



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

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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  
Sixth session (remote)  
21 December 2021***

**SUMMARY REPORT  
OF THE SIXTH SESSION  
(Videoconference, 21 December 2021)**

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1. The sixth 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 21 December 2021. The session was attended by 19 participants from five 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 sixth session of the Registrar Working Group.

#### **Item No. 1 Opening of the session**

3. *The Chair* welcomed the participants and other nominated experts to the sixth session of the MAC 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./6/Doc.1).*

#### **Item No. 3 Adoption of the Report of the 5<sup>th</sup> Session**

5. *The Working Group adopted the draft Report of the 5<sup>th</sup> Session (MACPC/Registrar/W.G./5/Doc.5).*

#### **Item No. 4 Consideration of issues associated with draft Request for Proposals (RFP)**

6. *The Chair* drew the attention of the Working Group to the Draft Request for Proposals (MACPC/Registrar/W.G./6/Doc.2). The Chair noted that the Working Group had been tasked to review the changes made to the RFP intersessionally, based on conclusions reached at the Working Group's earlier sessions and input received from experts intersessionally. The Chair proposed to review all the changes one at a time.

7. *The Secretariat* summarised the changes which had been made to the draft RFP intersessionally and thanked all the experts which had been involved in the process. The updated draft RFP contained a four-phase evaluation process which was supported by nine standardised forms in Word and Excel formats. It was noted that intersessionally, the Secretariat also sought feedback from the International Civil Aviation Organisation (ICAO) regarding certain matters. This resulted in not including a Best and Final Offer type provision in the draft RFP.

8. *The Secretariat* noted that all the Technical Requirements found in Part II of the draft RFP had been mapped onto the Functional and Non-Functional requirements found in Annexe 3. For evaluation purposes, bidders were expected to follow Annexe 3, as that described the expected Registry in a more operational way, rather than in a descriptive way as found in Part II.

9. *The Secretariat* summarised the nine forms to be annexed to the RFP. *The Chair* invited the Working Group to discuss these forms one by one.

10. *The Working Group approved Form 1 of the draft RFP.*

11. Regarding Form 2, it was queried whether question 4 on non-performance of contractual obligations should be further specified to non-performance of contractual obligations relevant to this

type of software. *The Working Group agreed that this would add too much ambiguity and was not necessary. The Working Group approved Form 2 of the draft RFP.*

12. Regarding Form 3, it was noted that the qualitative descriptions were intended to guide the Evaluation Committee in its review of a bidder's self-assessments found in Form 4 of the RFP.

13. It was suggested that the languages in questions 4, 5, and 6 requesting case studies and evidence be softened and replaced with requests to illustrate capabilities instead. This would allow for a larger pool of applicants to participate in the bidding process. Additionally, the types of experience required should be broadened, and not limited to operating registries.

14. *Subject to the aforementioned changes, the Working Group approved Form 3 of the RFP.*

15. Regarding Form 4, which was an excel spreadsheet, it was confirmed that the Components Overview of Annexe 3 was not reflected, as bidders could build similar systems with different technologies, and that there was no limitation on the types of components they could use. *It was agreed that this explanation should be included in the Evaluation Committee Guidance Document.*

16. *The Secretariat* noted that two different scoring options had been provided in sheet 2 and sheet 3 of Form 4. One option entailed a stratified/bracketed scorecard, whereas the other entailed an unstratified/granular and more specific scorecard. The stratified scorecard would categorise bidders into different bands (or ranges) of compliance, allowing the Evaluation Committee to get a good understanding of which bidders were generally compliant with the RFP. Whereas the unstratified scorecard would result in a granularly ranked set of bidders based on specific compliance to the RFP. It was added that both scorecards resulted in scores out of 30, which ensured that they were adaptable to the broader evaluation mechanism. It was noted that 25 hypothetical scenarios under both scoring systems were available in sheet 4 of Form 4.

17. It was noted that the number of bidders was an important consideration in determining which mechanism to use. In ICAO's approach, if they expected a lot of bidders, they would use the stratified methodology in order to group bidders into packs based on compliance, and only move the best few candidates forward, whereas for a low number of bidders, they would use the unstratified approach so as to get a clearer picture of which bidder was most suitable for the offer.

18. It was clarified that not all the information in the scoring methodology would be made available to the bidders. At the same time, all of this information should be included in the Evaluation Committee Guidance Document.

19. *Several participants* noted that this was only one part of a much larger scoring system. As such, minor differences should not be given too much weightage, and that the stratified scorecard would be sufficient in ensuring that all qualified bidders moved forward into the next phases of the evaluation process.

20. *One participant* noted that in situations where bidders were expected to self-assess their compliance to requirements, Consideration could be given to defining what 'compliant', 'partially compliant', and 'not-compliant' meant. Furthermore, should the Evaluation Committee disagree with a bidder's assessment, it was important to clarify when the Evaluation Committee would inform the bidder of this (whether in the decision letter or as part of the process). It was noted that the final score for the technical proposal would be determined by the Evaluation Committee, rather than simply relying on the self-assessments. The Evaluation Committee would revert back to bidders during the process and ask for clarifications if necessary.

21. *Following a discussion amongst the participants, it was agreed that both the stratified and unstratified methodologies should be preserved. The Evaluation Committee would use the stratified approach if the total number of bids received was less than 12. And it would use the unstratified approach if the total number of bids received was more than 12. It was also agreed that the RFP would only note that the same methodology for scoring will be used for all bidders, and the methodologies themselves would only be included as part of the Evaluation Committee Guidance Document.*

22. *As such, the Working Group agreed was agreed that only sheet 1 of Form 4 would be made available to the bidders.*

23. *With regard to Form 5, it was noted that it should be described that the contents have been taken directly from Part IV of the RFP. Furthermore, it was noted that keeping in mind the pass/fail nature of adherence to the mandatory contract terms, Form 5 should be made as part of the Eligibility Criteria and Initial Screening Process, rather than included in Phase 2 which related to the bidder's Technical Offer. As such, additional language regarding this should be added to paragraph 147 of the draft RFP.*

24. *Subject to these changes, the Working Group approved Form 5.*

25. *The Working Group approved Form 6, Form 7, and Form 8 of the draft RFP.*

26. *With regard to Form 9 which was an Excel document, it was explained that sheet 1 contained the bidder's resourcing plan, sheet 2 contained 4 different sections of the design, build, operation and future costs, and sheet 3 allowed bidders to indicate the fees they would charge users for making registrations.*

27. *The Secretariat explained that consideration could be given to making sheet 3 optional, as it was not an item to be used as part of the evaluation criteria, and only a means through which a bidder's business modelling could be understood. The Working Group agreed that this sheet should be relabelled as 'Average Cost per Registration'. Additionally, it should be clarified that these were only being requested to understand if bidders had conducted an assessment of the viability of the Registry. Additionally, it was also agreed that filling in the sheet should be mandatory, so that adequate comparisons could be made.*

28. *With regard to expected fees, it was noted that bidders would be able to indicate different fee levels based on different estimates for volumes they themselves could provide. It was noted that consideration should be given to whether searching the Registry would be free, or if this was also something bidders could indicate an amount for. The Working Group agreed that searching the Registry should be free of cost, and that no expectation should be inserted into the RFP which would indicate that bidders may be able to charge for searches.*

29. *Another question for the Working Group related to the weightage to be given to the 4 different types of costs indicated. It was suggested that they could either all be weighed equally, or half weightage could be given to operating, maintenance, and future costs. The rationale for giving half weightage to operating, maintenance and future costs was because there was no reasonable way to control all the variables around costs such as rent, staffing, utilities, etc, which also differed significantly in different parts of the world. It was noted that ICAO also used this methodology on some occasions.*

30. *One participant noted that all costs which will arise for the bidder would be internal, rather than invoiced. As such, these would not be subject to VAT and the column should be deleted. The Working Group agreed.*

31. Additionally, it was noted that the language in Table D needed to be clarified to ensure that there was no implication that the Supervisory Authority would pay for any future technical upgrades and/or enhancements of the Registry.
32. *One participant* noted that only giving half weightage to items such as future enhancements of the Registry gave an advantage to incumbents and parties already in the industry of running registries, as an entity could come forward with a pre-existing system and only provide very low costs for Tables A, B and C, and high costs adapting their existing product using Table D in the future.
33. *A participant* noted the risk of bidders trying to cheat the system by inputting incorrect numbers. It was noted that Form 8, which was a Declaration of accuracy would prevent this, but this could also be noted outright in the Evaluation Committee Guidance Document.
34. *One participant* noted that sheet 2 should specify that bidders should presume a 5-year amortisation period. *The Working Group agreed with this suggestion.*
35. *Subject to the aforementioned changes, the Working Group agreed to the content of Form 9. It was noted that the question of weightage to be ascribed to different tables would be considered when the relevant paragraph of the RFP would be discussed.*
36. With regard to Paragraph 147, it was agreed that additional clarity should be added with regard to what the 'eligibility' was for. Such language could be taken from the Evaluation Committee Guidance Document. Additionally, it should also be noted that relevant experience would be sufficient if one party from within a conglomerate had it. Furthermore, the word 'experience' should be replaced with 'proven capability' to enable more parties to submit bids.
37. With regard to Paragraph 148 and 149, the information in the RFP would be simplified based on conclusions reached regarding Form 4 above.
38. *One participant* queried the meaning of the references to 'experience operating registries' in Paragraph 148 of the RFP. It was noted that additional clarification could be provided accordingly. It was queried if proven capability could be sufficient, rather than experience. Furthermore, in the case of a consortium, only one entity having this experience would be sufficient. It was added that while the build of the software was a one-time expense, and could be done by a software development company, the ability to run the business of a registry was equally, if not more important, and should also be required.
39. With regard to Paragraph 158, it was noted that it should be made clear that the Evaluation Committee may ask the bidders questions other than those specified in Paragraph 152.
40. It was noted that bullet point 4 of Paragraph 152 needed to be changed to remove the presumption that any bidder would stop its operation of the Registry.
41. With regard to the evaluation methodology of the financial proposal, it was noted that while giving half weightage to Table C and Table D of form 9 was useful insofar as limiting the differences created by operating costs of a registry in different parts of the world, this also presented a risk whereby bidders may try to allocate more costs to Table C and D, rather than A and B, simply to reduce their totals.
42. Following discussion, the Working Group agreed that there were no significant benefits to ascribing different weightage to different costs, as all costs would eventually be taken into account for determining the fees. Furthermore, no advantage should be created for countries where wages

were high. Additionally, there were also risks related to forum shopping which existed in giving different weights to different items. *As such, the Working Group agreed to weigh all costs equally.*

43. *One participant suggested that a minimum number of days of effort should be included in Table D of Form 9. The Working Group agreed with this suggestion.*

44. *It was noted that the final score was now to be determined out of 100, rather than out of 1. The Working Group took note of this change.*

45. *It was noted that there was a typing error in Paragraph 174 (f) which needed to be addressed.*

46. *It was suggested and agreed that Paragraph 177 be merged with Paragraph 174.*

47. *A participant suggested that a clarification be added to Paragraph 182 of the RFP to indicate when the MAC Protocol would enter into force. This was agreed by the Working Group.*

48. *Subject to the aforementioned changes, the Working Group approved the draft RFP for submission to the MAC Preparatory Commission's Fourth Session.*

#### **Item No. 5 Consideration of the Evaluation Committee Guidance document**

49. *The Chair drew the Working Group's attention to MACPC/Registrar/W.G./6/Doc. 3, which contained guidance to be shared with the Evaluation Committee only in order to facilitate their work.*

50. *With regard to Paragraph 1, it was agreed that additional information should be provided on the purpose of the document.*

51. *With regard to Section II of this document, it was agreed that additional details should be added clarifying that the members of the Evaluation Committee would not be remunerated by the Preparatory Commission nor UNIDROIT. Additionally, some clarification should also be inserted regarding the process through which the Preparatory Commission would make the decision on the Members of the Evaluation Committee.*

52. *With regard to Section III, it was agreed that the possibility that the Supervisory Authority might not be appointed by September 2022 should be recognised and made more clear.*

53. *With regard to Section IV of this document, it was agreed that cross references to the relevant paragraphs of the RFP should be inserted.*

54. *It was noted that the items agreed during the discussion of the RFP, particularly with regard to eligibility should be added to the document, as well as scoring methodologies for the technical proposal.*

55. *It was agreed that a reference to Part II and Annexe 3 of the RFP should be made in Paragraph 15.*

56. *It was noted that where paragraphs are taken directly from the RFP, such clarification should be made in the document accordingly.*

57. *One participant noted that it should be made clear that the Financial Evaluation forms will not be opened by the Evaluation Committee until a bidder moved onto that stage. It was agreed that this would be clarified in Paragraph 27.*

58. *It was agreed that Paragraph 33 should be expanded and additional guidance should be provided with regard to the meaning of 'comprehensive report of the Committee's work'. This would include indicating the specific scores of all the bidders. It should also be made clear that the final ranking will need to be confirmed by the Preparatory Commission.*

59. *It was agreed that some brief guidance should be added to the document on the capacity of the Preparatory Commission to replace a member of the Evaluation Committee who declares a conflict of interest at a later point in time.*

60. *One participant noted that in order for the Evaluation Committee Members to be able to adequately declare no conflicts of interests, the Secretariat would need to make available a list of bidders to the appointees. This should be reflected in the document.*

61. *Subject to the aforementioned changes, the Working Group approved the Evaluation Committee Guidance Document for submission to the MAC Preparatory Commission's Fourth Session.*

**Item No. 6 Timetable and planning of further work**

62. *It was noted that the draft RFP and the Evaluation Committee Guidance Document would be presented to the MAC Preparatory Commission at its fourth session on 17-18 January 2022 for approval. The next meetings of the Registrar Working Group would be determined following this session.*

**Item No. 6 Any other business**

63. *No other business was raised under this item.*

**Item No. 7 Closing of the Session**

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

65. *The Chair closed the sixth 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
2. Adoption of the order of business of the session
3. Adoption of the Report of the 5<sup>th</sup> Session
4. Consideration of issues associated with the draft Request for Proposals (RFP)
5. Consideration of the Evaluation Committee Guidance document
6. Timetable and planning of further work
7. Any other business
8. Closing of the session