



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

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ISSUES PAPER

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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. The first session of the Registrar Working Group took place on 4 November 2020 and reached several policy consensuses regarding the different options for drafting the Request for Proposals (RFP) for the appointment of a registrar. Following this, with support from the members of the Working Group, the Secretariat sought feedback on the draft RFP from technical and procurement experts. An updated RFP was presented to the Working Group at its second session on 26 February 2021. This Issues Paper summarises the outcomes of the Working Group's sessions and outlines how the decisions adopted have been inserted into the draft RFP. It also presents the input received during intersessional work and highlights matters which still need to be resolved in the process of finalising the RFP.
4. The draft RFP, with tracked changes can be found at MACPC - Registrar W.G.3 - Doc. 3 - Draft request for proposals (RFP).
5. It is anticipated that one more meeting of Working Group will be organised prior to the third session of the Preparatory Commission (3-4 June 2021) to finalise the draft Request for Proposals. 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. 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 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

I. ISSUES RELATING TO THE SUBSTANTIVE CONTENT OF THE RFP

9. The Draft RFP is divided into 5 parts and 6 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 – Statement of Requirements for the International Registry
 - (i) Annex 4 – Illustrative model of a possible layout of an international registry registration form
 - (j) Annex 5 – Draft MAC Registry Regulations
 - (k) Annex 6 – Paper on Best Practices to be followed in the Design and Operation of an International Collateral Registry
 - (l) Appendix A – Documents and declarations relating to the identification of the Tenderer
 - (m) Appendix B – Documents relating to the financial and economic capacity of the Tenderer
 - (n) Appendix C – Declaration of honour on exclusion criteria and absence of conflicts of interest
10. This section of the Issues Paper identifies a non-exhaustive list of substantive items which the Working Group should deliberate.

A. General Approach to drafting the RFP

11. The Preliminary Draft RFP prepared by the Secretariat for consideration by the Working Group at its first session had been modelled after the RFPs issued for the Aircraft Protocol and the Luxembourg Rail Protocol. After the first session of the Working Group, the Secretariat reached out to technical and procurement experts to get feedback and input on the Draft RFP. It was suggested that the RFP take a more functional approach as to the design of the Registry, rather than a prescriptive one. As a result, the Secretariat made efforts to make the RFP more functional primarily through the inclusion of a new Annex 3 to the RFP relating to functional requirements for the International Registry. The Working Group endorsed a functional approach for the RFP at its second session and recommended that the Secretariat continue to develop Annex 3, as well as other parts of the RFP.

12. Following this, Annex 3 of the RFP has been enhanced to align better with the Draft MAC Regulations. The Working Group is invited to review the updated draft of Annex 3.

13. It was also suggested by experts that the FAQ requirement in the RFP be replaced with a functional equivalent. The Working Group endorsed this suggestion at its second session. As such, Paragraph 61 of the RFP has been modified for consideration.

B. Nature of the registrar's activities

14. 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.*

15. 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.

16. 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.

17. At its first session, the Working Group agreed that innovation should not be stifled insofar as the breadth of activities that the registry would be allowed to conduct. It was also agreed that specific portions of the collected revenue from any such ancillary activities should go towards the establishment, operation and enhancement/development of the registry, in order to lower access costs of the registry for users. It was agreed that the language should be expanded to provide that any favourable treatment insofar as ancillary activities were concerned should consider the integrity of the system as a whole and that such ancillary activities may not intrude with or compromise the primary activities of the registrar. It was also agreed that language in Paragraph 112 of the Draft RFP should be further expanded to mention legal or arbitration (or other dispute settlement mechanism) services, or advisory services, as specific examples of services whose provision should not be allowed in order to protect the integrity of the system. To this end, additional language was added in Paragraphs 16, 111-113 of the draft RFP.

18. At its second session, the Working Group requested the Secretariat to remove the word "website" from these paragraphs in order to better differentiate core and auxiliary activities. It was also suggested that the Supervisory Authority have flexibility in terms of the allocation of revenue from auxiliary services. As such, changes have been made to Paragraph 113 for the Working Group's consideration.

19. The Registrar Working Group requested the Secretariat to prepare some background research on the reasoning behind the not-for-profit nature of the International Registry, and the two-tier structure seemingly adopted by Aviareto and the International Registry. In this regard, it is relevant to recall that, at the time of the drafting of the Cape Town Convention and its Aircraft Protocol, the Drafting Committee noted that the question whether the Registrar shall operate as a non-profit-making entity was a policy question which needed to be determined separately for each category of equipment and accordingly left to the Protocols.¹ Nothing in the MAC Protocol precludes

¹ UNIDROIT Committee of Governmental Experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment, Third Joint Session (Rome, 20 - 31 March 2000) Report UNIDROIT CGE/Int.Int./3-Report, p xv.

the Registrar from being a profit-making entity in all functions other than its core activities, for which it is only allowed to operate on a cost recovery basis.

20. Following exchanges between the Secretariat and Aviareto, as requested by the Working Group, it has been ascertained that no two-tier structure exists. Aviareto is a registered Limited Company under Irish Law, and its main activity is to operate the International Registry. Aviareto describes itself as “managers of the International Registry”. Its contract with ICAO is to operate the International Registry not for profit and hence no distributions to shareholders have taken place. However, Aviareto is not generally restrained from making a profit under Irish Law.

21. Following input received from Aviareto, no action would seem necessary to reflect this issue in the RFP.

C. Promotion and Industry Support

22. At the second session of the Working Group, it was agreed to insert the amount €35,000 in the draft RFP with regard to promotion, recognising that the Registrar will play an important role in promoting the Treaty. This has been reflected accordingly in Paragraph 26 and 108 of the draft RFP.

D. Indication of volume of work

23. 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 29 of the Draft MAC RFP). For this, a capacity assessment must be undertaken.

24. 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.

25. This estimation of expected volume also guides the storage capacity a prospective registrar must make available (see Paragraph 71 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).

26. At the Working Group’s first session, it was agreed that the RFP should be drafted in a manner which ensured that bidders maintained flexibility, and had the capability to escalate/deescalate their capacity should the MAC Protocol generate more/less than the baseline number of transactions stipulated. This was reaffirmed at the second session. A technical expert also noted that it may be important to quantify the expected level of search activity, as this would drive requirements around system capacity.

27. The Working Group requested the Secretariat to conduct additional research into estimating a baseline volume of transactions all bidders should be expected to account for, based on other RFP documents, as well as the economic assessment for the MAC Protocol. Following this research, it is noted that the Aircraft Registry processes 130,000 registrations over 40,000 distinct objects each year. Additionally, it facilitates over 100,000 searches and also enables the creation of 7,000 - 10,000 accounts per year. Noting that these amounts are the result of almost 15 years of a functioning Registry, but also taking into account the fact that the MAC Registry would be expected to process an even larger number of registrations, searches, and accounts, it is proposed that a similar volume be expected from the MAC Registrar from its establishment. The Secretariat has tentatively inputted for the Working Group’s consideration some specific numbers along these lines in Paragraph 29 and 71 of the RFP.

E. Technological compatibility

28. The Draft MAC RFP notes in paragraph 32 and paragraph 85 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.

29. At its first session, the Working Group agreed on the importance of compatibility with a large number of commonly used browsers for the future MAC registry. The Registrar Working Group also agreed on the importance of ensuring that the MAC registry could be accessed using a mobile phone. As such, changes were made and approved at the Working Group's second session.

30. At its first session, the Working Group also agreed on the usefulness of Application Programme Interfaces, as well as intermediaries in general in facilitating access to the MAC registry to a wide variety of users. Thereafter, at its second session, after examining research showcasing no additional liability related issues with APIs, the Working Group agreed that the RFP must obligate bidders to ensure that the MAC Registry is API compatible, and that the issue of licensing for API providers would be resolved by the Registrar in coordination with the Supervisory Authority.

31. In order to enable this, a new Paragraph 33 has been added to the RFP. APIs are also mentioned in Annex 3 of the RFP. The Working Group is invited to consider the suitability of this language.

F. Languages

32. Paragraph 60 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.

33. During its first session, the Working Group considered three different types of elements which a registrar would have to deliver insofar as multiple languages were concerned: i) helpdesk; ii) the registry website; and iii) the information which users would submit to search and register in the registry. It was noted that the first two items were largely service related, and could easily, and at a low cost, be provided in several languages. The Working Group agreed that these two items should be clearly separated in the RFP and the obligations upon the bidders to provide multilingual functionality should be limited to these two items at this stage. With regard to the third item, considering the legal significance of such information, it was agreed that no translation should be available. It was noted that national entry points could assist in providing language services to users. API channels could also act as facilitators in this regard. It was also agreed that the Registry should be able to accept registration information in any language which the user may wish to provide, including the use of diacritical marks. Furthermore, it was agreed that the fields requesting information from users should be available in different languages.

34. At its second session, the Working Group approved the updated drafting of Paragraph 60 of the RFP, subject to removal of a reference to 'Latin Script' language. This has been reflected accordingly.

G. Currency of the operation + currency of indicated costs

35. The Working Group should give consideration to the currency which should be used by the registry in collecting its fees (see paragraph 77 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 106 of the Draft MAC RFP).

36. 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.

37. At its first session, the Working Group agreed that bidders should be allowed to indicate the currency in which they would collect fees, noting that it would be in the interest of the registrar to facilitate transactions, rather than disincentivise them. An expert noted that it would also be useful for bidders to indicate the payment options they would be willing to provide. The Working Group reviewed and approved drafting to this effect at its second meeting, which can now be found in Paragraph 77 of the RFP.

38. With regard to the issue of which currency bidders should be requested to submit their proposals in, the Secretariat's research has shown that tenders generally required costs to be listed in the currency which was used in the country of the tender's issuer. Should bidders wish to list costs in an alternative currency, they would be required to provide a converted cost in the requested currency on a given date.

39. The Working Group may give additional consideration to this matter at its third session.

H. Governing law of contract with registrar

40. 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 128 of the RFP.

41. At its second session, the Working Group decided that the RFP should state that the governing law would be decided by the Supervisory Authority. Paragraph 128 of the RFP has been drafted to reflect this decision.

I. Data Protection and Privacy

42. The RFP documents for the Aircraft Protocol and the Luxembourg Rail Protocol did not include any provisions on data protection and privacy. The Draft MAC RFP had addressed this concern in Paragraph 94 by noting that 'The system shall be in compliance with relevant data protection and privacy related laws and regulations.' The following is a preliminary list of areas where data protection might be a relevant consideration within the RFP:

- a. With regard to personal data collected at the time of registration
- b. Paragraph 71 regarding storing historical data indefinitely
- c. Paragraph 73 regarding the location of the Registry, given that the location of the Registry would automatically create issues of international transfer of personal data

43. Several participants of the Working Group indicated that the provisions in Paragraph 94 of the draft RFP are not sufficient. It was proposed that this issue should be explored further in order

to clarify to what extent the register involves personal data (such as for user accounts) or data referring to corporate entities (which might be subject to different standards of privacy and data protection).

44. At its second session, the Working Group requested the Secretariat to examine best practices in this area and provide some functional drafting for consideration. In this regard, it is noted that the Aircraft Registry works in full compliance with GDPR and also uses an extensive Privacy Policy and Cookie Policy for its website. Additionally, other registries and tenders normally require bidders to follow data protection and privacy related rules of the jurisdiction in which they will be based.

45. Paragraphs 94 and 95 have been modified in the RFP for issues related to privacy, data security, and data protection, for consideration by the Working Group.

J. Intellectual Property

46. Paragraph 72 and Paragraph 126 of the draft RFP refer to intellectual property relating to domain names, logos, etc. Additionally, Article 17(4) of the Cape Town Convention states: "*The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.*"

47. Regarding this, an expert stated that:

"It may be helpful to clarify the ownership of intellectual property of the software developed for the Registry. If ownership of software is not retained by the Supervisory Authority, some contingency plans may be required to cover a situation where the Registrar body ceases to exist for whatever reason, to ensure that the Supervisory Authority has the option to reassign a new contract to a new Registrar, without having to incur costs of software development again."

48. At its second session, the Working Group agreed that the RFP should be consistent insofar as stating who owned the rights to the software of the International Registry. For this reason, Paragraph 72 has been modified.

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

49. 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 35 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.

50. Regarding the issue of information to be collected when a registration is being filed, in paragraph 37 and others of the RFP, it is indicated that the registration form will collect the electronic signature of the registering person. On this matter, an expert noted the following:

"Further detail on exactly what is required as an 'Electronic Signature' would be helpful, including any cryptographic requirements, particularly in the international context, with different legislation applying in different countries.

It may be worth exploring eIDAS (electronic IDentification, Authentication and trust Services), the EU regulation on electronic identification and trust services for electronic transactions, which may have a role to play.

Some corporate users will have access to cloud-based electronic signature services, such as Docusign or Adobe Sign. It may be helpful to clarify if these services can be used when updating the Registry.

Some organisations require each user to download and install an application to enable digital signatures. Such a download may be a barrier to usage particularly for corporate users, where downloads will often be blocked by IT policy. It may be helpful to set out a desirable requirement for a solution that minimises or eliminates such download issues."

51. The Registrar Working Group requested the Secretariat to provide functional drafts of some of the aforementioned matters for consideration. As such, the Working Group is invited to review Paragraphs 35 of the RFP with regard to access requirements. Additionally, it is noted that Paragraph 38 and 39 are already of a functional nature. For other issues, the Secretariat will present functional drafts to the Working Group at its fourth session.

II. ISSUES RELATING TO THE TECHNICAL CONTENT OF THE RFP

52. The Secretariat has received technical feedback from various experts in IT and procurement and has incorporated this in the RFP. Based on the decision of the Working Group at its second session, the Secretariat will continue this process as necessary.

III. ISSUES OF PROCEDURE

A. Who to invite

53. At its second session, the Working Group approved the drafting of Paragraph 14 of the RFP, as well as Part 2.a.26 which relate to issue of who to invite.

B. How to distribute

54. At its second session, the Working Group approved the drafting of Paragraph 129 and 130 with regard to the circulation of the RFP.

C. Process of Submission of Proposals

55. Paragraph 134-135 of the draft RFP indicated that proposals must be submitted by post to the Institute's address in Rome with paper originals and documents sent in CDs or USB keys. Alongside the security risks to the Institute of receiving CDs or USB keys, it was noted by an expert that most Government procurement now takes place through online portals, with all submissions being done electronically, rather than through paper or hardware.

56. At its second session, the Working Group tasked the Secretariat to research whether email could be an acceptable form of receiving proposals. Following discussions with a technical advisor, it has been determined that email is a suitable option, keeping in mind the risks associated with collecting CDs and USB keys. Additionally, all relevant information regarding a proposal can be collected easily and securely over email. As such, Paragraph 134 has been modified accordingly for consideration by the Working Group.

D. Evaluation

57. 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 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).
- (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.

58. The participants of the Working Group agreed in their written comments after its first session that the proposals received should be evaluated by the Preparatory Commission while consulting outside experts as appropriate. A middle-ground approach relying upon a rating system was supported. However, it was noted that the present system outlined in Paragraph 143 of the Draft RFP was not sufficiently developed to adequately evaluate the technical offer. At its second session, the Working Group requested the Secretariat to consult procurement experts on this matter, and to also take into account the human resource capabilities of any bidder.

59. The Secretariat will report back to the Working Group on this matter at its fourth session. The Working Group is invited to give additional comments and guidance on this matter.

60. At its second session, the Working Group approved the drafting with regard to simultaneous negotiations and requested the same to be included in Paragraph 145. This has been addressed accordingly.

E. Timeline

61. 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.

62. At its first session, the Working Group agreed that the timeframes mentioned in Paragraph 149 (a)(b)(c)(d) were reasonable, whereas (e)(f)(g)(h)(i) were too short. The Working Group may give additional consideration to this matter.

F. Inclusion of Critical Performance Factors

63. 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.

64. The participants of the Registrar Working Group agreed in their written comments that the critical performance factors identified in the project on Best Practices in the Field of Electronic Registry Design and Operation organised under the auspices of the Cape Town Convention Academic Project should be incorporated within individual parts of the RFP document. It was also noted that bids could be scored against their capacity to adhere to the aforementioned critical performance factors.

65. At this stage, the Secretariat has included the Working Paper as an annex to the draft RFP. At a later stage in the development of the RFP, the Secretariat shall invite the drafters of the Working Paper to provide comments on how the critical performance factors could be appropriately incorporated into the document.

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:²

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
12. Reception and response to Requests for Clarifications

² Douh, S., 2016. Standard Practices for an Effective Competitive Tendering Process for Public Works Procurement. *Civil Engineering and Architecture*, 4(5), pp.193-200.

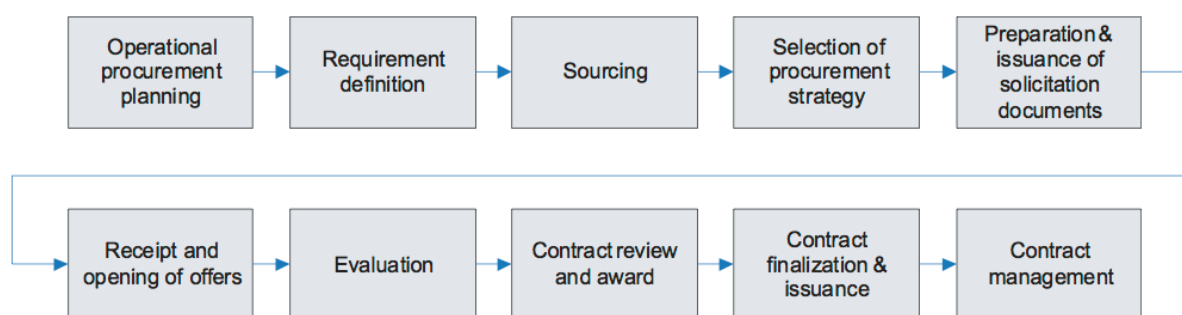
D. Evaluation of Bids Phase

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.