



INTERNAL AUDIT DIVISION

REPORT 2014/097

Audit of procurement at the United Nations Office at Nairobi

Overall results relating to the effective and efficient provision of procurement services were initially assessed as unsatisfactory. Implementation of two critical and four important recommendations remains in progress.

FINAL OVERALL RATING: UNSATISFACTORY

29 September 2014

Assignment No. AA2013/211/03

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AUDIT REPORT

Audit of procurement at the United Nations Office at Nairobi

I. BACKGROUND

1. The Office of Internal Oversight Services (OIOS) conducted an audit of procurement at the United Nations Office at Nairobi.

2. In accordance with its mandate, OIOS provides assurance and advice on the adequacy and effectiveness of the United Nations internal control system, the primary objectives of which are to ensure (a) efficient and effective operations; (b) accurate financial and operational reporting; (c) safeguarding of assets; and (d) compliance with mandates, regulations and rules.

3. The UNON Procurement Section performed procurement activities for UNON and on behalf of the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-Habitat), and other United Nations agencies in Nairobi. UNON provided "administrative and other support services" to UNEP and UN-Habitat in accordance with the Secretary-General's Bulletin on the "Organization of UNON". The United Nations Financial Regulations and Rules and the Procurement Manual provide guidance for all procurement activities at UNON. According to Financial Regulation 5.12, procurement functions include all actions necessary for the acquisition, by purchase or lease, of property, including products and real property, and of services, including works. The following general principles shall be given due consideration when exercising the procurement functions of the United Nations: (a) best value for money; (b) fairness, integrity and transparency; (c) effective international competition; and (d) the interest of the United Nations.

4. The UNON Procurement Section, headed by a Chief Procurement Officer at the P-5 level, comprised a total of 20 staff (5 Professional and 15 General Service). As of January 2013, the Section was responsible for managing 87 valid contracts of which 47 were in United States Dollars valued at \$59 million, and 32 contracts were in Kenyan Shillings valued at 1,500 million shillings (about \$17.4 million). Other contracts were in Euros (four contracts valued at Euro 1.45 million), British Pounds (one contract for £17,425), New Zealand Dollars (one contract for NZD 213,920) and two contracts with zero values. From 2011 to 2013, UNON processed 2,182 purchase orders valued at United States dollars \$93 million.

5. Comments provided by UNON, UNEP and UN-Habitat are incorporated in *italics*.

II. OBJECTIVE AND SCOPE

6. The audit was conducted to assess the adequacy and effectiveness of UNON governance, risk management and control processes in providing reasonable assurance regarding the **effective and efficient provision of procurement services by UNON**.

7. OIOS included this assignment in the 2013 internal audit work plan due to significant financial and operational risks related to procurement activities.

8. The key control tested for the audit was **regulatory framework**. For the purpose of this audit, OIOS defined regulatory framework as controls that provide reasonable assurance that policies and procedures: (i) exist to guide procurement activities; (ii) are implemented consistently; and (iii) ensure the reliability and integrity of financial and operational information. The key control was assessed for the control objectives shown in Table 1.

9. OIOS conducted the audit from January to March 2014. The audit covered the period from 1 January 2011 to 31 December 2013 and included a review of the solicitation, receipt and evaluation of bids, establishment and amendment of contracts, payments for goods and services, and vendor performance management.

10. The audit team conducted an activity-level risk assessment to identify and assess specific risk exposures, and to confirm the relevance of the selected key controls in mitigating associated risks. Through interviews, analytical reviews and tests, OIOS assessed the existence and adequacy of internal controls and their effectiveness. OIOS reviewed compliance with the provisions of the Procurement Manual relating to contract administration and contract management.

III. AUDIT RESULTS

11. The UNON governance, risk management and control processes examined were initially assessed as **unsatisfactory**¹ in providing reasonable assurance regarding the **effective and efficient provision of procurement services by UNON**. OIOS made six recommendations to address issues identified in the audit.

12. The segregation of responsibilities between procurement and requisitioning entities at UNON, UNEP and UN-Habitat were not adequately enforced, resulting in some procurement activities being performed without complying with established procurement procedures. This was compounded by inconsistencies between the Secretary-General’s Bulletin on the Organization of UNON, UNEP Financial Regulations, and UN-Habitat Financial Regulations regarding the delegation of procurement authority. This adversely impacted the achievement of the key procurement goals of the United Nations, namely: ensuring best value for money; fairness, integrity and transparency in procurement processes; effective international competition; and safeguarding the interest of the Organization.

13. The initial overall rating was based on the assessment of the key control presented in Table 1 below. The final overall rating is **unsatisfactory** as implementation of two critical and four important recommendations remains in progress.

Table 1: Assessment of key control

Business objective	Key control	Control objectives			
		Efficient and effective operations	Accurate financial and operational reporting	Safeguarding of assets	Compliance with mandates, regulations and rules
Effective and efficient provision of procurement services	Regulatory framework	Unsatisfactory	Partially satisfactory	Partially satisfactory	Unsatisfactory

¹ A rating of “**unsatisfactory**” means that one or more critical and/or pervasive important deficiencies exist in governance, risk management or control processes, such that reasonable assurance cannot be provided with regard to the achievement of control and/or business objectives under review.

A. Regulatory framework

Delegation of authority for procurement of goods and services was unclear

14. There were inconsistencies between the Secretary-General's Bulletin on the "Organization of UNON" and the Financial Rules of UNEP and UN-Habitat regarding the authority and responsibility for procurement of goods and services relating to UNEP and UN-Habitat, as explained below:

(a) The Secretary-General's Bulletin states that the core functions of the UNON Division of Administrative Services involve, inter alia, providing administrative and related support services to UNEP, UN-Habitat and other organizations of the United Nations system in Kenya, as applicable. The term "administrative and related support services" would normally include procurement services. However, the delegation of procurement authority issued by the Assistant Secretary-General for Central Support Services did not clearly state that UNON had the authority to procure goods and services for UNEP and UN-Habitat.

(b) According to the Financial Rules of UNEP, the Executive Director of UNEP was responsible for procurement of goods and services for UNEP for activities financed from extra-budgetary resources. These rules were issued by the Secretary-General of the United Nations in December 1975 and have been subject to amendments by the UNEP Governing Council. UNEP Financial Rule 212.1 states that "When budgetary provision is made for programme support costs or where provision is made in project budgets for equipment, supplies or services to be supplied by the Fund, the Executive Director shall be responsible for the purchase of equipment and supplies and the contracting of services."

(c) According to the Financial Rules of UN-Habitat, the Executive Director of UN-Habitat is responsible for the administration and management of the Habitat Foundation (including the budget) and to utilize its funds as planned and approved by the Governing Council. These Financial Rules do not allow the Executive Director to delegate procurement authority to non-UN-Habitat staff. UN-Habitat Financial Rule 301.1 states that the Executive Director should "delegate authority for specific aspects of these Financial Regulations and Rules to officials of the UN-Habitat Foundation".

15. In response to a 2010 OIOS audit of procurement activities at UNON on this matter, the Department of Management (DM) had stated that the Office of Central Support Services would seek legal advice from the Office of Legal Affairs with regard to the interpretation of the Secretary-General's Bulletin on the "Organization of UNON" and whether this Bulletin can be considered as a basis for including procurement actions for UNEP and UN-Habitat in the current delegation of authority to UNON. At the time of the present audit, this recommendation was yet to be implemented. Although DM had established a working group (including representatives of UNON, UNEP and UN-Habitat) in 2012 to examine this matter, it was yet to be resolved.

16. In the meantime, procurement actions in Nairobi were being undertaken as deemed appropriate within the provisions of the Financial Rules of each organization. For example, in 2013 UNEP obtained procurement services through the United Nations Office for Project Services (UNOPS) in Kenya by signing agreements with UNOPS in the amount of \$259,910 for procuring goods and services relating to the construction of the UNEP pavilion for the Global South-South Development Conference held in Nairobi. Furthermore, in 2013 UNEP signed another agreement with UNOPS for \$733,746 for procurement of geothermal equipment for projects in Kenya and Ethiopia. In addition, UNEP signed a Small Scale Funding Agreement for \$101,700 with an organization in Kenya to advise it on procurement

matters including: identification of procurement models best suited for UNEP; developing a procurement strategy and risk assessment for UNEP; development, in collaboration with DM, of an enterprise risk management implementation plan for UNEP; and making recommendations on policy suggestions and papers relative to procurement. Since there is already a previous OIOS recommendation referred to above which is still under implementation, no additional recommendation was made on this issue.

Segregation of responsibilities between procurement and requisitioning entities should be ensured

17. Procurement activities at UNON, UNEP and UN-Habitat were not always performed in compliance with the United Nations Financial Regulations and Rules and the Procurement Manual. UNON Procurement Section maintained a database of all purchase orders issued between 2011 and 2013. In this database, the basis (Financial Rule) upon which the purchase orders were issued was recorded. During the period 2011 to 2013, 53 purchase orders valued at \$1.2 million were issued “outside established procedures” as summarized in Table 2 below. UNON Procurement Section explained that cases categorized as “outside established procedures” were those whose basis for award was not in compliance with the United Nations Financial Regulations and Rules. For example, in these cases, requisitioners directly communicated with vendors, agreed upon the details and prices of goods or services to be delivered, and contacted UNON Procurement Section only to request the issuance of purchase orders based on the terms and conditions already agreed to between the requisitioners and vendors. At this stage, the procurement action was virtually completed without any involvement of UNON Procurement Section in sourcing the goods and services or conducting competitive bidding. These practices were not in compliance with the Procurement Manual procedures in Sections 1.1.4, 9.3.1, and 9.13.1 which, among other things, provide for segregation of responsibilities between procurement entities and requisitioners in order to ensure competition and best value in procurement.

Table 2: Summary of purchase orders issued “outside established procurement procedures”

Requisitioning Organization	Number of purchase orders	Value (amounts in \$)
UNEP	16	350,727
UN-Habitat	30	784,694
UNON	7	108,844
Total	53	1,244,265

18. Table 2 above shows that UN-Habitat had the most number of violations of procurement procedures, followed by UNEP. OIOS reviewed 13 out of the 53 purchase orders with a total value of \$635,626 and confirmed that the procedures followed did not comply with the rules, as indicated in the UNON database. The non-compliance instances mainly related to procurement of services such as accommodation and meals for conferences, meetings and training activities.

19. During the audit, in response to an OIOS request for justifications, if any, for the non-compliance with the procedures prescribed in the Procurement Manual, UNEP stated that it was still reviewing the cases but maintained that all procurements made by UNON for UNEP against the environment fund and associated funds were non-compliant with UNEP Financial Rules. UNEP explained that as recommended in the 2010 OIOS audit of procurement at UNON, and in line with the opinion provided by the Office of Legal Affairs, the UNEP Executive Director, who is designated by the UNEP Financial Rules as the sole holder of procurement authority against UNEP funds (excluding the regular budget), delegated his procurement authority to UNON to enable UNON to procure goods and services against these funds. This delegation was issued by the Executive Director of UNEP in November 2011 but UNON rejected it.

20. UNEP subsequently stated that it had conducted at its own initiative an internal review of its procurement activities and, on the basis of this review, launched a comprehensive capacity building, monitoring and control programme. A new procedure for review and approval of requests of procurement under the United Nations Financial Regulations and Rules (Financial Rules 105.16 (a) (i) to 105.16 (a) (ix)) was issued on 13 March 2013. Since then, UNEP had only three cases registered by UNON as “outside established procedures”. UNEP also stated that the awards to a specific hotel in Nairobi by UNON should have been made under Financial Rule 105.17 by using a system contract already in place.

21. UN-Habitat stated that it did not condone breach of rules and intended to strengthen its oversight and preventive controls over exceptions in coordination and with the assistance of UNON, including lessons learned on individual cases, training of nominated requisition and procurement focal points and monitoring of exception cases.

22. United Nations staff members have an obligation to comply with Financial Regulations and Rules. Financial Rule 101.2 provides as follows: “All United Nations staff are obligated to comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those Regulations and Rules. Any staff member who contravenes the Financial Regulations and Rules and corresponding administrative instructions may be held personally accountable and financially liable for his or her actions.” There was no evidence that Management in UNON, UNEP and UN-Habitat had determined accountability for the non-compliant practices.

23. Non-compliance with the Financial Regulations and Procurement Manual of the United Nations could result in the organization not achieving its key procurement goals, namely: (a) best value for money; (b) fairness, integrity and transparency; (c) effective international competition; and (d) the best interest of the United Nations.

(1) UNON should seek guidance from the Department of Management on how best to ensure compliance with the United Nations Financial Regulations and Rules and the Procurement Manual concerning the inadequate segregation of responsibilities between procurement and requisition functions at UNON, UNEP and UN-Habitat.

UNON accepted recommendation 1 and stated that the recommendation had been implemented following correspondence with DM on the matter. Recommendation 1 remains open pending receipt of the guidance provided by DM on how procurement and requisition functions will be segregated at UNON, UNEP and UN-Habitat.

(2) UNON should seek guidance from the Department of Management on determining accountability for non-compliance with United Nations Financial Regulations and Rules during the acquisition of goods and services in UNON, UNEP and UN-Habitat between 2011 and 2013.

UNON accepted recommendation 2 and stated that the recommendation would be implemented by 31 December 2014. Recommendation 2 remains open pending receipt of evidence that UNON has sought and received guidance from DM on determination of accountability for non-compliance with Financial Regulations and Rules during the acquisition of goods and services in UNON, UNEP and UN-Habitat between 2011 and 2013.

Need for early involvement of UNON in procurement activities initiated by UNEP and UN-Habitat

24. UNON provided "administrative and other support services" to UNEP and UN-Habitat in accordance with the Secretary-General's Bulletin on the "Organization of UNON". Procurement services were part of the administrative services that UNON provided to UNEP and UN-Habitat. There was a Local Committee on Contracts (LCC) in Nairobi that reviewed all procurement cases above \$200,000 for UNON, UNEP and UN-Habitat. All the three organizations were represented on this Committee.

25. In some cases, UNEP field and regional offices conducted the solicitation process and only reverted to UNON Procurement Section for presentation of cases to the LCC to obtain recommendations for award of contracts above \$200,000 since this was above the delegated authority for the respective offices. For example, in 2009 the UNEP Division of Technology, Industry and Economics in Paris identified additional office space and negotiated the price with the vendor before contacting UNON and the LCC for review of the case. The lease was for \$903,614 covering a period of six years. Similarly, in 2008, the Secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol entered into a contract to lease office premises for \$8 million over a 10-year period without evidence of compliance with the provisions of the Procurement Manual. In addition, the office space for the UNEP Regional Office of North America was negotiated by the requisitioner and only brought to the LCC at the end for recommendation of award of contract. The contract was for a total amount of \$3,239,152 for 10 years from 24 January 2008 to 24 January 2018.

26. *UNEP stated that the role of LCC is to review and make recommendation on procurement actions above established thresholds. UNEP has, and continues to, accept and respect the mandate of the Nairobi LCC. Therefore, procurement actions above \$200,000 are submitted to LCC for review.*

27. In the situations described above, it was too late for the UNON Procurement Section to restart the procurement process in order to provide effective service that would ensure transparency and best value for money.

(3) UNON should liaise with UNEP and UN-Habitat to ensure early involvement of the UNON Procurement Section in procurement processes involving amounts above the delegated authority of \$200,000 in compliance with established procurement procedures and to ensure transparency.

UNON accepted recommendation 3 and stated that UNON will implement this recommendation in liaison with its clients. Recommendation 3 remains open pending receipt of evidence of early involvement of the UNON Procurement Section by UNEP and UN-Habitat for procurements over \$200,000.

Purchase orders were issued under exigency without meeting the criteria for exigency

28. The Procurement Manual defines "exigency" as "an exceptional, compelling and emergent need, not resulting from poor planning or management, or from concerns over the availability of funds, that will lead to serious damage, loss or injury to property or persons, if not addressed immediately".

29. During the period 2011 to 2012, UNON issued 21 purchase orders valued at \$225,684 under "exigency". In the opinion of OIOS, only nine out of 21 purchase orders issued (or 43 percent) met the conditions for exigency as set out in the Procurement Manual. There were nine other purchase orders valued at \$160,059 that did not meet the conditions of exigency. These orders related to items such as purchase of printing paper, refurbishment of an office and maintenance of uninterrupted power supply. The other three purchases were less than \$4,000 hence exigency provisions were not applicable.

(4) UNON should ensure that purchase orders issued under exigency meet the Procurement Manual conditions for exigency.

UNON accepted recommendation 4 and stated that it will put measures in place to ensure adherence across UNON and its clients. Recommendation 4 remains open pending receipt of documentation showing the measures put in place by UNON to ensure compliance with Procurement Manual conditions regarding purchase of goods under exigency.

Reasons for not obtaining performance bonds needed to be documented

30. The Procurement Manual requires that security instruments be obtained “to provide the UN with security against expenses and losses that result from a failure by a vendor to perform its obligations”. The Procurement Manual also states that security instruments are not required for all solicitations and contracts and that the reasons for deciding to refrain from requiring the security must be recorded in writing and disclosed in the source selection plan and submissions to the LCC.

31. Only five contracts, totaling about \$4.5 million, out of 35 contracts totaling about \$67.4 million, had performance bonds to safeguard the interests of the UN in case of poor performance by vendors. The reasons for not requiring performance security for the 30 contracts, which were above \$200,000 (or its equivalent), were not documented in the procurement case files as required in the Procurement Manual.

32. UNON Procurement Section explained that generally, performance bonds were not sought as alternative ways were used to manage the risks of poor performance by vendors. The controls included payments to vendors only being made upon satisfactory completion of work. UNON Procurement Section stated that the concept of performance bonds was generally not well understood and welcomed by vendors hence the use of alternative controls.

33. OIOS acknowledges that the Procurement Manual does not require performance bonds in all cases. However, the Manual requires that the reasons for not demanding the bond should be documented. This could ensure that adequate internal controls are identified to ensure protection of United Nations interests. The potential impact of this non-compliance with the Procurement Manual could be financial loss in the event that vendors fail to comply with their contractual obligations.

(5) UNON should review all valid contracts to assess whether performance security issues have been adequately addressed in line with the Procurement Manual.

UNON accepted recommendation 5 and stated that it will implement the recommendation across UNON and its clients. Recommendation 5 remains open pending receipt of documentation showing the results of the review to appropriately address performance security issues.

(6) UNON should ensure that its procurement staff document the reasons for not requiring performance bonds when preparing new contracts or amending existing contracts in line with the Procurement Manual.

UNON accepted recommendation 6 and stated that it will ensure compliance by procurement staff. Recommendation 6 remains open pending receipt of evidence that UNON has started documenting reasons for not requiring performance bonds for new contracts or when amending existing contracts.

IV. ACKNOWLEDGEMENT

34. OIOS wishes to express its appreciation to the Management and staff of UNON, UNEP and UN-Habitat for the assistance and cooperation extended to the auditors during this assignment.

(Signed) David Kanja
Assistant Secretary-General for Internal Oversight Services

STATUS OF AUDIT RECOMMENDATIONS

Audit of procurement at the United Nations Office at Nairobi (Assignment No. AA2013/211/03)

Recom. no.	Recommendation	Critical ¹ / Important ²	C/ O ³	Actions needed to close recommendation	Implementation date ⁴
1	UNON should seek guidance from the Department of Management on how best to ensure compliance with the United Nations Financial Regulations and Rules and the Procurement Manual concerning the inadequate segregation of responsibilities between procurement and requisition functions at UNON, UNEP and UN-Habitat.	Critical	O	Guidance provided by the Department of Management on how procurement and requisition functions will be segregated at UNON, UNEP and UN-Habitat.	
2	UNON should seek guidance from the Department of Management on determining accountability for non-compliance with United Nations Financial Regulations and Rules during the acquisition of goods and services in UNON, UNEP and UN-Habitat between 2011 and 2013.	Critical	O	Evidence that UNON has sought and received guidance from the Department of Management on determination of accountability for non-compliance of Financial rules during the acquisition of goods and services in UNON, UNEP and UN-Habitat between 2011 and 2013.	31 December 2014
3	UNON should liaise with UNEP and UN-Habitat to ensure early involvement of the UNON Procurement Section in procurement processes involving amounts above the delegated authority of \$200,000 in compliance with established procurement procedures and to ensure transparency.	Important	O	Evidence of early involvement of the UNON Procurement Section by UNEP and UN-Habitat for procurements over \$200,000.	31 December 2014
4	UNON should ensure that purchase orders issued under exigency meet the Procurement Manual conditions for exigency.	Important	O	Documentation showing the measures put in place by UNON to ensure compliance with Procurement Manual conditions regarding purchase of goods under exigency.	31 December 2014
5	UNON should review all valid contracts to assess whether performance security issues have been	Important	O	Documentation showing the results of the review to appropriately address performance	31 December 2014

¹ Critical recommendations address significant and/or pervasive deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance cannot be provided regarding the achievement of control and/or business objectives under review.

² Important recommendations address important deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance may be at risk regarding the achievement of control and/or business objectives under review.

³ C = closed, O = open

⁴ Date provided by UNON in response to recommendations.

STATUS OF AUDIT RECOMMENDATIONS

Audit of procurement at the United Nations Office at Nairobi (Assignment No. AA2013/211/03)

Recom. no.	Recommendation	Critical ¹ / Important ²	C/ O ³	Actions needed to close recommendation	Implementation date ⁴
	adequately addressed in line with the Procurement Manual.			security issues.	
6	UNON should ensure that its procurement staff documents the reasons for not requiring performance bonds when preparing new contracts or amending existing contracts in line with the Procurement Manual.	Important	O	Evidence that UNON has started documenting reasons for not requiring performance bonds for new contracts or when amending existing contracts.	31 December 2014

APPENDIX I

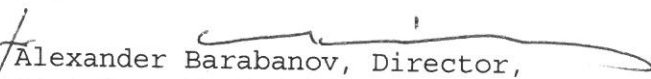
Management Response

United Nations  Nations Unies

INTEROFFICE MEMORANDUM MÉMORANDUM INTÉRIEUR
UNITED NATIONS OFFICE AT NAIROBI

TO: Mr Gurpur N. Kumar, Deputy Director,
A: Internal Audit Division, OIOS

DATE: 26 August, 2014

FROM:  Alexander Barabanov, Director,
DE: Division of Administrative Services
UNON

SUBJECT: **OIOS IAD Assignment no. AA2013/211/03 - Audit
OBJET: of procurement in UNON - draft report response**

With reference to the subject draft report requesting our comments, please find attached soft copy Annex 1 with the necessary annotations. Also attached are reference documents

May we take this opportunity to express our gratitude to the Nairobi Audit Section for the professional and collaborative manner in which the audit was conducted.

CC: Mr Chris Kirkcaldy
Ms Elisabeth Eckerstrom
Mr Kevin Stork
Ms Agness Chilinda
Mr Zachary Ikiara
Mr Christophe Bouvier
Mr Mohamed Robleh
Ms Cynthia Avena-Castillo

Management Response

Audit of procurement at the United Nations Office at Nairobi (Assignment No. AA2013/211/03)

Rec. no.	Recommendation	Critical ¹ / Important ²	Accepted? (Yes/No)	Client comments ³
1	UNON should seek guidance from the Department of Management on how to ensure compliance with the United Nations Financial Regulations and Rules and the Procurement Manual concerning the inadequate segregation of responsibilities between procurement and requisition functions at UNON, UNEP and UN-Habitat.	Critical	Yes	Implemented: UNON believes that this recommendation has been implemented. The relevant supporting documentation has been provided to OIOS.
2	UNON should seek guidance from the Department of Management on determining accountability for non-compliance with United Nations Financial Regulations and Rules during the acquisition of goods and services in UNON, UNEP and UN-Habitat between 2011 and 2013.	Critical	Yes	UNON will implement. Target date: 31 December 2014 Responsible officer: Director DAS
3	UNON should liaise with UNEP and UN-Habitat to ensure early involvement of the UNON Procurement Section in procurement processes involving amounts above the delegated authority of \$200,000 in compliance with established procurement procedures and to ensure transparency.	Important	Yes	UNON will implement in liaison with its clients. Target date: 31 December 2014 Responsible officer: CPO
4	UNON should ensure that purchase orders issued under exigency using Financial Rule 105.16 (a) (ii) meet the Procurement Manual conditions for exigency.	Important	Yes	UNON will comply by putting measures in place to ensure adherence across UNON and its clients. Target date: 31 December 2014 Responsible officer: CPO

¹ Critical recommendations address significant and/or pervasive deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance cannot be provided regarding the achievement of control and/or business objectives under review.

² Important recommendations address important deficiencies or weaknesses in governance, risk management or internal control processes, such that reasonable assurance may be at risk regarding the achievement of control and/or business objectives under review.

³ Please indicate feasibility and realistic timelines for implementation of the recommendation.

Management Response

Audit of procurement at the United Nations Office at Nairobi (Assignment No. AA2013/211/03)

Rec. no.	Recommendation	Critical ¹ / Important ²	Accepted? (Yes/No)	Client comments ³
5	UNON should review all valid contracts to assess whether performance security issues have been adequately addressed in line with the Procurement Manual.	Important	Yes	UNON will implement across UNON and its clients. Target date: 31 December 2014 Responsible officer: CPO
6	UNON should ensure that its procurement staff documents the reasons for not requiring performance bonds when preparing new contracts or amending existing contracts in line with the Procurement Manual.	Important	Yes	UNON will implement by ensuring compliance by procurement staff. Target date: 31 December 2014 Responsible officer: CPO



16th September 2014

Dear Mr. Kumar,

**Draft report on an audit of procurement at the United Nations Office at Nairobi
(Assignment No. AA2013/211/03)**

We refer to the OIOS draft report on UNON procurement copied to UNEP vide your memo dated 12 August 2014. We understand that the report is addressed to UNON but note that out of six recommendations made, three of them refer to UNEP and welcome the opportunity to provide our input especially in view of the fact that UNEP did not discuss these recommendations with the OIOS team during the audit. Therefore kindly allow me to explain the steps that have already been taken to address the issues raised by OIOS.

Procurement outside established procedures:

UNEP conducted at its own initiative an internal review of its procurement activities and, on the basis of this review launched a comprehensive capacity building, monitoring and control programme. A new procedure for the review and approval of requests of procurement under FRR 105.16(a)(i) to FRR 105.16(a)(ix) was issued on 13th March 2013. (Refer to Annex 1 "waiver of competitive bidding guideline").

Since this new procedure was issued UNEP has only three cases registered by UNON as 'outside established procedures' we believe this to be one of the cases implicitly referred to in paragraph 21 of the audit report. We wish to state that the awards to a specific hotel in Nairobi by UNON could have been made under FRR 105.17. Our preference would have been for UNON to apply the system contract that would have resulted in the saving of several thousand dollars.

On the 22nd April 2014 UNON DAS Director a.i. – issued a memorandum titled "New procedure for procurement of hotel services below USD 40,000" wherein it was stated that "When you {client office, hence likely the requisitioner} have identified a reasonable number of hotels, seek competitive rates from these hotels and compare and select the hotel that offers you the best value in terms of price, fulfilment of your predefined requirements and acceptable terms/conditions."

We note:

1. This procedure deemed not-compliant by UNON.



UNITED NATIONS ENVIRONMENT PROGRAMME

Programme des Nations Unies pour l'environnement Programa de las Naciones Unidas para el Medio Ambiente
Программа Организации Объединенных Наций по окружающей среде برنامج الأمم المتحدة للبيئة
联合国环境规划署



2. UNEP asked the memorandum to be withdrawn since in our opinion it violates the provisions of the Secretariat Procurement Manual and JIU recommendations.

UNEP does not agree with the inference in section 23 which states that "There was no evidence that Management in UNON, UNEP and UN-Habitat had determined accountability for the non-compliant practices or instituted corrective measures," insofar as it relates to UNEP.

Role of the Nairobi LCC:

The role of LCC is to review and make recommendation on procurement actions above established thresholds. UNEP has, and continues to, accept and respect the mandate of the Nairobi LCC. Therefore, procurement actions above USD 200,000/- are submitted to LCC for review.

We trust that you will take these clarifications into account when issuing the final report.

Yours sincerely,

J. Christophe Bouvier
Director,

Office for Operations and Corporate Services
United Nations Environment Programme
Nairobi, Kenya

Mr. Gurpur Kumar,
Deputy Director,
Internal Audit Division,
OIOS



UNITED NATIONS ENVIRONMENT PROGRAMME

Programme des Nations Unies pour l'environnement Programa de las Naciones Unidas para el Medio Ambiente

Программа Организации Объединенных Наций по окружающей среде

برنامج الأمم المتحدة للبيئة

联合国环境规划署



Headquarters, Nairobi - Kenya

13th March 2013

Waiver of Competitive Bidding

Guideline

1. Introduction

1.1. The Chief, Office for Operations hereby establishes the guidelines for Waiver of Competitive Bidding (Waiver), attached herewith.

2. Scope

2.1. These guidelines are applicable UNEP-wide to:

2.1.1. All Divisions;

2.1.2. All MEA Secretariats; and

2.1.3. All officials.

3. Effective date

3.1. This Guideline shall enter into force on 13th March 2013.

Mr. J. Christophe Bouvier

Chief,

Office for Operations and Corporate Services

United Nations Environment Programme

Nairobi - Kenya

1. INTRODUCTION TO GUIDELINE ON WAIVER OF COMPETITIVE BIDDING IN PROCUREMENT

1.1. Objective of this Guideline

1.1.1. The primary objective of this guideline is to establish a common operational methodology for the formulation, submission and recommendation of approval for requests of waiver of competitive bidding in procurement.

1.1.2. The waiver of competitive bidding request process contained herein is applied to all financial levels of procurement above the petty cash threshold¹.

1.2. Definitions

1.2.1. For the purposes of the Guideline, the following definitions of specific terms used shall apply:

- **Authorization** – process used in verifying that the personnel who has requested or initiated an action has the right to do so;
- **Accountability** – the obligation to: (a) demonstrate that work has been conducted in accordance with agreed rules and standards; and (b) report fairly and accurately on performance results vis-à-vis mandated roles and/or plans;
- **Authority** – the power to take decisions on behalf of UNEP in compliance with prescriptive content;
- **Unit** – an operation or office that is led by the respective key management personnel; in UNEP, these units typically consist of headquarters and offices away from headquarters (OAH);
- **Directors** – Directors of the relevant division;
- **Official** – staff member appointed in accordance with the United Nations Staff Regulations and Rules
- **Delegated Officer** – official of UNEP who has received, and accepted, delegation of authority on procurement
- **Requesting Officer** – an official of UNEP

1.2.2. **Waiver of competitive bidding:** For the purposes of the Guideline, waiver of competitive bidding is defined as the acquisition of services, goods or works without the use of the competitive bidding process.

1.2.3. **Competitive bidding processes** are defined in the Secretariat as Request for Quotations, Request for Proposals or Invitation To Bid.

¹ Petty cash levels at UNEP vary by duty station.

1.3. Headings and notes

- 1.3.1.** The headings or notes in this Guideline shall not be deemed to be part thereof or be taken into consideration in its application or interpretation.

1.4. Applicable Secretariat Regulations and Rules

All regulations and rules are listed here with headings only for ease of reference. The full text is remanded to APPENDIX B.

- 1.4.1.** Financial Regulations and Rules - Exceptions to the use of formal methods of solicitation 105.16
- 1.4.2.** Procurement Manual Version 6.02 of November 2011 Chapter 9 Part 2 9.18 Exceptions to Use of Formal Methods of Solicitation

1.5. Authority for approval of Waivers in UNEP

- 1.5.1.** UNEP internal delegations apply; the sole authority to approve waivers of competitive process in UNEP rests with the Executive Director.
- 1.5.2.** The Chief of UNEP Office for Operations (OfO) is mandated by UNEP's Executive Director to review all requests for waiver of competitive bidding before submitting its recommendations to the Executive Office for clearance.

2. MAIN PRINCIPLES OF THE GUIDELINE

- 2.1. The Guideline must improve UNEP' performance.** The main purpose of the Guideline in UNEP is to improve the efficiency and effectiveness of UNEP' performance while ensuring the Organization is protected against negative comments deriving from likely future scrutiny.
- 2.2. Applying competitive bidding.** The approval steps will include a rigorous review process of both the reasons provided for the waiver of competitive bidding, and proof that prior to the submission all avenues for competitive bidding have been duly explored.
- 2.3. Strict criteria for using non-competitive procedures.** In order to help enforce compliance to the UN and UNEP Regulations and Rules, and to provide advice OfO will review all requests.

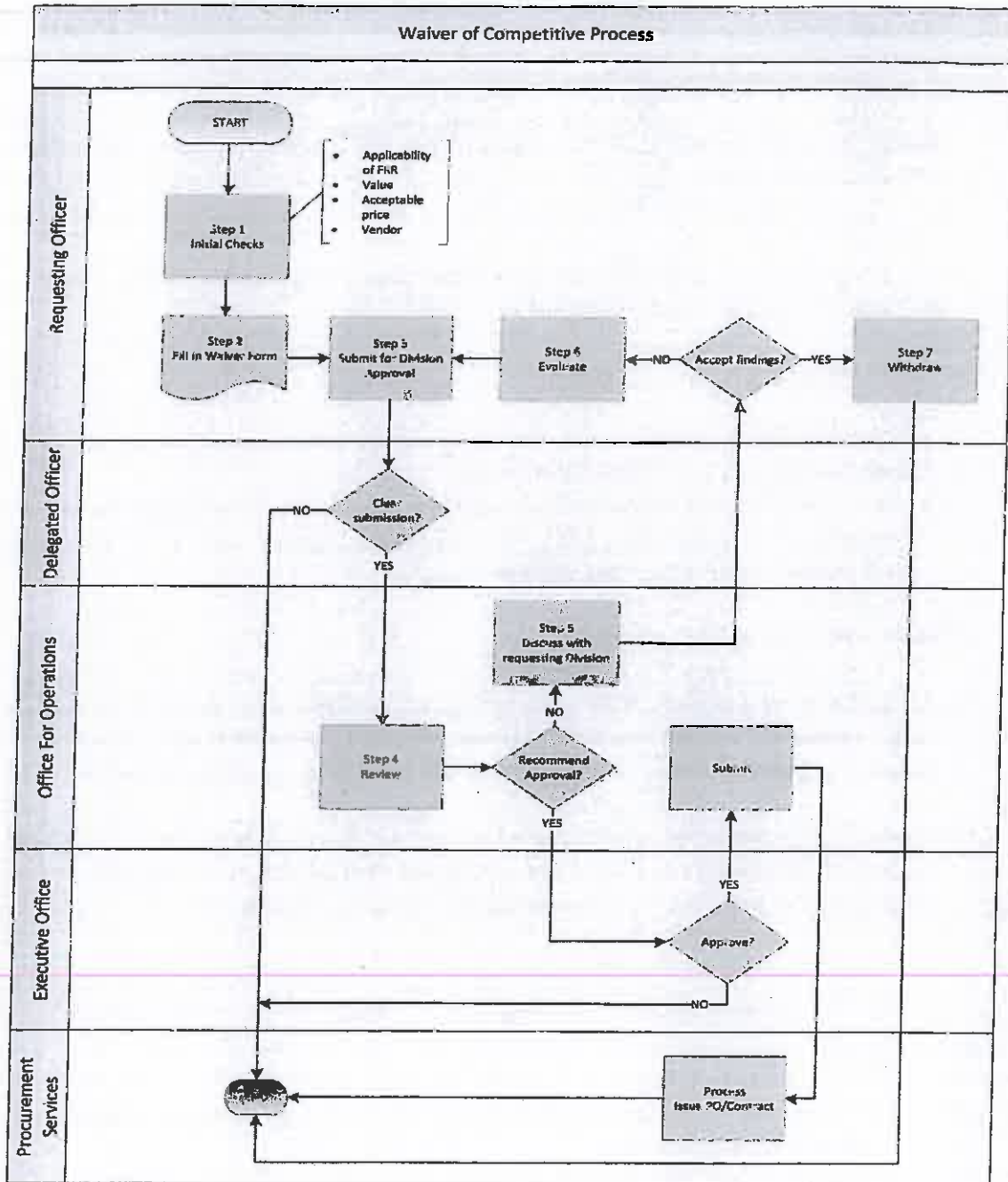
3. COMPLIANCE

- 3.1.** The Directors shall be responsible for the enforcement of compliance within their divisions of the content of this Guideline.
- 3.2.** Office for Operations is officially mandated for the overall monitoring and compliance across the Organization.

4. RESPONSIBILITY FOR MAINTENANCE

- 4.1.** Office for Operations shall be responsible for the maintenance of this Guideline.

4. THE WAIVER PROCESS



1. Step 1; The process starts under the responsibility of the requesting officer. In this part of the procedure the officer must prepare the base information for the request:

- 1.1. Select the Secretariat Financial Rules and Regulations (FRR) 105.16(a) clause that is appropriate for the waiver justification²
- 1.2. Determine the approximate value of the procurement
- 1.3. Determine if there is a proposed vendor for the procurement. If so:
 - 1.3.1. Obtain a cost proposal
 - 1.3.2. Determine if the costs proposed are reasonable
 - 1.3.3. Conduct background checks on the proposed vendor including contract history
- 1.4. Find the budget for the procurement together with budget codes
2. Step 2; Once the initial checks and data is gathered the requesting officer will obtain the template for the waiver request³ and fill in the following fields:
 - 2.1. First page –
 - 2.1.1. Division/Unit
 - 2.1.2. Requesting Officer
 - 2.1.3. Request No.
 - 2.1.4. Date
 - 2.2. Section I – General Information
 - 2.2.1. Project/Programme Number (if applicable)
 - 2.2.2. Project/Programme Title (if applicable)
 - 2.2.3. Project/Programme Objectives
 - 2.2.4. Amount of Proposed Contract(s)
 - 2.2.5. Source of Funds: BAC Code
 - 2.2.6. Fill in the table under the heading: “For the acquisition of” with a description of the goods, services or works required
 - 2.2.7. Resubmission; select the appropriate option⁴
 - 2.2.8. Name of proposed contractor (if applicable)
 - 2.2.9. Country of Proposed Contractor (if applicable)
 - 2.2.10. Legal status of Proposed Contractor (if applicable)
 - 2.2.11. In case of multiple contractors in the submission: the requesting officer selects the appropriate tick box AND “double clicks” on the corresponding excel sheet and fill in the sheet. Please remember to save the table as “SAVE” and not as “SAVE AS.” The data will be saved as an embedded sheet in the submission.
 - 2.2.12. If previous contracts have been issued with the same supplier: the requesting officer selects the appropriate tick box AND “double clicks” on the corresponding excel sheet and fill in the sheet. Please remember to save the table as “SAVE” and not as “SAVE AS.” The data will be saved as an embedded sheet in the submission.
 - 2.2.13. Qualification of suppliers/contractors: the requesting officer selects the appropriate tick box AND types in the information in the comments field immediately underneath.
 - 2.2.14. Item 4..
 - 2.3. Section II: Justification for waiving competitive process:

² See Appendix B

³ See Appendix A

⁴ Please note: clicking on the boxes will select the option and the box will change to if the selection is incorrect clicking again on the will change it back to

- 2.3.1. The requesting officer selects the tick box corresponding to the FRR identified at step 1.1
 - 2.3.2. The comments field immediately underneath is used to provide the full explanation of the circumstances and justifications leading to the request for waiver of competitive bidding.
 - 2.4. Section III: Cost Proposal:
 - 2.4.1. The requesting officer duly fills in the table. Please remember to save the table as "SAVE" and not as "SAVE AS." The data will be saved as an embedded sheet in the submission.
 - 2.4.2. The comments field immediately underneath is used to provide the full justification of reasonableness of costs.
 - 2.5. Section IV: Submission for Post-Facto or Retroactive Case.

Should the submission be for a post-facto or retroactive case then the requesting officer will:

 - 2.5.1. Select the tick box relative to the "YES" option, AND
 - 2.5.2. Use the comments field immediately underneath is used to provide the full explanation of the three issues highlighted in the comments and detailed in Appendix C herein.

Should the submission NOT be for post-facto or retroactive case then the requesting officer will:

 - 2.5.3. Select the tick box relative to the "NO" option
3. Step 3: At this point the request is ready to be submitted to the Division or unit's delegated officer to clear the submission before forwarding to OfO for review.
 - 3.1. If the delegated officer approves the request, he/she attaches an electronic mail of approval to the form and forwards it to the Office of the Chief, OfO for review. Final signature will be obtained after OfO review.
 - 3.2. If the delegated officer rejects the request the process terminates.
4. Step 4. OfO review:
 - 4.1. Once the approved form is received by OfO the case will be reviewed and the fields on Page 2 of the template will be filled:
 - 4.1.1. Date: date of the review
 - 4.1.2. Case No: OfO case number for the Waiver request
 - 4.1.3. Case Review: the text of the conclusions and justifications of the review process, including the recommendation for the Chief, OfO
 - 4.1.4. Should the recommendation be to NOT approve the process moves to Step 5
 - 4.1.5. Should the recommendation be to approve the Chief, OfO will review the recommendation and:
 - 4.1.5.1. If OfO decision is to approve the request the office of Chief OfO will:

- 4.1.5.1.1. Update the signature page
- 4.1.5.1.2. Print & sign the final document
- 4.1.5.1.3. Obtain the signature at point 3.1 above
- 4.1.5.1.4. Submit to the E.O. for final approval.
- 4.1.5.2. If OfO decision is not to approve the request the office of Chief OfO will instruct OfO staff to proceed with Step 5
- 4.1.6. Should the E.O. approve:
 - 4.1.6.1. The final signed document will be returned to OfO who will inform the Division and submit the case to Procurement Services for processing. The process ends.
- 4.1.7. Should the E.O. not approve:
 - 4.1.7.1. The rejected document will return to OfO for record keeping.
 - 4.1.7.2. OfO will inform the requesting Division.
 - 4.1.7.3. The process ends.
- 5. Step 5: Should the recommendation be, post OfO review, to reject the case, OfO staff will endeavor to meet with the requesting officer and delegated officer immediately to explain the circumstances of the case and explore alternatives in order to guarantee programmatic objectives while safeguarding the Organization from comments deriving from likely future scrutiny.
- 6. Step 6: Should the requesting officer and delegated officer not fully accept the findings of the OfO review they may amend the request and re-submit for approval.
- 7. Step 7: Should the requesting officer and delegated officer accept the findings of the OfO review they will withdraw the request.
 - 7.1. The process ends.

APPENDIX A- REQUEST FOR APPROVAL OF WAIVER

REQUEST FOR APPROVAL		WAIVER OF COMPETITIVE BIDDING
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SUBMITTED BY	
Division/Unit	Enter name of requesting Division/Office.
Requesting Officer	Click here to enter text.
Request No.	Click here to enter text.
Date:	Click here to enter a date.
Delegated Officer	Click here to enter a date.

TO BE COMPLETED BY UNEP CHIEF, OFFICE FOR OPERATIONS		
	Accept Request	Reject Request
Recommendation	<input type="checkbox"/>	<input type="checkbox"/>
Date:	Click here to enter a date.	
Signature		

TO BE COMPLETED BY UNEP EXECUTIVE OFFICE			
	YES	NO	COMMENTS
Recommendation Accepted?	<input type="checkbox"/>	<input type="checkbox"/>	Click here to enter text.
Date:	Click here to enter a date.		
Signature			

APPENDIX B- FULL TEXT OF APPLICABLE REGULATIONS AND RULES

1. Financial Regulations and Rules, 105.16:

(a) The Under-Secretary-General for Management may determine for a particular procurement action that using formal methods of solicitation is not in the best interest of the United Nations:

(i) When there is no competitive marketplace for the requirement, such as where a monopoly exists, where prices are fixed by legislation or government regulation or where the requirement involves a proprietary product or service.

(ii) Where there has been a previous determination or there is a need to standardize the requirement.

(iii) When the proposed procurement contract is the result of cooperation with other organizations of the United Nations system, pursuant to rule 105.17.

(iv) When offers for identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered remain competitive,⁵

(v) When, within a reasonable prior period, a formal solicitation has not produced satisfactory results;

(vi) When the proposed procurement contract is for the purchase or lease of real property and market conditions do not allow for effective competition;

(vii) When there is an exigency for the requirement;⁶

(viii) When the proposed procurement contract relates to obtaining services that cannot be evaluated objectively;

(ix) When the Under-Secretary-General for Management otherwise determines that a formal solicitation will not give satisfactory results;

(b) When a determination is made pursuant to subparagraph (a) above, the Under-Secretary-General for Management shall record the reasons in writing and may then award a procurement contract, either on the basis of an informal method of solicitation or on the basis of a directly negotiated contract, to a qualified vendor whose offer substantially conforms to the requirement at an acceptable price.

Procurement Manual

9.18 Exceptions to Use of Formal Methods of Solicitation

⁵ Reasonable period of times should be a time-frame not exceeding 3 months.

⁶ Exigency is defined as an exceptional compelling and emergent need, not resulting from poor planning or management or from concerns over the availability of funds, that will lead to serious damage, loss or injury to property or persons if not addressed immediately.

1. Use of Exceptions. Procurement Officers shall exercise sound judgement and caution in applying any of the exceptions to the use of formal methods of Solicitation listed in Financial Rule 105.16. In these cases, the Contract may be awarded "... on the basis of an informal method of Solicitation or on the basis of a directly negotiated contract to a qualified Vendor whose offer substantially conforms to the requirement at an acceptable price."

2. For the exceptions listed in Financial Rule 105.16, the Procurement Officer shall consider the following:

a. The exception based on the non-existence of a competitive marketplace (Financial Rule 105.16 (a) (i)) includes goods, services or works for which only one manufacturer or source exists, or when similar or generic items that fulfil the requirements are not available. Items that are not sold at uniform fixed prices, although protected by patents or copyrights, are not necessarily covered by this exception and shall be subject to competitive bidding, if no other exception applies.

b. The exception based on the need to Standardize the requirement (Financial Rule 105.16 (a) (ii)) shall be used only when such Standardization limits the acquisition to only one Vendor, and such Standardization has been cleared by the relevant substantive official (e.g., ICTB in the case of information technology requirements) and has been recommended by the HCC and approved by the ASG/OCSS. Procurement under this exception shall take place only for a limited period of time, normally not to exceed five years. If multiple Vendors can provide the standardized requirement, competition shall be sought on a 'no substitute' basis for the specified requirement.

c. The exception for Contracts resulting from cooperation with other organisations of the UN system (Financial Rule 105.16 (a) (iii)) shall be exercised in accordance with Financial Rule 105.17, which requires that "... the relevant regulations and rules of those organisations [be] consistent with those of the United Nations." In cases of cooperation with other organisations of the UN system, the ASG/OCSS may, as appropriate, enter into agreements with such organisations for such purposes. This exception shall apply in circumstances such as the following:

i. The UN acts jointly with another organisation of the UN system to achieve economies of scale or other benefits. In this case, the organisations may elect to have one organisation lead the procurement process (the "Lead Agency"), and the Lead Agency signs the Contract with the Vendor. The other organisations may: (i) sign the same Contract; or (ii) issue Purchase Orders against the Contract entered into by the Lead Agency. In this case, the RFP or ITB and the Contract signed by the Lead Agency shall include special clauses to address the Lead Agency arrangements so that the other organisations may place orders under the Contract based upon the terms agreed to between the Lead Agency and the Vendor. The UN shall submit Lead Agency Contracts to the HCC, if required, based on the estimated value of UN procurement under the Contract, and, if it is a Systems Contract, the UN shall communicate to the HCC the estimated NTE amount for the UN under the Systems Contract.

ii. The UN relies on the procurement decision of another UN organisation and enters into a Contract directly with the successful Vendor without undertaking a new and separate selection process. In this case, the requirement must be substantially the same in terms of

e.g., price, quality, quantity, and delivery time as those which were the subject of the other organisation's procurement decision; the organisation whose decision is being relied upon has made the award within the last 12 months; the terms and conditions of the Contract must be substantially the same; the costs must be acceptable to the UN; and the administrative costs of directly contracting with the successful Vendor must not outweigh the costs of undertaking a new and separate Solicitation process. This exception would not apply to requirements which, though similar to those that were the subject of the other organisation's procurement decision, are nonetheless different from such requirements (e.g., similar products, but with different specifications, such as size).

iii. The UN requests another UN organisation to conduct a procurement exercise on its behalf. This alternative may be used when the ASG/OCSS determines that the UN lacks the relevant expertise in procuring the type of goods, services or works being sought, and the other organisation has such expertise with the anticipated result that the UN would save time and administrative costs.

d. The exception for offers for identical goods, services or works Financial Rule 105.16 (a) (iv)) applies if they were subject to a complete procurement exercise, and the original Contract was entered into less than 120 days prior to the new contract award. Generally, no more than three consecutive awards should be given to the same Vendor within a 120- day period using this exception. If such limitation is exceeded, and additional awards are foreseen thereafter, UN/PD shall take appropriate steps to develop a Systems Contract for the requirement through a competitive Solicitation, unless the Director, UN/PD determines that other valid reasons exist for not doing so and places a written note in the procurement case file to that effect.

e. The exception for previous formal Solicitations without a result (Financial Rule 105.16 (a) (v)) applies if the previous Solicitation was completed less than six months prior to the award on the basis of an informal method of Solicitation or directly negotiated Contract. In this case, "completed" means that the earlier formal Solicitation was declared unsuccessful by the Director, UN/PD or the CPO in a written note to the procurement case file.

f. The exception for purchase or lease of real property (Financial Rule 105.16 (a) (vi)) applies, if comparable property is not available in the required geographical area. The Procurement Officer should, to the extent feasible, seek the advice of a qualified real estate broker or consultant to confirm whether comparable property is available and to determine a market range for the selling price or rent. Any such advice shall be recorded in writing and put in the procurement case file by the Procurement Officer.

g. The exception for exigency cases (Financial Rule 105.16 (a) (vii)) applies as set forth in Chapter 9 Section 9.19. Prior to awarding a contract on an exigency basis, the Procurement Officer should consider whether the requirement could be split and award parts on an exigency basis, and the remainder by competitive Solicitation, provided such action is acceptable to the Requisitioner and does not threaten or seriously impinge operational requirements.

h. The exception for services that cannot be objectively evaluated (Financial Rule 105.16 (a) (viii)) applies where the requirement is such that objective criteria for the technical evaluation are difficult to establish, as determined by the Procurement Officer with the approval of the Director, UN/PD or the CPO.

3. The approval of the ASG/OCSS is required for conducting a procurement process without formal Solicitation, above the applicable threshold. (Financial Rule 105.16 (a) (ix)).

4. Pro Bono goods and services: ST/SGB/2006/5, dated 22 March 2006, permits the acceptance of pro bono goods and services under certain conditions.

5. If one of the exceptions to formal methods of Solicitation applies, the Contract may be awarded based on an informal method of Solicitation or a directly negotiated contract.

6. If a Contract is awarded under an exception allowed by Financial Rule 105.16, the Procurement Officer shall place a written record in the case file of the facts on which the award was based, including copies of statements from other UN staff or officials requesting or approving the exception.

APPENDIX C – ISSUES WHICH MUST BE ADDRESSED IN REQUESTS FOR APPROVAL OF POST-FACTO/RETROACTIVE CASES

- 1) **Explanation of Circumstances Resulting in Post-Facto/Retroactive Situation**
 - a) Explanation of the process: Identify what happened when, who was involved, what were the delays resulting in late submission. Identify any emergency and unusual circumstances. Identify in which way the appropriate processes, precautions and controls were followed and why it still resulted in failure.
 - b) The person(s) or circumstances responsible for non-compliance with the standard procedures and why it happened;
 - c) The mechanisms which have been put into place in order to ensure that such a situation does not occur again.
- 2) **Reasonableness and Acceptability of Activity**
 - a) Details of the Activity, including the nature of services/goods, duration and cost. The activity should be justified in light of the project documentation, i.e. is it in conformity with project requirements. Finally, there must be evidence of agreement to the activity from, or action by the Government, Beneficiary and the Funding Source as appropriate.
 - b) Reasonableness of the activity/cost: Demonstrate its economy, efficiency and equity.
 - c) Successful completion of activity: including certification by designated Certifying Officer that the services have been satisfactorily performed, outputs have been produced (reports, documentation, etc.) and are acceptable to all parties. Evidence this by attaching TOR, reports, certifications, etc.
 - d) In the case of a contract for Works, a Certificate signed by the engineer should be submitted which states:
 - i) that the project has been designed and constructed according to the proper specifications; and
 - ii) that no accidents or injuries have occurred during construction which would cause UNEP to potentially be liable for any damages whatsoever.
- 3) **Financial Considerations**
 - a) Confirm that no loss has occurred to UNEP or the Funding Source as result of this circumstance. If there has been any financial loss, please explain.