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

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***Registrar Working Group
Fifth session (remote)
16 November 2021***

**SUMMARY REPORT
OF THE FIFTH SESSION
(Videoconference, 16 November 2021)**

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1. The fifth session of the Registrar Working Group established by the Preparatory Commission for the establishment of the International Registry for Mining Agricultural and Construction (MAC) Equipment took place via videoconference on 16 November 2021. The session was attended by 22 participants from four Member States of the Commission, one International Non-Governmental Organisation and *ex officio* observers from the Diplomatic Conference (the List of Participants is available in Annex I).

2. This report summarises the discussion which took place at the fifth session of the Registrar Working Group.

Item No. 1 Opening of the session

3. *The Chair* welcomed the participants to the fifth session of the MAC Registrar Working Group. The Chair also welcomed additional experts who had been nominated by participating States of the MAC Preparatory Commission to advise the work of the Registrar Working Group.

Item No. 2 Adoption of the order of business of the session

4. *The Working Group adopted the draft Order of Business (MACPC/Registrar/W.G./5/Doc.1).*

Item No. 3 Consideration of issues associated with draft Request for Proposals

5. *The Chair* drew the attention of the Working Group to the Draft Request for Proposals (MACPC/Registrar/W.G./5/Doc.3) and Paper on Evaluation Plan and Other Issues (MACPC/Registrar/W.G./5/Doc.4). The Chair invited the Secretariat to outline the intersessional work which had been conducted and the changes introduced to the RFP.

6. *The Secretariat* recalled that the Draft RFP produced by the Registrar Working Group at its 4th Session (20 May 2021) was presented to the MAC Preparatory Commission at its 3rd Session (3-4 June 2021). During their review, the MAC Preparatory Commission expressed appreciation for the work, and requested a final review of the RFP from additional outside experts on procurement, IT, and other related issues, with a particular focus on evaluation criteria and the structure of the Evaluation Committee.

7. Following this, a call was issued to Member States of the MAC Preparatory Commission to appoint additional experts to advise the work of the Registrar Working Group. This resulted in the appointment of 7 experts from 4 Member States of the Commission. It was noted that the Secretariat, in consultation with some members of the Registrar Working Group, and input received from procurement experts at the International Civil Aviation Organization (ICAO), had also made several updates to the draft RFP.

8. *The Chair* proposed to review the changes made one by one. It was noted that in Paragraph 29 of the RFP, it had been clarified upon the Preparatory Commission's request that references to the volume of the Aircraft Registry were 'purely indicative'. A suggestion had been made that it should also be added that tenders should be strongly encouraged to conduct their own research regarding expected volumes for the MAC Registry and outline their assumptions accordingly. *Both these propositions were approved.*

9. *Several participants* noted that while it would be useful bidders to conduct their own research, this would be very difficult in practice as an accurate assessment of volume could not be drawn without an understanding of how many States were expected to ratify the MAC Protocol in the coming years. Furthermore, in order to compare proposals accordingly, any reference to additional research

should only be in the context of the MAC Registries' scalability and adaptability to significantly more or significantly less volumes than those listed in Paragraph 29. It was added that a reference should also be made to which year the mentioned numbers were from.

10. With regard to Paragraph 107, an additional sentence had been added based on the Preparatory Commission's suggestion to alert bidders that the costs related to using the MAC Registry would be kept low, keeping in mind the nature of the MAC sectors. On this, *one participant* noted that it would be useful to ask bidders about what they would anticipate the costs of registrations to be. This would ensure that the bidders have undertaken business modelling and would be able to maintain the MAC Registry in a cost-effective way. It was suggested that such an indication could be requested as part of the evaluation process, but would not be scored, keeping in mind that the cost of using the Registry was to be determined by the Supervisory Authority at a later point in time.

11. *One participant* queried the difference between advisory services forbidden in Paragraph 109, and consultancy services allowed in Paragraph 110, as well as the meaning of services related to identification plates noted in Paragraph 110. It was noted that the first issue would be clarified with additional language. Regarding the second issue, it was noted that the Rail Registry issued identification numbers to users, and this is where the reference originated from. This might not be relevant for the MAC industries and could be deleted.

12. *Regarding Paragraph 133, it was agreed that it should be clarified that reference was only being made to formal requirements, rather than technical requirements, which would be judged using the relevant evaluation processes.*

13. It was noted that a proposal for replacing the evaluation mechanisms noted in Part 5 was found in Document 4. As such, should the Registrar Working Group approve the new approach suggested, significant changes would be made to the document which would be outlined at the next session.

14. *One participant* queried whether any market engagement had been conducted prior to preparing the RFP, particularly in terms of the technical elements. Additionally, it was queried whether the contract to be agreed would be in the format of a concession contract, or one related to upfront payment. *The Secretariat* clarified that the market had been engaged at earlier stages of the development of the RFP through direct discussions with the operator of the Aircraft Registry, as well as engagement of an expert group on Best Practices in the Design and Operation of Electronic Registries. With regard to the contract, this would be negotiated between the Supervisory Authority and the Registrar and would further explore specific clauses on the nature of the reimbursement, which would indeed be collected from end-users, rather than paid up-front.

15. A query was raised regarding Paragraph 154 and it was noted that additional clarification should be provided with regard to the entity which will sign the contract. Additionally, it was noted that Paragraph 156 should also provide additional clarification and not be restricted to the 'Build and Implementation Phase'.

16. It was noted that several annexes of the Draft RFP would need to be changed should the proposal in Document 4 regarding evaluation be approved by the Registrar Working Group.

17. *The Chair* drew attention to Document 4 regarding evaluation related issues. Regarding timeline of work, it was noted that the date of Entry into Force of the MAC Protocol noted in Paragraph 3 should not be mentioned in the RFP, as there was no certainty on this matter.

18. Regarding the Evaluation Committee, it was explained that based on feedback from ICAO on best practices in the field of international procurement, it would be a better option to ensure that all

members of the Evaluation Committee signed a Non-Disclosure Agreement, as well as sign a No Conflicts of Interests Statement, before agreeing to participate. This would be a better approach than excluding participation from individuals from States which are linked to bidders. *The Group supported this approach and requested the Secretariat to produce drafts of these two documents for consideration ahead of the next session.*

19. It was also noted that the Evaluation Committee shall comprise of 5-7 Members nominated by Member States of the Preparatory Commission and confirmed by the Preparatory Commission. These Members would be experts in the area of procurement, IT, and/or registry design and operation. Member States may nominate the same experts they had nominated to support the work of the Registrar Working Group. It was also suggested that the Evaluation Committee be Chaired by the Chair of the Preparatory Commission.

20. *One participant* reiterated that the Preparatory Commission would hold the final say in the Members which make up the Evaluation Committee, and should a large number of nominations be received, the Preparatory Commission would select a sufficient number of experts from among them accordingly.

21. It was queried as to when the Evaluation Committee would be set up. It was clarified that the Preparatory Commission would establish the Evaluation Committee at its 4th Meeting on 17-18 January 2022. Should the tender process be launched as per the timeline illustrated in Document 4, the first meeting of the Evaluation Committee would take place in Late-June 2022. With regard to process, once the Evaluation Committee was established by the Preparatory Commission, the Secretariat would issue a letter on behalf of the Preparatory Commission to States for the nomination of experts, and thereafter service the Committee accordingly.

22. It was noted that with regard to conflicts of interest, both, actual and perceived conflicts of interests would need to be examined. It was reiterated that the Preparatory Commission would decide whether or not a conflict of interest was significant enough to warrant excluding an individual from the Evaluation Committee. In this regard, guidelines should be made available to the Preparatory Commission insofar as how to decide the significance of a conflict of interest. It was also noted that evaluators should be obliged to notify the Preparatory Commission if any conflict of interest arises after their appointment, or during the course of the evaluation process. It was recognised that simply coming from a State from where a private entity had submitted a bid was not significant enough to be excluded.

23. *The Secretariat* noted that a sample conflict of interest notice, guidelines for the Preparatory Commission, and a non-disclosure agreement would be made available for review by the Registrar Working Group ahead of its next session.

24. *One participant* queried if it would be better to establish the Evaluation Committee prior to the publication of the RFP, so that any clarifications which bidders might have could be addressed by the Committee. It was noted that according to the RFP, clarifications would be provided by the Preparatory Commission with guidance from the Registrar Working Group and the Secretariat. It was noted that all clarifications should thereafter be also provided to the Evaluation Committee, which would be obliged to consider them as part of their evaluation process.

25. *The Chair* drew the Working Group's attention to the new evaluation process proposed in Section IV of Document 4. It was noted that this process used a more granular and refined approach than that presently in the RFP, such that it relied on 4 phases and used forms to allow bidders to submit easy-to-evaluate proposals.

26. Phase I related to an initial screening which served as an eligibility test. It was noted that this was done through Form 1 of Annex 1 which requested a broad variety of informational questions, including financial information, information related to sanctions, experience, etc, from the bidders. It was noted that this eligibility test would be a pass-fail test, rather than one involving scores.

27. *The participants* agreed that it should be clarified that not all fields in Form 1 related to eligibility, and that this should be recognised and clearly stated. Furthermore, Phase I should also request more information relating to personnel and human resources. As such, Form 6-7 could be moved to Phase I. It was agreed that general questions should be separated from questions of eligibility.

28. Phase II related to the evaluation of the Technical Proposals. This included bidders filling out Forms 2-7 (Capability Assessment, Responses Against Technical Requirements, Responses Against Functional & Non-Functional Requirements, Responses Against Contract Terms & Conditions, Reference Format, Resume Format). It was added that this would allow for a maximum of 60 points, with the scoring mechanism explained further. Of the 60 points, 30 related to the fitness of the technical solution, which was to be tied to adherence to the functional and non-functional requirements listed in the RFP.

29. Regarding scoring mandatory technical requirements, *participants* discussed whether proposals should be discarded entirely if they did not meet a mandatory requirement. Some participants noted that it would be expected for bidders to meet all the mandatory requirements, and that not doing so would result in a low score. At the same time, scoring mandatory requirements allowed for compliance to them to be measured based on performance, rather than on a yes/no basis.

30. With regard to how to measure compliance and if each requirement would be individually scored, it was noted that an evaluation matrix would be developed and presented at the next session of the Registrar Working Group, which would allow the Group to develop a better understanding on this matter and come to a decision accordingly.

31. *It was agreed that 0 should be a valid score for evaluation. It was also agreed that should a bidder not reach a sufficient score insofar as mandatory requirements, they should be discarded. It was also agreed that the scoring would be descriptive, substantive, and evidence based. It was also agreed that the terms 'Mandatory', 'Important', and 'Desirable' should also be made consistent with the RFP.*

32. Phase III related to an oral presentation. It was noted that this would be an opportunity to confirm some of the items submitted by bidders as part of their proposals, and that a maximum of 20 points were available for bidders on their oral presentation.

33. *Some participants* expressed concern with the use of oral presentations, noting that they would be opportunities for bidders to bring forward new information which was not part of the original proposals. As such, should an oral presentation be made part of the process, the slides and speaking notes should be requested alongside the bid. It was also noted that if the oral presentation was supposed to allow bidders to clarify their technical solution, then the technical score in Phase II should be changeable after an oral presentation had been concluded.

34. *Participants* noted the importance of developing a set of questions to be asked during oral presentations, and to ensure that the same questions are asked from every bidder, in order to ensure each bidder has the same opportunity to respond. It was requested that an attempt should be made at preparing these questions.

35. *Participants* discussed the mechanism which was necessary to allow technical scores to be reassessed following the oral presentations. It was noted that the two options in this regard were either to merge Phase II and III of the process, or to indicate that scores in Phase II were provisional and could be amended following Phase III.

36. Phase IV related to the evaluation of the Financial Proposal. It was explained that Phase IV would be conducted using standardised forms found in the Annex to the Document 4. It was added that Phase IV also reserved the right for the Preparatory Commission to conduct a Best and Final Offer process (BAFO), should it wish to do so.

37. Regarding the BAFO process, *some participants* noted that such a process had the potential to increase competition and allow bidders to present better bids at a later stage of the process after they had a better understanding of what the Evaluation Committee was looking for. However, it was also noted should a BAFO process be allowed, all bidders should be made part of it, and it would almost be an opportunity for all bidders to submit new bids, and would also involve the evaluation process needing to be conducted again from the start.

38. *It was concluded that the Secretariat would seek advice from other international organisations regarding this process before deciding whether to retain it as part of the RFP.*

39. It was noted that the currency of the RFP should be changed to Euros. It was also suggested that the multiplier in the formula states in Paragraph 11.14 should be changed to an addition, and the overall score be out of 100, rather than 1.

40. It was noted that bidders would also be provided with a contracts matrix which would allow them to indicate their compliance with the key contract provisions indicated in Part V of the RFP. It was noted that Paragraph 11.17 needed to be clarified to say that it only referred to proposals and counter-proposals relating to the contract, rather than the technical requirements.

41. *It was confirmed that the Registrar Working Group supported the four phases approach outlined in Document 4, and to replace the approach presently found in the RFP with it.*

42. With regard to clarifications which bidders might request, *the Working Group confirmed the approach presently found in the RFP and noted that the adequate mechanism to respond to clarifications would be for the Secretariat to prepare a first draft of the responses, share with the Registrar Working Group for approval, and then share with bidders.* It was noted that all clarifications must be shared publicly.

43. With regard to a complaints process for bidders who were unsuccessful, *the Secretariat* noted that a process had now been proposed for inclusion in the RFP which was consistent with the practices of other international organisations such as ICAO. This related to the inclusion of a debriefing process which allowed unsuccessful bidders to request a debrief from Preparatory Commission regarding their bid.

44. *One participant* noted that in domestic procurement, their agency would prepare a detailed letter of regret which would offer a comparative assessment of the losing bid with the winning bid. These letters of regret would be sufficient, and thereafter a debriefing process would not be conducted. It was noted that this was necessary, as otherwise unsuccessful bidders could go to court and seek an injunction. It was noted that procurement by international organisations was different from procurement by domestic agencies, and as such, a detailed letter of regret would not be necessary, and debriefs could be provided if requested.

45. *The Registrar Working Group approved the process indicated in Document 4. It was noted that the Preparatory Commission may give additional consideration to the question of who will conduct the debriefs, if requested.*

46. The Chair drew the Working Group's attention to the forms found in Annex 1 of Document 4. With regard to Form 1, it was reiterated that general and financial information about the bidder and information which would determine eligibility of a bidder to contest the tender should be duly separated.

47. With regard to Form 2, it was noted that a paragraph limit should be provided for all questions, rather than only a few.

48. It was noted that Forms 3 and 4 would be converted into a matrix to conduct a technical assessment of the proposals received. This matrix would be mapped to Part II and Annex 3 of the RFP. The Secretariat would give additional attention to this matter accordingly.

49. With regard to Form 5 (Reference Format), it was noted that the 'Contract Value' field needed to be given additional consideration, as prices were normally not paid for the setting up and operation of registries. It was also noted that references to price in Form 8 and others should also be removed. Furthermore, terms such as Pricing and Delivery should be replaced with the relevant terms for a contract such as that of setting up a registry, where there was no expectation for the entity conducting the tender process to pay a price, or receive any item upon delivery.

50. *A participant* queried what would happen should the selected service provider fail or go out of business. It was noted the contract between the Supervisory Authority and the Registrar would have a clause on software portability. Additionally, all rights to the databases and software would be held with the Supervisory Authority, which could appoint another Registrar should that become necessary. It was noted that the contract for the Registry for the Luxembourg Rail Protocol accounted for these types of matters and could be examined further as a model. It was also noted that the proprietary rights to the Registrar's databases and archives was held by the Supervisory Authority as a result of Article 17(4) of the Cape Town Convention.

51. *One participant* queried as to why Paragraph 118 of the RFP relating to Performance Guarantees in the contract between the Registrar and the Supervisory Authority was non-mandatory. It was noted that this was because many types of guarantees could be offered, and these could be further negotiated during contract negotiations.

52. *One participant* suggested changing Paragraph 131 of the RFP to clearly note that it was only relevant to the contract in its reference noting that where a bid did not address a specific item, the bidder was considered to be accepting that item. *The Working Group supported this suggestion.*

Item No. 4 Timetable and planning of further work

53. The Registrar Working Group noted that it would convene for its sixth session in December 2021. The Members of the Group were invited to submit written comments to the RFP intersessionally.

54. It was noted that the RFP produced after the Working Group's sixth session would be submitted to the MAC Preparatory Commission at its fifth session on 17-18 January 2022.

Item No. 6 Any other business

55. No other business was raised under this item.

Item No. 7 Closing of the Session

56. *The Chair* thanked all the participants for their attendance and positive contributions to the discussion.

57. The Chair closed the fifth session of the Registrar Working Group.

ANNEX I**LIST OF PARTICIPANTS****REPRESENTATIVES****STATES**

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ANNEX II**ORDER OF BUSINESS**

1. Opening of the session and introduction of the new participants (MACPC – Registrar W.G.5 - Doc. 2)
2. Adoption of the order of business of the session
3. Consideration of issues associated with the draft Request for Proposals (RFP):
 - a. Summary of intersessional work and changes made to the RFP (MACPC – Registrar W.G.5 - Doc. 3)
 - b. Consideration of issues regarding evaluation (MACPC – Registrar W.G.5 - Doc. 4)
4. Timetable and planning of further work
5. Any other business
6. Closing of the session