



**PREPARATORY COMMISSION FOR THE
ESTABLISHMENT OF THE INTERNATIONAL REGISTRY
FOR MAC EQUIPMENT PURSUANT TO THE MAC
PROTOCOL**

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ISSUES PAPER

CONTENTS

Introduction	2
I. ISSUES RELATING TO THE SUBSTANTIVE CONTENT OF THE RFP	3
A. Nature of the registrars activities	3
B. Promotion and Industry Support	4
C. Indication of volume of work	4
D. Technological compatibility	4
E. Languages	5
F. Currency of the operation + currency of indicated costs	5
G. Governing law of contract with registrar	5
H. Data Protection and Privacy	5
I. Matters in the RFP dependent upon the Regulations Working Group	5
II. ISSUES RELATING TO THE TECHNICAL CONTENT OF THE RFP	6
III. ISSUES OF PROCEDURE	6
A. Who to invite	6
B. How to distribute	7
C. Evaluation	7
D. Timeline	8
E. Inclusion of Critical Performance Factors	9
Annex A	10
Research on international best practices in tendering and procurement	10

Introduction

1. Chapter IV (Articles 16 and 17) of the Convention on International Interests in Mobile Equipment (hereinafter the 'Cape Town Convention') and Article XIV of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (hereinafter the 'MAC Protocol') provide for the establishment of an International Registry and appointment of the Registrar.
2. The Diplomatic Conference for the Adoption of the MAC Protocol, in Resolution 1, established a Preparatory Commission, inter alia, to ensure that the international registration system be set up in accordance with an objective, transparent and fair selection process.
3. The Registrar Working Group was established by the MAC Protocol Preparatory Commission at its first session (hereafter "PC1") under Rule 6 of the Rules of Procedure.
4. The first session of the Registrar Working Group will be dedicated to reaching policy consensus on the issues raised in this paper, and if possible also discuss different options for drafting the Request for Proposals (RFP) for the appointment of a registrar.
5. It is anticipated that a second Working Group meeting will be organised after the second Preparatory Commission meeting in December to refine the RFP. In comparison to the Preparatory Commission, the Working Group will operate on a relatively informal basis to allow for open discussion in resolving the various policy issues.
6. The purpose of this paper is to provide the Registrar Working Group with an initial list of issues for discussion. This issues paper is not intended to provide an exhaustive list of issues. Working Group members are encouraged to raise any additional issues related to the MAC Protocol RFP during the first session.
7. This paper presents three categories of issues:
 - (a) Issues relating to the substantive content of the RFP.
 - (b) Issues relating to the technical content of the RFP.
 - (c) Issues relating to the process of issuing the RFP.
8. This Paper is accompanied by the following documents:
 - (a) Document 3 – Preliminary Draft RFP for the MAC Registry
 - (b) Annex A – Research on international best practices in tendering and procurement
 - (c) Appendix 1 – RFP issued for the appointment for the Aircraft Protocol Registrar
 - (d) Appendix 2 – RFP issued for the appointment for the Luxembourg Rail Protocol Registrar
 - (e) Appendix 3 – Draft Paper on Best Practices for Collateral Registries prepared by NatLaw as part of the project on Best Practices of Electronic Registry Design and Operation conducted under the auspices of the Cape Town Convention Academic Project.
9. The Preliminary Draft RFP prepared by the Secretariat for consideration by the Working Group is modelled after the RFPs issued for the Aircraft Protocol and the Luxembourg Rail Protocol. Consideration was also given to the Draft RFP for the Space Protocol, which has not been included in this document as a finalised version has not yet been published. This preliminary draft only serves as a baseline for the Working Group's deliberations and the Group is invited to provide comments on all parts of it to the extent practicable. Noting the different nature of the MAC industries, and the

relatively lower cost of anticipated registrations to the MAC International Registry, several different types of considerations may need to be analysed.

I. ISSUES RELATING TO THE SUBSTANTIVE CONTENT OF THE RFP

10. The Draft RFP follows the model of the RFPs published for the Aircraft Protocol and the Luxembourg Rail Protocol. As such, it is divided into 5 parts and 4 annexes, and 3 appendices:

- (a) PART 1 – Introduction
- (b) PART 2 – Technical Requirements
- (c) PART 3 – Cost Specifications
- (d) PART 4 – Information about key contract provisions
- (e) PART 5 – Practical information about the solicitation process
- (f) Annex 1 – Information relating to the background of the International Registry
- (g) Annex 2 – Relevant provisions of the Convention and the MAC Protocol
- (h) Annex 3 – Illustrative model of a possible layout of an international registry registration form
- (i) Annex 4 – Draft MAC Registry Regulations
- (j) Appendix A – Documents and declarations relating to the identification of the Tenderer
- (k) Appendix B – Documents relating to the financial and economic capacity of the Tenderer
- (l) Appendix C – Declaration of honour on exclusion criteria and absence of conflicts of interest

11. This section of the Issues Paper identifies a non-exhaustive list of substantive items which the Working Group should deliberate.

A. Nature of the registrar's activities

12. Article XVIII (2) of the MAC Protocol follows a similar approach to that taken by the Aircraft Protocol in Article XX(3) and the Space Protocol in Article XXXII(4) when dealing with fees which the International Registry may collect for its services. This allows for the fees to be determined so as to recover:

- (a) *the reasonable costs of establishing, operating and regulating the International Registry, and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers and discharge of the duties contemplated by Article 17(2) of the Convention; and*
- (b) *the reasonable costs of the Depositary associated with the performance of the functions, exercise of the powers and discharge of the duties contemplated by Article 62(2)(c) of the Convention and Article XXXVII(2)(c) to (f) of this Protocol.*

13. This approach is different from the Luxembourg Rail Protocol which has an additional sentence in this provision noting: '*Nothing in this paragraph shall preclude the Registrar from operating for a reasonable profit.*' The RFP published for the Luxembourg Rail Protocol foresaw the possibility of the Registrar taking part in ancillary activities to generate revenue and compensate for the costs of initial development and design. Such ancillary services would require the approval of the Supervisory Authority, and it was noted that the Supervisory Authority would look favourably upon the idea. A similar model was discussed during the meetings of the Space Preparatory Commission.

14. With regard to the International Registry for the Aircraft Protocol, a two-tier model is followed whereby the International Registry itself is established as a not-for-profit entity, keeping in mind Article XX(3) of the Aircraft Protocol, whereas the company which manages the International Registry (Aviareto) may engage in ancillary activities following approvals for those activities by the Supervisory Authority.

15. The Working Group should give consideration to the nature of the activities of the future MAC registry. This would be relevant for Part 3.c of the Draft MAC RFP which has presently been drafted following the model of the Luxembourg Rail Protocol RFP. It is also relevant in helping the prospective registrar have an understanding of how the costs of initial development and design of the registry can be recovered.

B. Promotion and Industry Support

16. The registrar for the MAC Protocol will play an important role in promoting the treaty. Paragraph 25 of the Draft RFP should indicate an amount of expenditure which the registrar must allocate annually to costs relating to the promotion of the MAC Protocol. The RFP issued for the Luxembourg Rail Protocol specified an amount of €25,000 per year (see paragraph 19 of RFP for Luxembourg Rail Protocol). The Working Group is invited to consider what the appropriate amount for the MAC Protocol registrar would be for promotion.

C. Indication of volume of work

17. In order to allow prospective registrars to have an understanding of the capacity they need to develop, the MAC RFP must specify an expected number of individual transactions each year (see paragraph 28 of the Draft MAC RFP). For this, a capacity assessment must be undertaken.

18. For this provision, the RFP issued for the Luxembourg Rail Protocol simply referred to 'many thousands of assets', whereas the RFP for the Aircraft Protocol did not consider this issue.

19. This estimation of expected volume also guides the storage capacity a prospective registrar must make available (see Paragraph 68 of the Draft MAC RFP). The RFP issued for the Luxembourg Rail Protocol notes that the registrar must have storage capacity to store up to 200,000 individual registry transactions each year (see paragraph 56 of the RFP for the Luxembourg Rail Protocol).

20. The Working Group is invited to deliberate this matter to either decide on a mechanism to undertake a capacity assessment, or propose arbitrary numbers for these two provisions.

D. Technological compatibility

21. The Draft MAC RFP notes in paragraph 30 and paragraph 82 that the website for the registry must be accessible from web browsers released in the past two years. This follows the model of both, the RFP for the Luxembourg Rail Protocol and the RFP for the Aircraft Protocol. However, both these sectors largely consist of registry users with a high level of technical sophistication. Noting the different nature of users on the MAC registry, the Working Group may consider obligating the registrar to ensure backwards compatibility for a larger number of years with regard to web browsers in order to ensure users of all levels of technical sophistication are able to access the registry.

22. Additionally, the Working Group is invited to consider whether or not the RFP should oblige prospective registrars to ensure that the MAC registry is accessible and usable through a mobile phone, keeping in mind the level of technical sophistication of its expected users.

E. Languages

23. Paragraph 57 of the Draft RFP relates to the languages which the International Registry must be available in. This follows similar drafting from the RFP for the Luxembourg Rail Protocol. However, noting the different nature of users in MAC industries, the Working Group may give additional consideration to the provision of registry services in additional languages from the onset.

F. Currency of the operation + currency of indicated costs

24. The Working Group should give consideration to the currency which should be used by the registry in collecting its fees (see paragraph 74 of the Draft MAC RFP). Additionally, the Working Group should give consideration to the currency in which bidders should present their cost specification in (see Paragraph 101 of the Draft MAC RFP).

25. With regard to fees, the RFP published for the Aircraft Protocol allowed bidders to use the currency of the country in which they were based, whereas the RFP published for the Luxembourg Rail Protocol obliged bidders to use the Euro as its currency, noting that the registry had to be hosted in Luxembourg.

G. Governing law of contract with registrar

26. A policy decision needs to be reached by the Working Group on the law which will govern the contract between the Supervisory Authority and the Registrar. In determining this, factors such as the seat of the Supervisory Authority and the location of the successful registrar might need to be considered. This is addressed in Paragraph 123 of the Draft MAC RFP.

H. Data Protection and Privacy

27. The RFP documents for the Aircraft Protocol and the Luxembourg Rail Protocol did not include any provisions in data protection and privacy. The Draft MAC RFP addresses this concern in Paragraph 91 by noting that 'The system shall be in compliance with relevant data protection and privacy related laws and regulations.'

28. The Working Group may consider expanding this section or creating a separate section within the Draft MAC RFP for data protection and privacy.

I. Matters in the RFP dependent upon the Regulations Working Group

29. Several technical requirements which the registrar would be expected to meet are dependent upon ongoing discussion regarding the Draft Regulations for the MAC Protocol International Registry. These include:

- (a) Details on the process of registering and authenticating users (Part 2.a.3 of the Draft MAC RFP): any prospective registrar must have an idea of the steps it will need to undertake in registering users to the International Registry. Additionally, the question of who can access different parts of the registry may also be addressed following the finalisation of this discussion in the Draft Regulations (see Paragraph 34 of Draft MAC RFP).
- (b) The process of minimising the risk of unauthorised registrations (Part 2.a.4 of the Draft MAC RFP): the RFP could indicate the process, if any, a prospective registrar would need to follow to minimise the risk of unauthorised registrations.
- (c) Registration criteria (Part 2.a.5 of the Draft MAC RFP): the RFP should indicate the types of data a prospective registrar would be expected to collect when a registration

is made in the international registry. This will be guided by the work of the Regulations Working Group.

- (d) Block registrations may be deleted from the RFP subject to discussions in the Regulations Working Group.
- (e) Entry points designated by Contracting States (Part 2.a.16 of the Draft MAC RFP): the discussion on connecting factors for designated entry points within the Regulations Working Group will have to be included in the RFP.
- (f) Closing room feature: Depending upon the result of deliberations within the Regulations Working Group, provisions may need to be added to the Draft MAC RFP in relation to requiring a prospective registrar to offer services similar to the 'Closing Room' of the International Registry for the Aircraft Protocol.

II. ISSUES RELATING TO THE TECHNICAL CONTENT OF THE RFP

30. Noting the technical nature of the design and operation of a registry of this sort, several technical details must be considered. These technical details form an important part of the RFP as they allow prospective bidders to ascertain their capacity to undertake this role. The Working Group may consider relying upon outside expertise to further their understanding of these matters and provide feedback on the Draft RFP. A non-exhaustive list of these issues with their corresponding sections in the Draft RFP is as follows:

- (a) Details on FAQs, technical support, and helpdesk of the registry (Part 2.A.18 of the Draft RFP): This includes the determination of the number of hours for which the helpdesk of the Registry should be available (Paragraph 59).
 - (i) According to Section 3.6 of the Regulations, live help shall be available as set out in the Procedures. Section 3.5 of the Aircraft Registry Regulations provides that the helpdesk shall be available 24 hours a day, 7 days a week, whereas the Request for Proposals for the International Registry for Railway Rolling Stock refers to 40 hours per week.
- (b) System availability (Part 2.A.21 of the Draft RFP): the question of how much non-availability time should be allotted per year for maintenance power outages, hardware problems, etc.
- (c) The list of items to be included in the System Design Document (Part 2.B.9 of the Draft RFP), including the number of days within which such a document is to be expected after the finalisation of the contract with the registrar.
- (d) Overarchingly, for all items in Part 2.C on System Requirements, input should be sought from engineers and software specialists who have knowledge of developing and operating similar registries. The Secretariat is not in a position to assess the validity or invalidity of the requirements listed and does not possess the technical expertise to ascertain if certain items are missing from these lists. The Secretariat would welcome offers from the Working Group regarding getting input from technical experts on this matter.

III. ISSUES OF PROCEDURE

A. Who to invite

31. The RFP issued for the Aircraft Protocol invited proposals from States, as well as other entities. In the case where a bid was submitted by an entity other than a State, the following additional information was requested:

(1) identify the State where the bidder will locate the Registry (the Proposed Host State);

(2) describe any undertakings the Proposed Host State is prepared to make with respect to establishment and operation of the Registry; and

(3) provide assurances from the Proposed Host State with respect to the Proposed Host State's intended undertakings, including, where that Proposed Host State is not a Contracting State, its willingness to enter into a Host State agreement in which, *inter alia*, it agrees to comply with all provisions of the Convention and Protocol relating to the International Registry to the same extent as if it were a Contracting State.

Any bid to serve as Registrar submitted by a State other than a Contracting State shall provide assurances that it is willing to enter into a Host State agreement in which, *inter alia*, it agrees to comply with all provisions of the Convention and Protocol relating to the International Registry to the same extent as if it were a Contracting State.

32. The RFP issued for the Luxembourg Rail Protocol invited entities to apply for the role of setting up the International Registry. An explanation for this can be found in Resolution 3 of the Diplomatic Conference for the adoption of the Luxembourg Rail Protocol which resolved that the *'that the Grand Duchy of Luxembourg shall be the host State of the International Registry.'* This provision automatically ensured that the International Registry for the Luxembourg Rail Protocol shall be hosted in Luxembourg. As such, only entities could be invited to serve as the registrar. The MAC Protocol has no such limitations.

33. Paragraph 14 of the Draft MAC RFP reads: *'Requests to participate may be made by public or private entities'*, thereby allowing proposals from all types of entities. The Working Group may consider:

- (a) Expressly noting that the RFP is only open to States;
- (b) Expressly noting that the RFP is only open private entities;
- (c) Changing the language to: *'Requests to participate may be made by public or private entities, including States.'*

34. The Working Group may also give additional consideration to the location of the registry in general. Part 2.a.26 of the Draft MAC RFP notes that *'It is preferable, though not required, that the International Registry's computer back-up and storage systems be located in the territory of a Contracting State to the Convention.'* Expressly obliging the registry to be based in a Contracting State of the MAC Protocol could also be an alternative in this regard and could be an incentive for States to sign and ratify the MAC Protocol.

B. How to distribute

35. Paragraph 124 of the Draft MAC RFP indicates that the RFP will be distributed to States which are Contracting Parties to the Cape Town Convention and/or any of its Protocols, as well as States which attended Diplomatic Conferences for the Cape Town Convention and/or any of its Protocols, and to member and observer States of the Preparatory Commission, and to UNIDROIT Member States. Additionally, the RFP would also be posted on the UNIDROIT website.

36. The Secretariat would welcome input from the Working Group on the distribution of the RFP.

C. Evaluation

37. Several issues exist insofar as the evaluation process is concerned for the selection of a registrar after proposals have been collected:

- (a) Noting the resources available to the ICAO Secretariat, for the Aircraft Protocol, a comprehensive Evaluation Plan was developed as part of the RFP. This can be found in Attachment 1 Annex B of Appendix 1 of this Document. This plan entailed an Evaluation Team which comprised of several evaluators possessing expertise in different areas, and was also supported by advisors. This Evaluation Team followed a comprehensive ratings and evaluation process. The report of the Evaluation Team was submitted the Preparatory Commission, where only Members from those States which did not have a bid were allowed to vote to come to a final decision.
- (b) Noting the relatively limited amount of resources available when identifying a registrar for the Luxembourg Rail Protocol, the proposals received were evaluated by the Preparatory Commission, drawing upon expertise as appropriate (see Paragraph 121 of Appendix 2 of this document).
- (c) The Draft MAC Protocol RFP seeks to follow a middle-ground approach whereby the Preparatory Commission would be in charge of evaluating the proposals received, and consulting experts as appropriate. However, the Commission would rely upon a ratings system to objectively evaluate both the Technical Offer, and the Financial Offer. Details of this rating system can be found in Part 5.D of the Draft MAC RFP of this document.

38. The Working Group is invited to consider the various approaches available in evaluating the Proposals received.

39. As part of the Evaluation Phase, consideration may be given to the process of negotiating with bidders. The process for the Aircraft Protocol registrar involved simultaneous negotiation with several of the most promising bidders, whereas for the Luxembourg Rail Protocol, one preferred bidder was selected for negotiation. The Draft MAC Protocol RFP follows a model similar to the Luxembourg Rail Protocol, wherein Paragraph 3 States that only the initially preferred bidder will be invited for negotiations. The Working Group may consider whether it would like to conduct parallel negotiations with multiple bidders.

D. Timeline

40. The Working Group may give consideration to the timeline identified for procuring a registrar. Presently, the following sequence illustrates the RFP process (actual dates may vary according to the circumstances):

- (a) [DD MM] – RFP is issued;
- (b) [DD MM] (a + 3 months) – final date for the request to participate and preliminary offer to be submitted;
- (c) [DD MM] (b + 3 months) – evaluation by Preparatory Commission and notification of all tenderers on their ranking, notification to the preferred tenderer – preferred tenderer should be prepared to commence contract negotiations within 4 weeks of the notification – although may be subject to change;
- (d) [DD MM] (estimated) (c + 3 months) – finalisation of contract negotiations between the Preparatory Commission and the preferred tenderer;
- (e) [DD MM] (estimated) (d + 1 month) – approval by the Preparatory Commission of the final contract between the Supervisory Authority and the preferred tenderer;
- (f) [DD MM] (e + 3 months) – submission to the Supervisory Authority by the Registrar of the System Design Document (SDD);
- (g) No later than 6 months after (e) – commencement of test phase of the International Registry;

- (h) No later than 8 months after (e) – completion of test phase of the International Registry;
- (i) No later than 12 months after (e) – full implementation and commissioning of the International Registry. The full implementation and commissioning of the International Registry refers to the preparedness for the International Registry to immediately begin full operations. However, the precise date of the entry into force of the MAC Protocol, and of the actual commencement of full operations of the International Registry, will be determined in accordance with Article XXV of the MAC Protocol, and that date may be after the date that the full implementation and commissioning of the International Registry is achieved.

E. Inclusion of Critical Performance Factors

41. As part of the project on Best Practices in the Field of Electronic Registry Design and Operation, which is organised under the auspices of the Cape Town Convention Academic Project, a paper has been developed detailing a list of critical performance factors for collateral registries. This can be found as Appendix 3 to this Document.

42. The Working Group is invited to consider whether to, and how to include these critical performance factors in the Draft MAC RFP. The paper could be included as an annex to the RFP, or the critical performance factors could individually be built into the RFP.

ANNEX A**RESEARCH ON INTERNATIONAL BEST PRACTICES IN TENDERING AND PROCUREMENT**

1. This section identifies certain international best practices in tendering and procurement. Noting the nature of its work, UNIDROIT does not have a set of procurement rules which it follows. However, as an intergovernmental organisation, UNIDROIT seeks guidance from practices of the United Nations for several of its activities.
2. Noting this, the Secretariat will aspire to follow guidelines issued by the [United Nations Procurement Division](#) and the [United Nations Global Marketplace](#), as well as examining procurement guidelines issued by other intergovernmental organisations.
3. In setting a baseline Code of Conduct for suppliers, the Secretariat will follow the UN Supplier code of conduct which informs vendors of the following:
 - (a) that they may not engage in corrupt practices
 - (b) that they must disclose information on any situation that may appear to present a conflict of interest
 - (c) that UNIDROIT has a zero-tolerance policy with regards to the acceptance of gifts or hospitality from Vendors
 - (d) that there are restrictions on the employment by Vendors of former UNIDROIT staff members.
4. The full UN Supplier Code of Conduct can be accessed in six languages at the following link <https://www.un.org/Depts/ptd/about-us/un-supplier-code-conduct>
5. Additionally, the Secretariat has examined the [United Nations Procurement Manual](#) issued on 30 June 2020 for guidance as to best practices in issuing a RFP. Moreover, the Secretariat has sought guidance from the 2009 UNCITRAL Model Law on Procurement of Goods, Construction and Services to identify 20 standard practices in conducting a tendering process:¹

A. Tender Planning Phase

1. Publication of approved Annual Procurement Plan
2. Needs assessment and formulation of project initial brief
3. Provision of an adopted accurate estimate in the national budget
4. Appointment of an Independent and Free Tender Committee

B. Tender Document Development Phase

5. Use of neutral & standard Technical specifications
6. Setting of Non-discriminatory Eligibility/Participation conditions
7. Use of Standard Tender Documents 5 C. Solicitation of Tenders Phase
8. Reception/Submission of Tenders and Public Opening of Bids
9. Allocation of sufficient time to Advertisement of tender proposals
10. Use of multiple and/or dedicated media for Tender Advertisement
11. Grant of enough time for preparation of Tender Bids

¹ Douh, S., 2016. Standard Practices for an Effective Competitive Tendering Process for Public Works Procurement. *Civil Engineering and Architecture*, 4(5), pp.193-200.

12. Reception and response to Requests for Clarifications

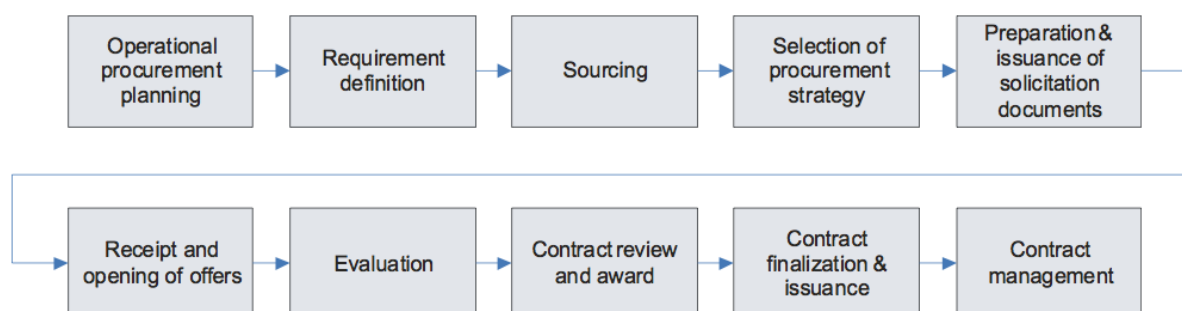
D. Evaluation of Bids Phase

13. Requiring of tender security covering the Validity Period
14. Constitution of qualified and ethical Tender Evaluation Panel
15. Evaluation of tenders using Points system of scoring
16. Requiring of necessary clarification of bids
17. Appropriate use of Margin of Preference

E. Pre-Award Phase

18. Provision of Complete recordkeeping of procurement proceedings
19. Publication of tender results including successful & Unsuccessful
20. Provisional award of contract

6. The United Nations Global Marketplace utilises the following flowchart for its procurement process which can be found in the [UN Procurement Practitioners Handbook](#):



7. The procurement process relied upon by the Secretariat is largely in compliance with the aforementioned best practices and guidelines issued by the United Nations, to the extent practicable. The Secretariat has also examined procurement principles and best practices from other intergovernmental organisations. The Secretariat will intend to implement best practices in the following categories within its procurement process:

- (a) Derive value for money
- (b) Promote fair competition
- (c) Practice transparency
- (d) Practice good management
- (e) Ensure the prevention of misconduct
- (f) Provide for accountability and control
- (g) Ensure an effective process for dispute resolution

8. In evaluating the bids received in response to the RFP, the Secretariat will provide the evaluators a comprehensive document outlining the considerations which they should keep in mind.