter shall be null and void and of no effect.

TITLE III: Contract Execution

Chapter I: General Provisions

Article 60: Form of Contracts

1. The contract consists of all the documents which are referred to in the contract agreement and, in particular, the General and Special Conditions of Contract referred to in Article 69 hereinafter. The contract must be duly approved and signed in accordance with the provisions of Chapter V, Title II of this Code, prior to the commencement of execution of the contract.

2. Contracts shall at least include the following essential information:

- a. the names, designation and addresses of the contracting parties;
- b. the scope of supply, works or services;
- c. reference to the Articles of this Code under which the contract is concluded, and the listing by order of priority of contract documents as prescribed in the bidding documents;
- d. the sources of funds and language of the contract;
- e. the contract price with its terms of payment; the provisions for payment in foreign currency with respect to the inputs from non-domestic sources;
- f. the period of execution of the works and services or the date of delivery of the goods;
- g. the conditions of acceptance or delivery of the goods, works or services;
- h. the conditions of payment and, where the contract value should be revised, the terms of the review and the conditions for its application;
- i. the amount of guarantee required;
- j. the insurance coverage to be provided by the successful bidder;
- k. where necessary, the regulatory provisions governing international transit and transport operations;
- l. the provisions governing contract termination;
- m. the date of contract notification;
- n. the bank account where payments shall be made; and,
- o. the applicable law and competent jurisdiction in case of conflict arising out of the execution of the contract.

Article 61: Types of Contract

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

Manual. These include: lump sum contracts; performance-based contracts; time-based contracts; reimbursable-cost contracts; contracts based on unit prices; and framework agreements.

Article 62: Lump sum contracts

Under a lump-sum contract, the contractor agrees to perform the scope of services for a fixed contract amount. Payment percentages or amounts may be linked to the completion of contractual milestones or determined as a percentage of the value of the work to be done. TRANSCO CLSG should use this type of contracts when the scope and duration of works, supply of goods or consulting services are well defined.

Article 63: Performance-based contracts

Under a performance-based contract, the payments are not made for inputs but for measured outputs that aim at satisfying functional needs in terms of quality, quantity, and reliability. Performance-based contracts should, in particular, be applied to the operations and maintenance of TRANSCO CLSG infrastructure facilities.

Article 64: Time-based contracts

Under time-based contracts, the payment is made on the basis of agreed rates and time spent, plus reasonable incurred reimbursable expenses. TRANSCO CLSG should use this type of contractual arrangements for i) emergency situations, and repairs and maintenance work; or ii) consulting services, when it is difficult to define the scope and duration of the services - for instance complex studies, supervision of works, and advisory services.

Article 65: Reimbursable-cost Contracts

Under reimbursable-cost contracts, payments cover all actual costs, plus an agreed fee to cover overhead and profit. TRANSCO CLSG should consider using this type of contract for circumstances such as emergency repairs and maintenance work. To minimize risk to TRANSCO CLSG, the Procurement Manual will define appropriate contractual incentives to limit costs, and the contractors should make all records and accounts available for inspection by TRANSCO CLSG.

Article 66: Contracts based on Unit Prices

Contracts based on unit prices include estimated quantities of items and contractual unit prices for each of these items, with payments as per the actual quantities of items delivered or installed, with contractual unit prices. TRANSCO CLSG should consider using this type of contract for: i) works, when the nature of the work is well defined, but the quantities cannot be determined with reasonable accuracy in advance of construction; and ii) goods, when the required quantities are known and unit prices are sought from bidders.

Article 67: Framework Agreements

1. A Framework Agreement (FA) is a contractual arrangement with one or several firms for the delivery of fixed or variable volumes of products or services provided over a fixed period. The firms should be capable of delivering the specified products or services and agree, in advance, on the applicable terms and conditions for such deliveries. The applicable terms and conditions should include the fees, charge rate or pricing mechanism. The period of application of a framework agreement should not exceed three years. Firms selected under a FA will subsequently compete to be awarded call-off contracts for the actual supply of products or services along the duration of the FA.
2. The firms entering into a FA with TRANSCO CLSG should be selected competitively by issuing a request for bids, which should include as a minimum the description and total volume of the products or services that the FA is intended to cover, the bidders' qualification and evaluation criteria, the main terms and conditions of the call-off contracts, and the procurement method to be used for the call-off contracts (either competitive quotes or direct selection).

Article 68: Contract Price

1. The contract price shall cover all the expenses resulting directly and indirectly from the execution of the works, supply of goods or provision of services, and all applicable taxes, fees, and duties unless such taxes, fees, and duties have been specifically excluded from the contract price, if so specified in the bidding documents and contract form.
2. Contract prices can be fixed or adjustable in the following circumstances:
 - a. The Contract price is fixed when it cannot be modified during the execution of the contract as a result of a change in economic circumstances. Fixed-price contracts are only concluded when the foreseeable changes in the economy do not expose the parties to unpredictable risks.
 - 2
 - b. Price adjustment provisions shall be included in contracts which extend beyond eighteen months and are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen months. Prices will be adjusted by use of a prescribed formula which breaks down the total price into components that are adjusted on the basis of price indexes that are verifiable from official sources defined in the contract.
 - c. Conditions under which prices may be reviewed shall be determined for each type of contract in the general administrative provisions applicable to contracts and detailed in the special administrative provisions applicable to each contract, with particular emphasis on the review formula, the start-off threshold, the neutralization margin and any other special condition.
 - d. Advances shall not be subject to adjustments. Where advances are deducted from the sums payable as progress payments or balances to the contractor, the price review clause shall apply only to the amount outstanding from the initial

cost after deduction of all advances.

Article 69: General and Special Conditions of Contract

1. Conditions of Contract govern the execution of the contract and include General and Special Conditions, which shall follow the standard forms applicable to each type of contract and are published on TRANSCO CLSG Website, as stipulated in Article 48 of this Code.

- a) General Conditions of Contract include administrative and technical provisions applicable to every contract of the same nature.
- b) Special Conditions of Contract include administrative and technical provisions specific to each contract. The Special Conditions of Contract identify the General Conditions of Contract that they supplement or amend.

2. The conditions of contract shall provide an appropriate allocation of rights, obligations and liabilities of the parties to the contract, as should be defined in TRANSACO CLSG Procurement Manual.

3. The Conditions of Contract shall include a provision requiring that the supplier, contractor or service provider and their sub-contractors must comply with regulatory provisions governing environmental, social, health and safety aspects, which are mandatory in the country of the contract's execution or as per TRANSCO CLSG requirements.

Chapter II: Contract Securities

Article 70: Performance Securities

1. Contractors, suppliers or service providers, either from the public or the private sectors, must provide a performance security to guarantee the proper execution of their contract. Consultants are not subject to this requirement.

2. The amount of the security shall be specified in the special conditions of the contract. Such amount shall not exceed ten percent of the initial contract price, subject to any further increase or decrease that may occur during contract execution if the contract amount is amended.

3. The performance security shall be provided within twenty calendar days after notification of the contract award. Submission of a performance security acceptable to TRANSCO CLSG as per the format included in the bidding documents should be a condition for effectiveness of the contract.

4. The performance security should be returned within one month after the expiry of the warranty period or, if such period is not stipulated in the contract, immediately following the acceptance of the goods, works or services, according to the modalities determined in the conditions of contract.

Article 71: Form of Securities

1. Securities are submitted in the form of a surety bond or a first demand bank guarantee. A security issued by a reputable foreign financial institution located outside the country of TRANSCO CLSG headquarters shall not be rejected by TRANSCO CLSG if it otherwise conforms to the requirement set forth in the bidding documents.
2. The performance securities may be replaced by guarantees provided by a joint and several guarantor whereby a third party undertakes to pay to TRANSCO CLSG any sums owed by the supplier, contractor or service provider in respect of the contract up to the amount posted as guarantee.
3. The joint and several guarantor shall be chosen from approved banks, mutual guarantee institutions guaranteeing their members if any, and recognized insurance companies.
4. The joint and several guarantees shall be in a format specified by TRANSCO CLSG. The form shall contain an undertaking to pay on first demand, any amount owed by the contractor up to the amount guaranteed.

Article 72: Other Securities

1. Where the contract provides for advance payment, the supplier, contractor or service provider, shall provide a security for the repayment of the advance payments.
2. If the contractor receives advance payments on materials or goods, the ownership of these materials is transferred to the procuring entity. The contractor shall be legally responsible for the care of these materials.
3. Where the contract specifies a warranty period, a portion of each payment shall be retained by TRANSCO CLSG as retention guarantee in order to secure the full compliance with the contract obligations. The sum retained by the procuring entity, which may be replaced by a joint and several guarantee, should not exceed ten percent of the total amount of the payments and shall be specified in the conditions of contract. At least half of the retention guarantee shall be returned at the time of provisional acceptance of the works, supplies, or services by the procuring entity. The duration of the guarantee period shall be established in the technical specifications in accordance with the nature of the contract.
4. The technical specifications shall determine, where necessary, any guarantees other than those stipulated above which may, under special circumstances, be required of the supplier or contractor to ensure the discharge of their obligations. The technical specifications shall define the rights of TRANSCO CLSG in relation to such guarantees.

Chapter III: Modifications During the Execution of the Contract

Article 73: Modification in the Contract Quantities or Price

1. Any variations to the initial contract shall be embodied in an amendment to the

contract except in the cases specified below:

- a) Variations in the execution of contracts for works, supplies or services not exceeding 15 percent of the total value of the contract shall be verified and approved by an order issued by the General Manager, after validation by the Director in charge of finances.
 - b) Where the totality of the variation in the quantity of the works, supplies or services exceeds **40 percent** of the contract value calculated on the basis of initial costing, a new contract shall be drawn up.
2. The application of price adjustments in compliance with contractual terms shall not require amendments to the contract.
 3. Where the variation in the quantity of the works, supplies or services **exceeds 15 percent but is less than or equal to 40 percent** of the basic contract value, such variation shall be the subject of an amendment to the contract.

Article 74: Penalty for Delayed Completion

1. Where a contractor fails to complete the works or services or deliver the goods within the agreed time for completion, it should be liable for the payment of a penalty for a maximum amount defined in the contract, which shall not be higher than **ten (10) percent** of the contract price. This provision does not apply to consulting services.
2. This penalty, when applicable, shall be deducted from the last payment due to the contractor.

Chapter IV: Payments under contracts

Article 75: Advance Payments, Progress Payments, Delays in Payments and Final Payments

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

Article 76: Advance Payments

1. Advance payments may be made under contracts for works, goods or services. The total amount of these advance payments may not, in any case, exceed Thirty (30) percent of the initial price of the contracts. For consulting services, advance payments shall not exceed Twenty (20) percent.
2. Advance payments and their terms of payment must be specified in the bidding documents or request for proposals. Advance payments should be fully secured by a bank guarantee, or a joint and several guarantee.
3. Advance payments are reimbursed according to a fixed rate specified in the contract,

by deduction from the sums due to the supplier, contractor or service provider, and in any event before the end of the contract. In the case of a total or partial termination of the contract, TRANSCO CLSG has the right, without prejudice to other outstanding payments, to demand immediate refund of outstanding advances.

Article 77: Progress Payments

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

Article 78: Delays in Payments

When payments have not been made within the period set forth in the General and Special Conditions of the contract, the contractor, supplier or service provider is entitled to the payment of interest starting on the day after the expiration of the period for payment. The interest rate shall be specified in the Special Conditions of Contract and should be based on the discount rate adopted by BCEAO or equivalent public institution in the country where the contract is being executed, increased by a maximum of One (1) point.

Article 79: Final Payment

Final payment occurs when the contractor, supplier or service provider is paid the amounts due in respect of the execution of the contract, including the additional payment due to the sums retained as guarantee in accordance with the provisions of Articles 70 and 72 of this Code, and after deduction of all advances or amounts due which have not been recovered by TRANSCO

CLSG.

Article 80: Methods of Payment

1. Payment can be effected by means of cheque or bank transfer in accordance with the provision of TRANSCO CLSG Financial Regulations.
2. The General Manager must approve all progress and final payments and arrange for payments to be made within a period not exceeding sixty (60) days starting from the date of the submission of an invoice.

Chapter V: Contract Management

Article 81: Inspection, monitoring and auditing of contracts

1. All contracts concluded by TRANSCO CLSG shall be subject to technical inspections, performance monitoring, and audits.
2. These functions of inspection, monitoring and auditing shall be conducted directly by the competent departments of TRANSCO CLSG or by private entities contracted by TRANSCO CLSG for such purpose.
3. The conditions and modalities for technical inspection and monitoring shall be established in the technical specifications for each category of contract.
4. Without prejudice to audits performed by the departments of TRANSCO CLSG, independent auditing of procurement processes shall be conducted on a periodic basis.

Chapter VI: Termination and Suspension of Contracts

Article 82: Termination

1. Contracts may be terminated by TRANSCO CLSG in the following cases:
 - a) the supplier, contractor or service provider's failure to perform its obligations;
 - b) its liquidation, or if it is forbidden by a court decision to pursue its activity, its bankruptcy, unless TRANSCO CLSG accepts an offer made by its creditors;
 - c) its death, civil or physical incapacitation, except where TRANSCO CLSG agrees that the contract be completed by its successors or any person designated by a court of law; or
 - d) for convenience of TRANSCO CLSG.
2. Contracts may be terminated by the supplier, contractor or service provider in the following cases:
 - a) in case of delayed payments, **in accordance with the contractual terms**; or

- b) in case of suspension of the contract for reasons not attributable to the contractor and during a period longer than sixty (60) days.
- 3. Any contract may be terminated if its execution becomes impossible due to "force majeure" events.
- 4. Notwithstanding the reasons for the termination of a contract, TRANSCO CLSG shall make an inventory of works or services performed and of supplies received with a view to effecting thereafter the corresponding payments due to the contractor.

Article 83: Suspension

- 1. TRANSCO CLSG may suspend the execution of the contract in the following cases:
 - a) Failure of the supplier, contractor or service provider in carrying out its obligations;
 - b) In case of a temporary event of force majeure preventing the continuation of works or services;
 - c) For the convenience of TRANSCO CLSG.
- 2. Where the duration of the suspension exceeds ninety (90) days within the overall execution period of the contract, the supplier, contractor or service provider is entitled to terminate the contract.
- 3. When the suspension is not due to failure by the contractor in complying with its obligations as per the contract, the suspension entitles the contractor to the payment of any additional costs and the extension of the delay for contract completion, which are caused by the suspension and as specified in the general and special conditions of the contract.

TITLE IV: Review

Chapter 1: Contract Award Review

Article 84: Amicable Settlement and Administrative Review

- 1. Any disagreement between the supplier or contractor and TRANSCO CLSG arising out of the implementation or interpretation of this Code may be settled amicably. The parties shall make every effort to reach amicable settlement of the matter.
- 2. However, any supplier or contractor that claims to have suffered, or that may suffer loss or injury due to a breach of a duty imposed on TRANSCO CLSG by this Code may seek review in accordance with the provisions of Articles 84 to 86 of this Code.
- 3. The following however shall not be subject to the review provided for under paragraph 1 of this Article:

- a) the selection of a procurement method pursuant to Article 22, and Articles 38 to 41 of this Code;
 - b) the choice of a selection procedure pursuant to Articles 25 and Articles 43 to 45;
 - c) a decision by TRANSCO CLSG to reject all bids and cancel the procurement process pursuant to Article 56;
 - d) the choice by TRANSCO CLSG of a shortlist for the procurement of consulting services pursuant to Article 42 of this Code.
4. Any complaint shall be sent to the General Manager within ten (10) working days following the publication of the decisions that are being contested. The General Manager shall with the assistance of the relevant services within the company review the complaint.
5. After the submission of a complaint, the General Manager shall notify all other bidders about it.

Article 85: Review by the Dispute Resolution Committee

1. If within ten (10) working days of submission of the complaint to the General Manager, the matter remains unresolved, the General Manager shall refer the matter to the Dispute Resolution Committee established under Article 9 of this Code, for its review and decision, and shall inform the bidders accordingly. The rules of procedures for the Dispute Resolution Committee shall be specified in the Procurement Manual.
2. Within ten (10) working days of the request submitted by the General Manager, the Dispute Resolution Committee shall issue a written decision, stating the reasons, and, if the complaint is upheld, indicating the corrective measures to be taken. All bidders shall be notified of the decision, which shall also be published on TRANSCO CLSG Website.
3. The Dispute Resolution Committee, unless it dismisses the complaint, may order TRANSCO CLSG to proceed in a manner conforming to this Code and/or Procurement Manual, and suspend, in whole or in part, an unlawful act or decision made by the procuring entity, including the decision to award or conclude a contract. However, the Committee has no jurisdiction for awarding a contract in lieu of TRANSCO CLSG, or to substitute another bidder to the one selected by the Procurement Committee.
4. The Dispute Resolution Committee shall, before taking any decision regarding a request for review, notify all parties in the procurement process and shall take into account the information and arguments received from such parties and from the procuring entity of TRANSCO CLSG.
5. The Dispute Resolution Committee may also exercise the same powers over the procurement process in case it receives any substantiated information, even from a third party to the process, on any irregularity or violation of the provisions of this Code committed during a procurement process.

Chapter II: Contract Disputes

Article 86: Dispute Resolution

If the complaint is not resolved through the application of Articles 84 and 85 of this Code the complaint may be settled in the following manner:

- a) arbitration in accordance with the provisions of the contract; or
- b) referral to the ECOWAS Court of Justice.

TITLE V: Provisions Related to Ethics and Sanctions

Article 87: Ethics Infringements and Sanctions of TRANSCO CLSG Staff and Officials

1. Any TRANSCO CLSG staff or official shall declare any interest that he/she may have in any supplier, contractor or service provider, and shall take no part in, nor seek to influence in any way, the procurement processes in which that supplier, contractor or service provider is involved or liable to become involved in.

2. Any TRANSCO CLSG staff or official having participated directly or indirectly in a procurement processes or in the contract execution in violation of the provisions of this Code shall incur the sanctions provided for such violation in TRANSCO CLSG Staff Regulations and Financial Regulations and shall in any event be prohibited from participating in any further procurement process.

Article 88: Infringements by candidates and bidders

1. Where TRANSCO CLSG has established after appropriate investigations that a person or firm has provided false information or falsified documents contained in its bid or proposal, or has engaged in corrupt or fraudulent practices in competing for a contract, the General Manager shall:

- a) reject the proposal for qualification or award of such a contract; and
 - b) apply the sanctions referred to in Article 10 of this Code.
2. The procedures for applying sanctions should be described in the Procurement Manual. Sanctions may include the following:
- a) declaring the related person or firm ineligible to be awarded a TRANSCO CLSG contract for a maximum period of ten (10) years;
 - b) pronouncing the termination of the awarded contract, and canceling any registration or certificate of qualification that were granted to the said person or firm;
 - c) imposing a fine on the said person or firm to a level established in the Procurement Manual;

- d) in case the investigations conducted revealed any criminal offence committed in the course of the procurement process, referring the matter to the appropriate competent authorities.
3. The sanctions approved by TRANSCO CLSG Board shall be immediately binding and published without prejudice to any recourse before competent authorities or courts.
4. TRANSCO CLSG shall keep and update continuously the record of the persons and firms barred from participating in TRANSCO CLSG contracting processes.

TITLE VI: Final Provisions

Article 89: Procurement Manual

Upon adoption of the Tender Code, TRANSCO CLSG shall prepare a Procurement Manual that should be consistent with the guidelines and provisions of the Tender Code. TRANSCO CLSG Procurement Manual shall be approved by the General Manager and submitted to TRANSCO CLSG Board for final approval.

Article 90: Adoption of the Tender Code

TRANSCO CLSG Board shall issue a Resolution adopting this Tender Code, which shall be posted on TRANSCO CLSG Website.

Article 91: Amendments

The provisions of this Code may be amended from time to time and as needed, subject to approval by TRANSCO CLSG Board.

Article 92: Transitional Provisions and Entry into force

The present Code shall govern the procurement of goods, works and services, as of its effectiveness upon approval by TRANSCO CLSG Board. As of the effectiveness of this Code, all other regulations or rules relating to public procurement by TRANSCO CLSG using its own funds, shall cease to have any effect, power, function, authority or duty in relation to any procurement process of goods, works or services within TRANSCO CLSG.