



CORTE DEI CONTI

LA SEZIONE DI CONTROLLO

PER GLI AFFARI COMUNITARI ED INTERNAZIONALI

Composta dai Magistrati:

Dott.	Giovanni	COPPOLA	Presidente
Dott.ssa	Maria Annunziata	RUCIRETA	Presidente
Dott.	Giacinto	DAMMICCO	Consigliere
Dott.	Carlo	MANCINELLI	Consigliere relatore
Dott.ssa	Igina	MAIO	Consigliere
Dott.	Michele	COSENTINO	Consigliere
Dott.ssa	Marcella	PAPA	Referendario

Nell'Adunanza del 15 ottobre 2020

Visto il D.P. n. 153 del 18 maggio 2020 pubblicato nella G.U. n. 131 del 22 maggio 2020 recante "Regole tecniche e operative in materia di svolgimento delle camere di consiglio e delle adunanze in videoconferenza e firma digitale dei provvedimenti dei magistrati nelle funzioni di controllo della Corte dei conti";

Viste le modalità indicate dalla DGSIA per lo svolgimento delle adunanze e camere di consiglio in videoconferenza - versione 1.0 del 26 maggio 2020;

Viste le regole tecniche della DGSIA riguardanti la procedura per la sottoscrizione con firma digitale dei provvedimenti dei magistrati nelle funzioni di controllo - versione 2.0 del 26 maggio 2020;

Visto il mandato di *external auditor* dell'*International Civil Aviation Organization* (ICAO) conferito alla Corte dei conti dal *Council* dell'ICAO e ratificato dall'*Assembly* dell'Organizzazione nella sua 38^a Sessione tenutasi il 4 ottobre 2013, nonché il rinnovo del mandato per un ulteriore triennio, deliberato,

su proposta del *Council* dell'ICAO, dall'*Assembly* dell'Organizzazione nella sua 39^a sessione con risoluzione n. A39/36, in data 29 settembre 2016;

Visti i principi internazionali di audit applicabili all'attività delle Istituzioni superiori di controllo (*International Standards of Supreme Audit Institutions –ISSAI*), emanati dall'INTOSAI;

Visto lo *Special Report “Procurement at ICAO: enhancing efficiency and effectiveness of the process”*, approvato senza i commenti del Segretario Generale ICAO con Deliberazione n. 5/2020, assunta nell'adunanza del 10 giugno 2020;

Considerato che in data 26 agosto 2020 sono pervenuti i commenti del Segretario Generale dell'ICAO;

Udito il relatore Consigliere Carlo Mancinelli ed esaminato e discusso su sua proposta lo *Special Report “Procurement at ICAO: enhancing efficiency and effectiveness of the process”*;

DELIBERA

di approvare lo *Special Report “Procurement at ICAO: enhancing efficiency and effectiveness of the process ”* con le modifiche apportate dal Collegio;

DISPONE

di trasmettere copia dell'*audit certificate* e del *report* al Segretario Generale dell'*International Civil Aviation Organization (ICAO)*.

IL RELATORE

Carlo Mancinelli

f.to digitalmente

IL PRESIDENTE

Giovanni Coppola

f.to digitalmente

Depositata in Segreteria il

Il Dirigente

Maria Pia Gubbiotti

f.to digitalmente



Corte dei conti

SPECIAL REPORT OF THE EXTERNAL AUDITOR

INTERNATIONAL CIVIL AVIATION ORGANIZATION

***Procurement at ICAO: how to enhance the
efficiency and effectiveness of the process***

PERFORMANCE AUDIT

2020

The Audit Team

This special report sets out the results of a performance audit of the area of Procurement at ICAO.

The audit team of this performance audit was led by Mr. Carlo Mancinelli, Counsellor of the Corte dei conti's Audit Chamber for European and International Affairs, and was composed of Mr. Stefano Penati and Mr. Flavio Giuseppone, senior auditors.

This report has been approved by the Audit Chamber for European and International Affairs.

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Glossary and abbreviations

APAC RO	Asia and Pacific Regional Office
ASR	Annual Statistical Report on UN Procurement
DPO	Direct Purchase Order
EAO	Evaluation and Internal Audit Office
ITB	Invitation to Bid
JIU	Joint Inspection Unit
LTA	Long-term Agreement
MOU	Memorandum of Understanding
PO	Purchase Order
PRO	Procurement section
RFP	Request for Proposals
RO	Regional Office
RSO	Regional Sub-Office
TCB	Technical Cooperation Bureau
UNGM	United Nations Global Marketplace

Executive Summary

I. Our audit focused on the rules and procedures adopted by the Organization and currently used to manage the procurement process, both at ICAO HQ and Regional Offices, to check if they are efficient, effective and transparent, and also if they are in line with the common practices in force within the UN system.

II. We concluded that they present some weaknesses, which should be amended to ameliorate the whole process.

III. With this aim, in this report we issued 18 recommendations and 2 suggestions, designed to add value to the procurement framework, through the adoption of the recommended practices within the UN system, in order to improve its efficiency and transparency.

IV. At its meeting of 10 June 2020, the Audit Chamber for European and International Affairs of the Corte dei conti approved and adopted the present report. The Secretary General provided her comments on 26 August 2020; they have been incorporated and the Audit Chamber eventually confirmed the approval of this report at its meeting of 15 October 2020.

Introduction

Audit background

1. During our audit of the Asia and Pacific (APAC) Regional Office in Bangkok and its Regional Sub-Office (RSO) in Beijing, we analysed a sample of procurement contracts related to the RO activities and needs, concluded at both HQ and RO levels.
2. During our interim audit, carried out in preparation of our financial audit of the 2019 FS, we also analysed a sample of procurements, taking into account the recommendations issued in our past reports, as well as some past EAO recommendations on the Procurement area that we considered relevant for this audit.
3. We audited the procedures and the rules in force at ICAO and also compared the ICAO framework with the common practices adopted within the UN system for the Procurement process and procedures.

Audit objectives and methodology

Audit questions

4. Our audit objective focused on assessing if the current ICAO procurement framework could be enhanced in its efficiency and effectiveness.
5. We therefore assessed if ICAO's current rules and procedures could benefit from a comparison with UN best practices, *not only* in respect of the UN legal and conceptual procurement framework (i.e. the UN Procurement Practitioner's Handbook), *but also* with the current position of the Procurement function in the organigramme of various UN Agencies and Funds.
6. As a matter of fact, we already highlighted, in our report "*Efficiency and effectiveness of the Procurement service at ICAO*", that ICAO places the Procurement service in its organigramme in a different position, as compared with the scheme commonly adopted within the UN system.
7. Therefore, the main audit questions, on which our work was based, are the following:
 - 1) *Is the current Procurement framework at ICAO efficient and effective?***

The deriving sub-question is:

 - *Could the ICAO Procurement process be enhanced, taking advantage of the best practices currently present in the UN system?*
 - 2) *Are the recent UN system's updates, related to conflicts of interests, being tackled effectively in the ICAO Procurement process?***
 - 3) *Is the current ICAO procurement framework applied effectively and efficiently at the Regional Level?***

The consequent sub-question is as follows:

 - *Is the control and monitoring system, currently implemented to detect the DPOs bypassing the threshold, efficiently and effectively applied by all offices, at HQ and Regional level?*
8. Due to the above, this report, and its findings, are directly linked to our previous report "*Efficiency and effectiveness of the Procurement service at ICAO*", presented in 2019.

Audit work and approach

9. The audit field work was carried out from the beginning of October to the mid of March 2020. The audit visits for the on-the-spot work were carried out in the period from 27-31 October 2019 in the APAC RO, in the last week of January and in the period from 25 February to 11 March 2020.
10. The audit team got direct contacts with the relevant Management at HQ and Regional level, with regular requests for data and supporting documents.

11. In particular, we examined different sources of information (as explained also in paragraph 2 above):
- ICAO Financial Regulations – Doc 7515/16, Sixteenth Edition – 2017;
 - ICAO Procurement Code – Doc 9761 – 2013.
 - UN Procurement Practitioner’s Handbook – 2017
 - Our audits carried out in the past years, our recommendations and Management’s replies related to:
 - long form report at 31.12.2016, with 7 recommendations, all closed, and 3 suggestions of which 2 closed;
 - long form report at 31.12.2017, with 3 recommendations, of which 2 closed, and 1 suggestion, closed;
 - long form report at 31.12.2018, with 2 recommendations and 1 suggestion, all ongoing;
 - performance audit report “Efficiency and effectiveness of the Procurement service at ICAO”, not yet discussed by the Council, with 6 recommendations, all ongoing;
 - The Internal Audit report IA/2015/1 “*Procurement for Headquarters*”;
 - The Internal Audit report IA/2018/6 on “*The Asia and Pacific (APAC) Regional Office and Regional Sub-Office*”;
 - Our findings related to the 2019 financial year, where we have performed our audit on procurement, selecting specific samples at HQ and RO level.
12. Audit evidence was obtained from (i) on-site meetings with Director, Deputy Director and officers of the APAC RO, (ii) video conference meeting with Director TCB and Chief/PRO, (iii) meetings and interviews with Management, (iv) desk reviews of the documents above and of the ones received and (v) analysis of the EAO’s Reports.

Timeline

13. Due to the COVID-19 pandemic, both ICAO and the Corte dei conti were forced to switch to remote working mode. The final draft of our report was sent to ICAO management for comments on April 6. We received a first response on May 14, which was supplemented on May 20. We sent the report to the Secretary General the same day, to get the final comments from the top management. In the absence of a response, the report was finally adopted by the Audit Chamber on June 10.

Acknowledgement

14. We wish to thank the Director of the Asia and Pacific Regional Office, the Director of the Technical Cooperation Bureau, the Chief of the Procurement section and all staff for the assistance and cooperation given during the audit.

Observations and findings

Procurement

15. Procurement represents part of the expenses analysed in the paragraph above and accounted as “Supplies, consumables and others”, “General operating expenses”, “Meetings” and “Training”.

Effectiveness and efficiency versus compliance

16. As referred in our audit scope (refer to paragraph 11) and in our objectives, our work is based on different sources of information.
17. On the basis of the work carried out this year, and through the follow-up exercise of our previous audits, as stated above, we have identified some process shortcomings and areas of improvement and subsequently we then have issued the recommendations and suggestions in this report.
18. As also stated in our audit objectives (please refer to the concerning section of this report), we highlight that, in this audit, references to the UN Practitioner’s Handbook¹ are often in the logic of referring to UN best practices and are oriented to a logic of effectiveness and efficiency of the Procurement procedures and processes at ICAO, because compliance could be assessed mainly against the ICAO Procurement code (Doc 9761 of 19 August 2013).
19. Therefore, we consider all recommendations and suggestions that refer to the UN Practitioner’s Handbook as an opportunity for ICAO to have an added value in the procurement process. We acknowledge that the ICAO Procurement Section is part of the UN High Level Committee on Management – Procurement Network, and it is our understanding that this network is currently seeking to harmonize all procurement factors and initiatives.

Segregation of duties enhances the effectiveness of the ICS

20. We highlight that some of our findings and related recommendations of this report are based on the principles of “segregation of duties”, which is one of the key principles for an effective Internal Control System (ICS).
21. Cornerstone for enhancing the effectiveness of ICS in the ICAO’s procurement area is the Recommendation n. 1 of our special report on “*Efficiency and effectiveness of the Procurement service at ICAO*”, where we recommended “*to relocate the Procurement*

¹ <https://www.ungm.org/Shared/KnowledgeCenter/Pages/PPH2>

Section to an independent position in the ICAO structure, like, for example, the Bureau of Administration and Services (ADB) or the Office of the Secretary General (OSG)".

22. As it was explained in the same recommendation, this is essential "*in order to conform to the guiding principles of procurement (best value for money, accountability, integrity, transparency, fairness, effective competition, best interest of the Organizations) and reduce the usual ethical risks in procurement (conflict of interest, fraud, corruption, coercion and collusion)*". We will recall the same principles in the text of some recommendations of this report.

Two-envelope System: Technical and Commercial proposals should be delivered to PRO by tenderers separately

23. For the Request for Proposals (RFP), the UN Practitioner's Handbook states that "Since proposals are usually submitted using a two-envelope system, i.e., one envelope for the technical proposal and another separate envelope for the financial proposal, the financial proposal will only be opened after the technical evaluation has been completed and not at a public opening. In some cases, upon completion of the technical evaluation financial proposals are opened publicly. (...) Once offers have been formally opened, they should be handed to the procurement function for processing".
24. The UN Practitioner Handbook makes a difference between Invitation to Bid (ITB) and RFP, as follows:

"ITB

The essential characteristic of the ITB is that the technical requirement can be clearly and completely specified in a qualitative and quantitative manner, and the award is normally made on the basis of lowest cost, among commercially and technically compliant bids, lowest priced substantially compliant or similar criteria.

Bids are normally submitted in a single envelope (or email), or, if available, electronically by using the organization's eTendering system, and the price can be read out at a public bid opening. This necessitates (and assumes) that negotiations are not foreseen and that no premium is to be given for bids that exceed the specified technical requirements. It also assumes that other requirements can be specified in pass/fail form as threshold qualifying conditions, and that delivery time requirements can be specified in a manner to adjust price (e.g., 0.5% increase or decrease per week of delay), if relevant.

RFP

The essential characteristic of the RFP is that proposals are submitted against requirements that cannot be fully defined and/or quantified at the time of solicitation and where innovation and the specific expertise of the proposer is being sought, often in form of performance requirements (for more information see Chapter 5: Planning the Procurement Process), to better meet the procurement requirement.

Proposals are usually submitted with technical and financial components in separate sealed envelopes or emails, therefore there is normally no public bid opening. This implies that proposals will be evaluated technically prior to the opening of the financial

offer and will be based on several criteria outlined in the solicitation documents with a weighted score allocated for the overall technical proposal. The technical score is then combined with the financial score to determine best value for money.”

25. During the performance audit on procurements carried out in 2019, we detected again, as in the past years, that a two-envelope system is not applied during the procurement procedures carried out at ICAO; actually, the ICAO Procurement Code does not provide for a two-envelope system.
26. Therefore, we recommended (Rec 5) to implement a two-envelope system. The recommendation was agreed by Secretary General, with the following comment: *“Agreed. An in-depth evaluation and possible modification of the current Agresso/Alito ERP will have to be done to accept a web based two envelope system through the procurement portal. Timeline: End December 2021”*.
27. A two-envelope system envisages that the technical proposal and the financial proposal for RFP are presented separately and evaluated independently in order to (i) prevent knowledge of the price from influencing the technical evaluation with the aim to ensure procurement integrity, (ii) reduce the risk of pricing criteria unfairly influencing the evaluation process and (iii) reduce the risk of biased technical evaluation where price considerations may take precedence over quality.
28. PRO’s Management referred to us that the current software in use at ICAO for Procurement does not allow having separate delivering by suppliers in the mailbox; however, they informed us that in 2020, following the decision of the Secretary General above mentioned, they have decided to buy a new software that should solve this issue.
29. We acknowledge also that, during 2019, some actions were taken and one experimental procedure was carried out using the two-envelope system; nevertheless, considering the risks abovementioned, we consider appropriate for a two-envelope procedure to be introduced as soon as possible, even without the help of a dedicated software. There might be non-automated mechanism for scrutiny independently the technical and the commercial proposals.

Recommendation n. 1

30. Considering what explained above, in order to reduce the risk that pricing criteria might unfairly influence evaluation process **we recommend** that Management:
 - 1) immediately implement the two-envelope system for RFP, without waiting for the modification of the ICAO Procurement Code, for all the procurement carried out by PRO (meaning for both Regular Programme – HQ and ROs – and TCB), and
 - 2) start a cost-benefit evaluation, in line also with what agreed by the Secretary general, on the possibility of selecting and buying a new software that might help PRO in implementing such system.

Comments by the Secretary General

1. Agreed. TCB has been in the process of purchasing a new Web Tendering System that will allow to implement the Two Envelope Solution. We are currently in the evaluation phase of proposals together with various stakeholders and expect that the new system allowing for a two-envelope solution will be implemented by 4th quarter 2020.
2. Agreed. See above. As we are currently implementing other changes, the Procurement Code is expected to be revised accordingly to capture other changes.

Two-envelope system: Technical and Commercial proposals should be assessed by different experts

31. During the audit on procurements carried out in 2019 for TCB, we have detected, as in past years, that Technical and Financial offers have been evaluated by the same consultant hired by PRO.
32. In our long form report on FS 2016 (Sugg. 5/2016) we suggested that "ICAO should explore the possibility and the cost-benefit of having different technical consultants for the different stages of the procurement process." This suggestion is still assessed as "ongoing", because, in case of TCB projects, the fact of having different experts, performing the technical specifications and the technical evaluation, is not yet implemented.
33. We understood from Management that, in specific procurement cases, hiring two different experts might result uneconomic, however PRO confirmed us that, in limited cases, this solution was tried.
34. According to the UN Practitioner's Handbook:
 - a) "...consultants can be engaged to help prepare the requirements document (...). Whenever it is decided to engage a consultant to assist with the development of the specifications, procurement officers should remember that the consultant will also need to be engaged through a procurement process"².
 - b) "...in order to conduct a fair and unbiased evaluation of offers, the evaluation team should be comprised of a minimum of three members and normally not more than five. The team may include procurement officers, technical experts and requisitioners. Technical experts may include staff from other UN organizations and external consultants hired for this particular purpose..."³.
35. During our audit, we detected that, in case of procurement related to Headquarters and Regional Offices, the technical specifications and the technical evaluation are performed directly by the requisitioner/Regional Office involved as requestor.

² See "unclear requirement definition"

³ See "Establishing the evaluation team"

36. Therefore, considering what explained above, we modify our previous suggestion 5/2016 in the following recommendation.

Recommendation n. 2

37. For all procurement carried out by PRO (meaning for both Regular Programme – HQ and ROs – and TCB), **we recommend:**

1) in order to avoid potential conflict of interest, that PRO should hire different technical experts for the preparation of the technical specifications and for the technical evaluation;

2) that PRO should engage a consultant through a competitive process (on the condition that PRO is not under the authority of TCB – see Recommendation n. 1 of our special report on “*Efficiency and effectiveness of the Procurement service at ICAO*”;

3) that the ICAO Procurement Code is amended in order to establish an evaluation team, comprised of a minimum of three members and normally not more than five (depending the nature, complexity and value of the procurement), overseen and coordinated by a procurement officer;

4) summarizing the results of the technical/quality evaluation in a specific report, signed by the responsible of the evaluation team and forwarded to PRO for its approval, before it is sent to the procurement officer/evaluation team responsible for the financial/commercial and supplier evaluation;

5) once the two-envelope system is in force, PRO, in order to guarantee a confidentiality of the commercial offers of the bidders, may consider not necessary to hire a technical expert for the evaluation of the financial offers.

Comments by the Secretary General

1 Agreed. Please note this practice has been implemented since 2019.

2. Agreed. Experts are not engaged by Procurement but will be done by the by the Field Personnel Section.

3. Agreed. In November 2019 the UN HLCM Procurement Network, of which ICAO is a part of, agreed to harmonized processes that include amongst other, evaluation team compositions as best practices. This was based on a three year best practices study amongst all UN agencies. The Procurement section is currently developing SOPS and eventually a revised Procurement code to address and implement. Please however delete the words “and coordinated”.

4. Agreed. Refer to comment in point 3 above.

5. Agree. We do not see the need to hire a financial evaluator. Experts hired will be subject matter experts on the commodity that is being sought and strictly for technical evaluations. These experts will be hired by the Technical Support Unit in conducting their evaluation and not by procurement.

Splitting payments: direct purchase orders (DPO) cumulatively bypassing threshold of 10K CAD

38. During our audit we found that, also in 2019, the practice of bypassing the ICAO Procurement Code was adopted by ICAO Headquarters staff, including Regional Offices by issuing DPOs for amounts in excess of 10,000 CAD per supplier, this in spite of an on line training administered by procurement and relevant guidelines developed by the procurement section. We consider this as a systemic issue within ICAO, as it was already detected by both EAO (IA/2015/1 par. 66) and us (recommendation 11, report on FS 2016).
39. In 2018, by closing the recommendation 11/2016, we had commented that «In our future audits we will monitor the effectiveness of the training courses provided by PRO for reducing “the risk of abuse of Direct Purchase Orders and sole-source procurements”».
40. Considering that the audit tests carried out this year revealed the above-mentioned shortcomings, we will “reopen” the previously closed recommendation by issuing a new recommendation.
41. Furthermore, we acknowledge that PRO each year prepares an ICAO Annual Procurement Report, analysing also the DPOs and reporting the problems that there are with the same vendor on a recurring basis for the same or similar goods/services, exceeding the threshold foreseen by the article 1.10 of the ICAO Procurement Code; nevertheless, we have no evidence of follow-up actions taken by Management after the PRO monitoring. It should be highlighted that Bureaux and Regional Directors are accountable for enforcing the procurement rules.
42. We highlight that the relevance of this risk is also mentioned in the UN Practitioner's Handbook: *“Some requisitioners intentionally split or disaggregate requirements by processing them under several lower value requisitions. They may claim that by staying below a specified monetary threshold on each of their requisitions, they are benefiting their organization by cutting processing time. However, by doing so they are deliberately avoiding organizational requirements associated with these thresholds, such as requirements for competitive solicitations and submission to a contracts committee for review and award prior to contract issuance. In reality, the practice of splitting a requirement is a short-sighted business approach that is generally counter-productive, and undermines the integrity of the procurement process. Furthermore, splitting a requirement actually hinders the procurement process because it contravenes the procurement principles prescribed by the FRR. Neither is it cost effective because it can prevent the UN from achieving economies of scale and other volume discount practices offered by commercial suppliers. In addition, splitting procurement requirements into several requisitions subjects the procurement process to possible criticism from auditors and other members of the international community for circumventing the organization's*

internal control mechanisms centred around segregation of duties, delegated authorities and the procurement review and award process. Potentially an organization may also pay too much for the goods and services procured in this manner while at the same time limiting competition. Finally, having to issue multiple tenders also increases the procurement officer's workload⁴. The following recommendations and suggestions are, therefore, based not only on findings, but also considering the risks presented in the UN Handbook.

Recommendation n. 3

43. In order to avoid the systemic bypassing of procurement rules, resulting in a splitting of contracts, in line to what is stated in the UN Practitioner's Handbook, **we recommend**:
- a) that PRO requests an automatic alert in Agresso, blocking the DPOs once the threshold of 10k is exceeded for the same supplier in a year;
 - b) once DPOs are blocked, setting up a procedure, in order that all the DPOs over the threshold should be authorized by PRO and/or by a Director located in a different unit.

Comments by the Secretary General

- a) Agreed. This recommendation will be studied for system feasibility together with ETS and Finance.
- b) Agreed. This recommendation will be studied for system feasibility together with ETS and Finance.

Recommendation n. 4

44. Furthermore, in order to have an internal process more effective after the DPO's blockage, **we recommend** that PRO should then organize a competitive tender published on ICAO website and UNGM for the purchase of the item (or service) needed; in this way, not only cost-effectiveness will be enhanced, but ICAO might also reach important savings on purchasing good and services.

⁴ See under "Requirements splitting", page 82.

Comments by the Secretary General

Agreed. A process exists through PRO and Finance whereby if an Allotment Holder is found to have abused issuing a direct purchase order multiple times to the same supplier for purposes of exceeding the authorized limit, the Allotment Holder is made aware jointly by PRO and Finance and must provide justification for their actions. . However, that as part of its regular procurement planning, Allotment Holders have complied with rules, and repeated DPO issuance has been authorized only in cases of LTAs which are permissible since the LTA had undergone a competitive process.

Suggestion n. 1

45. In line with the abovementioned recommendations (Rec. 3 e 4), due to the fact an ex-post analysis of DPOs made by PRO is not preventing the abuse of DPOs, **we suggest** that, until the updating of Agresso, PRO could perform random checks on the DPOs issued during the year, in order to verify that the ICAO Procurement Code is respected and to block the found suppliers having received DPOs above 10k.

Comments by the Secretary General

Agreed. This is currently being done and reported to as part of the Procurement Annual Report submitted each year to the Office of the Secretary General.

Long-Term Agreements: risk of bypassing ICAO due procedures if the outsourcing of services is not duly monitored in a precise timeframe.

46. During our audit, we detected a Long-Term Agreement (LTA) for services that had not been monitored by PRO.
47. PRO explained to us that ICAO internal procedures request that the monitoring and the performance assessment of LTA is a responsibility that lies within the Service that has requested the LTA.
48. As a general matter, in our Performance Audit on External Agreement issued in 2018 (*“Special Report of the External Auditor on the Efficiency and effectiveness of the procedures on interactions with External Parties”*) we have already issued recommendations on the importance (ref. to recommendation 3) on the monitoring of Agreements.
49. According to the UN Practitioner’s Handbook: *“Another option for procuring goods, services or works is through an LTA. An LTA is a written agreement between a UN organization and a supplier, setting out all the commercial terms applicable to the orders that may be issued against the LTA for pre-selected goods or services, i.e. pricing, discounts, payment, delivery and packaging and any other relevant special as well as*

general terms and conditions. While an LTA is binding to the supplier in terms of price and all other contract conditions, the UN organization typically is under no obligation to exclusively use a specific LTA for the requirement stipulated therein, nor is it under any obligation to use the LTA at all. However, in order to avoid supplier fatigue, LTAs are usually entered into with the intention of being used as outlined in the solicitation. LTAs exist in many forms and have various names in the different UN organizations, including: framework agreements, systems contracts, requirements contracts, and possibly others.”⁵

50. In this sense, LTA are considered in the UN as an effective practice, however is the UN Practitioner’s Handbook that highlight some relevant risks, such as “*LTAs may also lead to dependency on suppliers and the risk of organizations becoming less attentive to performance monitoring and quality inspection*”.
51. During our audit, we have detected that an LTA had been awarded to a supplier for services, but we have found no evidence in the dossier about effective controls by PRO on the quality and performance of the supplier nor there is clear information on effective role of the Service concerned; furthermore, there is the risk that the LTA is used to bypass ICAO due procedures in that particular area. We will consider these findings in a specific paragraph dedicated to the service concerned, referencing them to this report.

Recommendation n. 5

52. In line with the UN Handbook and with our recommendation in the Special Report on the interactions with External Parties (Rec. n. 3), in order to minimize the risk of the lack of effective monitoring, **we recommend** that the performance of every LTA should be assessed by a Service independent from the Service that had initiated the request for goods and services, and, in this monitoring, the Services selected should also consider if the LTA was used to circumvent due process at ICAO.

Comments by the Secretary General

Agreed. The Procurement Section is currently developing both a vendor and LTA performance monitoring tool that will facilitate regular tracking and performance review of LTAs, through interactions with the Allotment Holders that are using the LTAs. Roll out of said tool is expected in 1st Quarter 2021.

⁵ See under “Long Term Agreements (LTAs)”, page 88

Without a precise timeframe, LTAs might be renewed indefinitely; a new tender procedure should be considered.

53. According to the UN Practitioner's Handbook: *"Depending on the nature of the purchase requirement and the policies of the organization concerned, LTAs are typically established on a non-exclusive basis, without mandatory minimum purchases, for a specified period of time (e.g., two or three years, sometimes with the possibility of extensions) and, if applicable, for a maximum amount corresponding to a ceiling of aggregate demand volume. While the relevant Financial Regulations and Rules (FRR) and procedures vary, most UN organizations make use of LTAs to stabilize supply/costs, achieve economies of scale and avoid duplication of procurement processes for many goods and services that are required on a regular basis but have uncertain quantity and delivery requirements."*
54. During our audit we found not only the absence of monitoring (see para. 51), but also that an LTA did not have a precise period of time in which the services rendered should have been monitored through a performance evaluation; therefore, there is a risk of multiple tacit renewals of the agreement itself, although there is a maximum time frame in the LTA.
55. For instance, in the LTA it is reported that *"This Framework Agreement's duration shall be initially for a period of one (1) year, on a probationary basis, starting from the coming into force date as per Article 48.1, with the possibility of annual extensions for up to a maximum total duration of four (4) years, subject to satisfactory performance of the Services provided by the Contractor"*; however, no evidence of such performance monitoring in the file, nor performed by PRO nor forwarded to PRO by the requestor, as also indicated in the previous paragraphs, was detected by the auditors.

Recommendation n. 6

56. In line with the UN Handbook and the recommendation above, in order to minimize the risk of an indefinite/long period of renewal between ICAO and a given supplier, that could avoid ICAO to assess regularly the market conditions and the most cost-effective services in a given period, **we recommend** that PRO:
- a) should monitor that every LTA approved at ICAO have specified limited period of time, indicating already who should be the independent responsible for the performance assessment, and
 - b) assess as soon as possible the performance of the ongoing LTAs, with independent experts.
57. Furthermore, **we** also **recommend** that PRO, or a technical assessor already pre-indicated in the LTA, independently from the requisitioner, should review what are the most effective conditions of the market at the moment of the LTA's renewal, in order to evaluate the performance jointly with economic conditions.

Comments by the Secretary General

a) Agreed.

b) Agreed. The Procurement Section is currently developing both a vendor and LTA performance monitoring tool that will facilitate regular tracking and performance review of LTAs, through interactions with the Allotment Holders that are using the LTAs. Roll out of said tool is expected in 1st Quarter 2021

57) Agreed. Said monitoring will be carried out by the Procurement Section and not the Allotment Holder or service user and is contemplated as part of the vendor/LTA performance tool process being developed.

Memoranda of Understanding should not be used to bypass Procurement procedures

58. During our audit, we found that a Memorandum of Understanding (MOU) was signed with a supplier for providing services. This finding was also found in past years by the EAO (IA/2015/1 par. 87).

59. According to the ICAO Procurement Code (art. 1.12) *“Memoranda of Understanding (MOUs) or similar arrangements should not include the provision of goods or services to ICAO in return for payment by ICAO. Should ICAO have a requirement for goods or services for payment, such requirement shall be met following ICAO’s Procurement rules”*.

Recommendation n. 7

60. As already highlighted in past years by EAO, we found that a Memorandum of Understanding (MOU) was used to “acquire” services, breaching what is foreseen by the ICAO Procurement Code (art. 1.12). Therefore, **we recommend** that, before an MOU is signed officially, said MOUs are forwarded to LEB to ensure that it is not infringing on ICAO’s Procurement rules.

Comments by the Secretary General

Agreed. TCB shall coordinate and consult with LEB

Suggestion n. 2

61. In addition to what stated in Recommendation n. 5 and in line to what recommended by us in our special report on the “efficiency and effectiveness of the procedures on interactions with External Parties” (Recommendation n. 3), **we suggest** that LEB make an analysis of all MOUs in force and consider all the ones signed for services in return for payment by ICAO as ineffective and without a legal basis for issuing Direct Purchase Orders.

Comments by the Secretary General

Agreed. TCB shall coordinate and consult with LEB.

Inserting correct supplier in the Agresso system: some corrections needed

62. In our sample, we noted that, in the list of DPOs produced by Agresso, staff receiving reimbursement for expenses anticipated and even consultants can appear as suppliers. This demonstrates at least two weaknesses: a) Agresso can be misled easily, for example in case of staff members receiving reimbursement for expenses advanced by them, as they appear as supplier instead of the real supplier; the DPO can be misused, using an Agresso code related to suppliers, to reimburse travel expenses or to hire consultants directly, without passing through Human Resources and the correct procedures.

Recommendation n. 8

63. In order to have a reliable system, **we recommend** updating and strengthening Agresso, to avoid that DPOs are misused (for example, to reimburse travel or training expenses to active staff, or to hire consultants); in the meantime, it should be monitored by a dedicated unit (to be identified by the Secretariat), in order to detect and report to Secretary General how many cases (as the ones detected by the external auditor) are existing and in how many cases supplier codes have used as DPO to hire Consultants without passing through HR Procedures.

Comments by the Secretary General

Agreed. FIN, HR and PRO are presently working together with ETS on how to strengthen the Agresso system. It is expected that a solution will be rolled out in the 4th Quarter 2020 or earlier.

Evaluation process weakness: Award criteria and evaluation methodology should be communicated in the Tender dossier

64. We consider that the ICAO Procurement code should be further developed with a renewed vision on the principles of accountability, integrity, transparency, fairness and effective competition. Some of the recommendations listed above are the evidence that there is room for improvement towards these principles.
65. We consider that ICAO could have an added value in term of cost effectiveness and direct savings if the following recommendations and suggestions are implemented.
66. According to the UN Practitioner's Handbook:

"Accountability, integrity and transparency"

Accountability in procurement means that buyers must take ownership of all responsibilities and commitments that have been allocated to them; delivering outputs (for which one has responsibility) within the prescribed time and cost and according to the required quality standards; operating in compliance with the FRR; supporting subordinates, providing oversight, taking responsibility for assignments, and taking personal responsibility for one's own shortcomings and those of the business unit, where necessary. This must be supported by a filing system, documenting the procurement process, signatures on key documents such as specifications, bidding documents, evaluation reports and approvals, with clear justifications for decisions made, thus leaving a clear audit trail of the actions and decisions taken.

Business Units are also responsible for protecting the integrity of the procurement process and maintaining fairness in the organization's treatment of all bidders. Integrity is therefore about demonstrating the core values of the UN in daily activities and behaviours. This may include: acting without consideration of personal gain; resisting undue political pressure in decision-making and actions taken; not abusing power or authority; standing by decisions that are in the organization's best interest, even if they are unpopular; taking prompt action in cases of unprofessional, unethical and corrupt behaviour. (...)

A transparent procurement system has clear rules and mechanisms to ensure compliance with those rules (unbiased specifications, open advertisement of requirements, open and fair selection of suppliers invited, objective evaluation criteria, standard solicitation documents, equal information to all parties, confidentiality of offers, announcement of contract awards, etc.). Records are open to inspection by auditors, as and when appropriate, and unsuccessful suppliers can be briefed on the strengths and weaknesses of their own offers. Transparency ensures that any deviations from fair and equal treatment are detected very early, making such deviations less likely to occur and/or minimize their consequences. It thus protects the integrity of the process and the interest of the organization.

There are two degrees of transparency: internal scrutiny and external scrutiny. Internal scrutiny is transparency within the UN, such as being open and transparent to examinations conducted by internal auditors. External scrutiny involves transparency outside the UN, such as examination by Member States, the press, external auditors, or other outside observers.

Fairness and effective competition

Competition conducted in a fair and transparent manner is at the heart of procurement in the UN. For competition to be effective, it must guard against collusion and be conducted based on clear and appropriate regulations, rules and procedures that are applied consistently to all potential suppliers. The procurement process should be carried out in a manner that gives all interested parties, both inside and outside the organization, the assurance that the process is fair. Business units are therefore responsible for providing the widest possible access to UN contract opportunities for the supply community through open competitive procurement processes, broad advertisement on relevant websites, unbiased specifications, clear and unambiguous evaluation criteria, etc.

Effective competition also means providing an appropriate solution to the organization's need with regards to quantity, quality and timeliness at the right price. It requires that the overall transaction cost to the organization in conducting the procurement process is minimized in the interests of the overall budget of the organization. Economy in the procurement process should protect the interest of the budget owner, while effective competition ensures the interest of the end-user is met".

67. We found that tender dossiers and "instruction to tenderers" stating the award criteria and the evaluation methodology that would have been applied for the award of the contract could be clearer.
68. For instance, the technical specifications explained that they specify *"the minimum requirements to be met..."* and only a table with Formal, Corporate eligibility, and Technical criteria, to comply with (pass/fail), were part of the "instruction to tenderers". Furthermore, in the Tender Notice in the Paragraph 9 (General Information), sub a), reference is done to the fact that technical requirements should be, if different, only *"equal or superior to the requirement of the specification"*.
69. We understood from PRO that, with Pass/Fail they intended that this signifies lowest cost compliance, however it is our opinion that the tender documents published for the bidders should then instead state "lowest cost compliance", otherwise indications in the Technical specifications and in the introduction (as stated in the previous paragraphs), might result misleading for tenderers.
70. Moreover, The table, containing all the pass/fail criteria to comply with, also may potentially lead the bidders to a misunderstanding in preparing the technical and financial offers, because some of them, in order to comply with all the criteria established by the technical specifications, may have indicated a price higher than other offers that were not respecting some of the technical requirements.
71. If only part of the technical requirements were mandatory, this should have been highlighted in the "instruction to tenderers" and not considered only after, in the technical evaluation of the bid. The "instruction" could have contained, for example, a list of mandatory technical requirements and another list of technical requirements to be considered as an added value of the bid.
72. According to the UN Practitioner's Handbook:
"Lowest priced technically responsive/compliant acceptable offer method

When using this method as typically is the case for ITBs (and in a simpler form, also for RFQs), the award of a contract should be made to the supplier whose offer has been evaluated and determined as both:

- *Responsive/compliant/technically acceptable*
- *Offering the lowest price/cost*

“Responsive/compliant/technically acceptable” can be defined as fully meeting the specifications/TOR/SOW required, or reaching a pre-defined threshold of a maximum attainable score based on the requirements stated in the specifications/TOR/SOW. The level of responsiveness/compliance/acceptability may be measured using straightforward pass/fail criteria or more complex approaches like a weighted scoring system which is further explained below.

When an evaluation factor requires an attribute that is not conducive to varying degrees of superiority or inferiority, a pass/fail factor is appropriate. When a factor merely requires an acceptance or rejection, it is termed pass/fail (or compliant/non-compliant), or a threshold condition. In principle, an offer that “fails” would be disqualified, while an offer that greatly exceeds the requirement would be ranked the same as one that just meets that same requirement”.

73. Analysing the tender sampled by us, we found that the evaluation report was prepared by an independent and external expert hired for the procurement; he explained the evaluation methodology that he would have applied for the evaluation of the proposals received: 1) *“Formal criteria will be evaluated on a Pass/Fail basis”* 2) *“Corporate eligibility criteria will be evaluated on a Pass/Fail basis. If one or two of the criterion fail, a risk assessment needs to be undertaken to determine if the procurement would be impacted by said non-compliance or of alternative measures can be put in place to overcome any potential problem. A company will not be accepted if they fail on every criteria for this category”* 3) *“Technical criteria will focus on the following main areas: (....) Only companies with a technically acceptable proposal will be commercially reviewed. The lowest best technically compliant bid will be recommended.”*
74. Nevertheless, during the evaluation, the external expert decided to exclude some companies from the tender because of some non-compliances, observed during the technical assessment, that were considered as serious by the evaluator. However, other companies were considered for commercial evaluation despite several non-compliances, observed during the technical assessment, that were considered as minor by the evaluator. A company, which presented a sound and feasible technical proposal that met the tender requirements, was not considered for a deeper technical analysis, due to the fact that the commercial offer was above the budget (not communicated to the bidders) envisaged for the tender.
75. In conclusion, during the technical evaluations, the Pass/Fail criteria was not fully respected, because not *“only companies with a technically acceptable proposal [were] commercially reviewed”*; this means that the Pass/Fail system was not actually applied to all the three companies having passed the technical specifications.

76. Furthermore, according to the UN Practitioner's Handbook: *"The budget is most often used for internal purposes only, and is not normally revealed in the TOR. This ensures competition on the financial as well as on the technical part of the proposal from bidders. However, in certain cases, in particular if it is very difficult to estimate the input needed in terms of working days or the TOR are vague, it can be useful to provide the total budget as an indication to the suppliers of the level of the consultancy"*. We have the opinion that, communicating in advance to tenderers the budget, this would not only allow tenderers to better set the technical proposals but also would have facilitated PRO commercial assessment.
77. In addition, considering that, for the tender sampled, a two-envelope system had not been applied, the external evaluator was already aware of the commercial offers of the bidders, during the technical evaluation. Although in UN system ITBs and lowest cost-compliance proposals do not require a two envelope system, it is our opinion that it would be more effective – in order to increase the quality of the tender process (and to lower the risk for ICAO of being challenged by third parties), even though it might not be as well efficient, in term of cost for PRO (more analysis will be in this case needed) – that the procedure stated that the technical evaluation be anyway completed by the technical evaluator and then forwarded to another office/evaluator to consider the commercial part.
78. In this sense, we could then consider as a reference what is reported by the UN Practitioner's Handbook: *"It is good practice to summarize the results of the technical/quality evaluation in a technical/quality evaluation report. The responsible evaluation team should sign the report and forward it to the procurement officer/evaluation team responsible for the financial/commercial and supplier evaluation"*.
79. A good practice would be, therefore, to have 1) an evaluation report for the technical evaluation 2) an evaluation report for the financial evaluation 3) an evaluation report with the final ranking, given by both the technical and the commercial evaluation.
80. In the sampled cases, according to the "Instruction to tenderers" communicated to the potential suppliers (Pass/Fail criteria), it would have been consequential (and, therefore, logic) to exclude all companies not respecting the technical specifications, then to exclude the only technically compliant company during the commercial evaluation (not during the technical evaluation) and to re-perform the tender procedure, because the only technically compliant offer was above the budget of the project.

Recommendation n. 9

81. In order to increase the transparency and the regularity of the bids, given what we found in our audit, **we recommend** that PRO:
 - 1) communicate, for transparency, to the companies, in the Instruction to tenderers or in the tender dossier, the award criteria ("lowest price" or most economically advantageous tender) and the evaluation methodology that will be applied during the technical evaluation;
 - 2) check that the award criteria and the evaluation methodology published in the Instruction to tenderers or in the tender dossier are the same actually applied during the technical evaluation process;

3) decide case by case if communicate to the tenderers the indicative budget of the project and, when not indicated, to communicate to the companies that the exclusion was due to the failure to respect the indicative budget

4) as already recommended, apply, as soon as possible, the two-envelope system, because, during the technical evaluation, the (external) technical expert can be influenced by having the knowledge also to the economical offers presented by the companies.

82. The ICAO Procurement Code should be amended in order to introduce the principles of transparency and fairness.

Comments by the Secretary General

1) Agreed. Note however that pass/fail in accordance with UN Best practices refers to lowest cost compliance. Nevertheless, the text has already been amended and is part of the procurement section's alignment strategy with the recently approved UN Best Practices.

2) Agreed.

3) Agreed.

4) Agreed. Please refer to previous comment.

Strengthening Evaluation Criteria application by Independent Experts

83. With reference to what has been stated above, it is envisaged that good practices highlighted should be systematically applied and, it is our opinion that there is room for improvement and stricter controls as part of the evaluation process as it pertains to ensuring that the correct and intended evaluation is applied throughout.

Recommendation n. 10

84. In view of the above, **we recommend** that PRO should:

1) oversee carefully all the evaluation carried out by external consultants

2) organize training or provided accurate guidelines for all external consultants involved in procurement

Comments by the Secretary General

1) Agreed. Note however as part of its migration to the recently approved UN harmonized best practices, evaluations shall be conducted by an evaluation team of three persons. Any expert joining the evaluation team shall participate as a subject matter expert without voting rights. Evaluation Teams shall be composed of various participants from different segments of the Organization

2) Agreed. This will be conducted by the Technical Support Unit and Procurement.

Differences in terminology for procurement activities in the UN/Introducing a weighted scoring method (combining cost and quality) also for equipment

85. As also recalled in the previous paragraphs, our analysis is linked to the necessity to assess how the ICAO procurement code is (or should be) in line with the best practices highlighted in the UN Practitioner's Handbook. We found that even some terms and their terminology, although used for expressing similar concepts, are different (with a various degrees).
86. There is, therefore, the risk that, if PRO would like to hire an independent expert from outside for guaranteeing fairness, independency and transparency in the process, there might be some difficulties and/or misinterpretation, for the external expert, in understanding the ICAO Procurement Code.
87. Therefore, we are highlighting in the below synoptic table the difference in terminology between the ICAO Procurement code and the UN handbook.

ICAO Procurement Code article 7.8	UN Practitioner's Handbook
<p><i>“Contracts for equipment shall be awarded to the supplier who submits the lowest-priced, technically acceptable tender and meets all other conditions specified in the solicitation document. Contracts for services shall be awarded to the supplier who submits the “best value for money” proposal and meets all other conditions specified in the solicitation document. The basis on which a conclusion is made to award or recommend an award of contract shall be properly recorded in writing in the respective procurement file”.</i></p>	<p>Weighted scoring method:</p> <p>When using the weighted scoring method, which is typically the case for RFPs, the award of a contract should be made to the supplier whose offer has been evaluated and determined as:</p> <ul style="list-style-type: none"> ▪ Responsive / compliant / technically acceptable ▪ Having received the best combined score out of a pre-determined set of weighted technical and financial criteria specific in the solicitation ▪ This method may be used for more complex procurement where: ▪ Evaluation criteria cannot easily be quantified ▪ Different aspects of value for money (e.g., cost/price and quality) need to be considered and balanced ▪ Different types of scales need to be used for the various factors <p>The weighted scoring method is typically used for procurement of services, where the relative importance of each evaluation criterion needs to be weighted. It can also be used for the evaluation of offers for complex goods, services and works requiring the evaluation to be based on a number of criteria other than price in order to ensure best value for money, and where it is difficult</p>

	<p>to evaluate an offer on the compliant/non-compliant scale only.</p> <p>Under this evaluation method, price or cost is rendered as one of the evaluation criteria. For more straightforward requirements, price can play a significant part in the selection process, provided that the technical criteria are also met. In general, the more complex the requirement, the more significant the end product, and the less comparable the proposals, the less influence price should have on the selection of the recommended proposal, meaning that the points allocated for the technical offer is normally higher than the number of points allocated to the financial offer. This way the risk of selecting a potentially non-performing but low price supplier is reduced, while the potential savings to be achieved by selecting the lower priced offer are, in such case, not considered to outweigh the possible implications and costs caused by a non-performing supplier. Thus, the financial offer is typically given between 15 and 50 percent importance. The less weight given to the financial aspects of an offer, the smaller a difference in technical scores is needed to justify a proportionately higher price or cost.</p> <p>The technical proposals are opened and evaluated first. The financial offers should be opened only for those proposals where the technical evaluation scores above a stated threshold. Each UN organization sets its own threshold. For those proposals where the technical offer does not reach the minimum specified score, the corresponding financial offer is not eligible for further consideration.</p> <p>Some UN organizations open both the technical and financial offers at the same time, but only the technical proposals are shared with the evaluation team. This enables the technical and financial evaluation to be completed in parallel by different teams. Once the technical evaluation is completed, the financial details are shared with the technical evaluation team.</p>
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	<p>After scoring both the technical and price or costs components, UN organizations often use the formula below to calculate the total number of points in order to identify the winning proposal. There are situations, however, when a UN organization may use other formulae depending on the type of procurement.</p> <p>Rating the Technical Proposal (TP):</p> $\text{TP Rating} = (\text{Total Score Obtained by the Offer} / \text{Max. Obtainable Score for TP}) \times 100$ <p>Rating the Financial Proposal (FP):</p> $\text{FP Rating} = (\text{Lowest Priced or Cost Offer} / \text{Price or Cost of the Offer Being Evaluated}) \times 100$ <p>Total Combined Score:</p> $(\text{TP Rating}) \times (\text{Weight of TP, e.g., 70\%}) + (\text{FP Rating}) \times (\text{Weight of FP, e.g., 30\%})$ <p>Total Combined and Final Rating of the Proposal</p>
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88. As written in the table above, currently the ICAO Procurement Code article 7.8 states that “Contract for equipment shall be awarded to the supplier who submits the lowest-priced, technically acceptable tender and meets all the other conditions specified in the solicitation document”; while, “*Contracts for services shall be awarded to the supplier who submits the “best value for money” proposal and meets all other conditions specified in the solicitation document*”.
89. The UN Practitioner’s Handbook envisages that the weighted scoring method (combining cost and quality) “*can also be used for the evaluation of offers for complex goods, services and works requiring the evaluation to be based on a number of criteria other than price in order to ensure best value for money, and where it is difficult to evaluate an offer on the compliant/non-compliant scale only*”.
90. Therefore, according to the UN Practitioner’s Handbook:

Recommendation n. 11

91. **We recommend** that the ICAO Procurement Code should be amended in order to introduce a weighted scoring method (combining cost and quality) for the award of the tender related to complex goods, services and works, as also indicated and specified in the UN Practitioner’s Handbook.

Comments by the Secretary General
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Agreed

Recourse system for challenging procurement decisions

92. As already recommended in our special report on “*Efficiency and effectiveness of the Procurement service at ICAO*” (Recommendation 6), currently there is no possibility for the companies to have a procurement challenge/bid protest mechanism, where the complaint is reviewed by an independent entity. We take note that the recommendation is under implementation by the Secretary General and we hope for a rapid implementation.
93. In fact, according to the UN Practitioner’s Handbook:

“Protest by vendors

Suppliers perceiving that they have been unjustly treated in connection with the solicitation or award of a contract or purchase order may lodge a complaint with the appropriate person within the UN organization. Each UN organization will have its own procedures for handling protests. If UN organizations have a formal process for this, the details should be available on the organization’s website, including the option to bring the case to the attention of the Office of Internal Oversight. Under no circumstances will the staff involved in the procurement activity under complaint be allowed to participate in the review of the protest.

A protest process in general involves a designated senior official or a review board who will make an initial assessment of the complaint and who may, at his/her discretion, seek clarification from the authorized official responsible for the procurement process or any other staff, as necessary. The senior official or review board will issue a response to the supplier. This response will reflect the final formal position of the organization on the matter. Suppliers filing complaints may be granted clarification meetings in order to better understand the rationale for the organization’s final decision on the subject. The protest process is a delicate matter that shall always be handled in accordance with the organization’s established process. Any allegations of fraud or staff misconduct shall be brought to the attention of the Office of Internal Oversight or handled in accordance with the organization’s whistle-blower policy”.

94. Furthermore, in our Financial Report on FS 2016, we had already suggested (suggestion n. 4/2016) that “*ICAO should introduce an internal procedure to enable potential suppliers to enquire about the outcome of tender procedures*”. The suggestion has been agreed by the Secretary General confirming “*that procedure already exists internally but it will be published as part of the tenders*”.
95. According to the UN Practitioner’s Handbook:

Award notification and debriefing of unsuccessful suppliers

Once the purchase order, contract or LTA has been signed, an award notification should be published and the unsuccessful suppliers notified and de-briefed, if requested by the supplier. Usually the UN organizations publish the award notifications on UNGM and/or their internet site. Normally this includes the following:

- *Reference number of the solicitation*
- *Type of goods/services procured*
- *Name of the awarded supplier*
- *Total award value*

Where a debriefing has been arranged, this should be a “lessons learned” experience for the unsuccessful supplier, enabling the supplier to respond better to future solicitations. Therefore, the debriefing should focus on the supplier’s offer. When giving the debriefing, the UN organization should identify the unsuccessful supplier’s significant weaknesses and deficiencies, and explain the general basis of the organization’s award decision. The UN organization should not compare the unsuccessful offer to other offers, including the successful offer. It should also not disclose the relative merits or technical standings nor prices of other offers.”

96. However, as in the sampled procurement we have not found that procedure published as part of the tender, we recall the suggestion 4/2016, modifying it as a recommendation.

Recommendation n. 12

97. **We recommend** that:

- 1) ICAO should publish in all the tender dossier how suppliers can ask for a debriefing about the outcome of tender procedures;
- 2) a notification should be sent directly to all companies having participated in the tender;
- 3) in case a company request for a debriefing, PRO, with the assistance of LEB (if considered necessary), should study a transparent mechanism to allow this before the procedure is concluded and/or the contract is awarded.

Comments by the Secretary General

- 1) Agreed. This is already implemented in the tender documents but has been available on the tendering website for over 5 years now.
- 2) Agreed. This is an established practice for some time. All companies are advised of tender results and unsuccessful bidders can request a debrief as per the UN framework on debriefs. Moreover, all tender results are made public.
- 3) Agreed. See point 2 above. Subsequent to a debrief, a Formal Bid Protest Mechanism, and respective administrative instructions are being developed. It is expected that the Bid Protest will be implemented in 1st Quarter 2021.

Participating in the Annual Statistical Report on UN Procurement (ASR)

98. In the website of the United Nations Global Marketplace (UNGM) there is a section regarding the Annual Statistical Report on the United Nations Procurement (ASR), providing an overview of procurement in the UN system in support of its operations, projects and programmes. The ASR portal publishes data collected from United Nations

organizations. It includes a range of information about the categories of goods and services procured by the UN system, as well as the countries from which these goods and services were procured. There is also analysis of sustainable procurement indicators, as well as collaborative procurement within the UN system.

Recommendation n. 13

99. **We recommend** that ICAO should participate in providing the data about procurement in the Annual Statistical Report on the United Nations Procurement (ASR), as it joined UNGM as of 24 March 2017.

Comments by the Secretary General

Agreed and planned for 2020.

Conclusion: Review of ICAO Procurement Code and related policies and guidelines

100. According to the UN Practitioner's Handbook:

"Controls in procurement"

Procurement procedures should be set out in a manual provided to all staff involved in procurement. Procedures, authorities, responsibilities and penalties for not adhering to procedures should be clearly defined. When setting the strategy for a particular procurement activity, the following factors should be taken into account:

- *Threshold above which contracts and orders must be put out for competitive tenders should be clearly defined and enforced.*
- *As far as possible, spot, short-term, or emergency orders should be avoided.*
- *Cost-plus contracts should be avoided if possible, but if they cannot be avoided special care should be taken to verify the supplier's expenses".*

Recommendation n. 14

101. Considering the related recommendations and suggestions issued on procurement at ICAO, included in this External Auditor Report, in our previous Financial Reports and in the special report on "Efficiency and effectiveness of the Procurement service at ICAO", with particular reference to need of segregation of duties (rec. n. 1 of the special report) and to the controls, and considering that the procurement code is a living document that must be periodically reviewed to add best practices and improvements, **we recommend:**

1) reviewing the ICAO Procurement Code and the related policies and guidelines according to what envisaged in the UN Practitioner's Handbook (Note that the last revision dates to 2013).

2) establishing clear procedures, authorities, responsibilities and penalties for staff not adhering or bypassing procurement procedures.

Comments by the Secretary General

1 & 2. Agreed. In November 2019 the UN HLCCM Procurement Network of which ICAO is a part of, approved harmonized best practices and guidelines for all UN agencies. This review was based on lessons learned and best practices. Consequently, ICAO is currently developing and implementing some of those practices which include amongst other, a Bid Protest Mechanism, standardized UN solicitation method, bid evaluation teams, and a two-envelope system. Moreover, since having decided to create an independent technical support unit segregated from Procurement, the ICAO Procurement will be revised accordingly in cooperation with LEB and EAO as has been the practice for periodic reviews. It is expected that the revised procurement code will be issued 1st Quarter 2021.

Procurement in Regional Offices

102. During the audit of APAC Regional Office, we noted some weaknesses related to the tendering procedures carried out, or directly at regional level, or, on behalf of the regional office, by PRO, for purchasing goods and services needed by the local offices. They are highlighted in the following paragraphs.

Lack of segregation of duties: Receipt and Opening of Offers in case of Regional Offices

103. In our sampling over procurement carried out at regional level, in one case we noted that the offer presented by the winner company was dated November, but the request was dated December of the same year. Staff was not able to explain this inconsistency.
104. We noted also that the staff who is doing the invitation to the potential suppliers is in charge also of receiving the offers in his personal (ICAO) mailbox.
105. According to the UN Practitioner's Handbook: *"Receipt of offers is normally performed by an individual not directly involved in the procurement function. For quotations, it is usually the procurement officer in charge who receives them. For offers received by fax or email, this must be on a 'secure' fax machine or email address specifically dedicated to the purpose of receiving offers. The fax machine must be safely secured, i.e., locked or in a lockable room. UN organizations have increasingly established an official email account for bid submissions which is communicated to the bidders in the solicitation documents. This address must be protected to ensure that emails containing offers are kept unopened until the bid opening. In the case of hard copies, the offers should be received and remain sealed until the formal opening time, except in the case of RFQs".*

Recommendation n. 15

106. **We recommend** creating an official email account for bid submissions, to be communicated to the bidders and opened, only after the deadline of receiving the offers, in the presence of the Regional Director or another staff delegated by him.

Comments by the Secretary General

Agreed. Standard Instructions ROSI AG-03 and RSO-SI-19 Receipt and Opening of Procurement Bids at the Regional Office (attached) have been promulgated to ensure strict compliance with the recommendation.

Lack of segregation of duties: if RO prepares Technical specifications, then should not be involved in the assessment

107. In our audit, we noted that both the technical specifications and the technical assessment were carried out by the same RO; PRO limited his work in helping the RO to follow the procurement procedures and in ensuring support to the RO.
108. In line with our Recommendation n. 2 above mentioned, we consider appropriate that also at regional level, although understanding the logistical difficulties of procuring goods and services in certain countries, segregation of duties should be respected.
109. Specifically, we consider appropriate that the RO should prepare technical specification of goods and services needed, but in order to avoid potential conflict of interest, an independent expert should assess the technical specifications.

Recommendation n. 16

110. **We recommend** developing a procedure that, for procurement in Regional Offices, provides for segregation of duties between the officer in charge of preparing the technical specifications and who is tasked to perform the assessment, having in mind the potential difficulties of purchasing good and services at local level, due to local laws, regulations etc.

Comments by the Secretary General

Agreed.

Increasing the use of Long-Term Agreement (LTA) in regional offices jointly with other UN organizations.

111. As already explained above (Recommendation n. 3), in the APAC RO we detected Direct Purchase Orders (DPO) bypassing threshold of 10K CAD envisaged by the ICAO Procurement Code.

112. According to the UN Practitioner's Handbook:

"Long Term Agreements (LTAs)

Another option for procuring goods, services or works is through an LTA. An LTA is a written agreement between a UN organization and a supplier, setting out all the commercial terms applicable to the orders that may be issued against the LTA for pre-selected goods or services, i.e. pricing, discounts, payment, delivery and packaging and any other relevant special as well as general terms and conditions. While an LTA is binding to the supplier in terms of price and all other contract conditions, the UN organization typically is under no obligation to exclusively use a specific LTA for the requirement stipulated therein, nor is it under any obligation to use the LTA at all. However, in order to avoid supplier fatigue, LTAs are usually entered into with the intention of being used as outlined in the solicitation....".

Use another UN organization's LTA

While in some cases two organizations may have LTAs for the same goods, services or works in place (e.g., office supplies), which could be unified in a common services framework, more often than not many of the technically more specific LTAs of an organization tend to reflect its mandate and programme requirements. When another UN organization faces the same requirement, it may wish to utilize an existing LTA established by another UN organization, leveraging that organization's expertise in procuring certain goods, services or works. A UN organization may decide to use such an LTA if the specifications for the goods, or terms of reference for the services required are substantially similar to those included in the LTA. UN organizations have varying policies for accepting the LTAs of other organisations and for accepting the use of their own LTAs by others, also referred to as 'piggybacking'. Specific procedures may apply to the use of the LTA of another organization and these should be fully complied with.

It is also important to note that it requires the supplier's approval if a UN organization other than the initial contracting party wishes to piggyback on the terms and conditions of an existing LTA. To pre-empt a possible approval process with the supplier each time a UN organization wishes to use another organization's LTA, some LTAs contain a caveat that the supplier shall make available the specified goods and services under the same terms and conditions to other UN organizations as and when requested to do so. Procurement officers should always contact and verify with the main contracting UN organization the possibility of using of one of their LTAs, thereby ensuring that all parties stay informed, that possible discount schemes will kick in and that the LTA is utilized in line with the supplier's capacity as stipulated in the LTA".

Recommendation n. 17

113. **We recommend**, in order to not exceed the thresholds and rules stated by the ICAO Procurement Code:

- 1) exploiting the use of the Long-Term Agreements with more than one supplier;

2) due to the relatively small dimension of the Regional Offices, increasing the use of another UN organization's LTA.

Comments by the Secretary General

Agreed.

Increasing the competition between suppliers

114. During our audit at APAC RO, we noted that all the suppliers had been directly invited by the staff, or, in some cases, in order to have more than one quotation, an internet survey had been carried out. This way of operating may result in a restriction of competition, due to the fact that the staff tend to invite always the same suppliers and might not be aware of changes of price or new potential suppliers available in the market.

Recommendation n. 18

115. Therefore, **we recommend** publishing in the ICAO website all tenders related to the Regional Offices and/or on the UNGM, finding a reasonable solution (like, e.g., the publication in the area of the website dedicated to the RO) that can make the possible tenderers aware of the tender itself, especially in a delimited market.

Comments by the Secretary General

Agreed. APAC will explore to publish ICAO Tender requirements on the local APAC website

Conclusions

116. Based on our audit work, we conclude that, regarding the Procurement framework in force at ICAO, some improvements are needed both in efficiency and in effectiveness. In particular, weaknesses were noted with regard to segregation of duties, which needs to be better implemented in order to avoid possible conflict of interests in the procurement process, with regard to the different steps.
117. In addition, improvements are needed in the control and monitoring process, both at HQ and at Regional level, especially with regard to the use of DPOs and to the performance of the LTAs and MOUs.
118. A reinforcement is also needed in the transparency of some procedures and in the use and overseeing of the evaluation criteria when the evaluation is carried out by an external consultant/expert.
119. Finally, as already observed during our audit on “*Efficiency and effectiveness of the Procurement service at ICAO*”, the ICAO Procurement Code has not been revised since 2013, it is therefore not fully compliant with good practices and guidelines currently adopted within the UN system and it should be reviewed and amended accordingly.