

OPERATIONAL INSTRUCTION REF. OI.LG.2018.06

CONTRACTS AND PROPERTY COMMITTEES SUBMISSIONS AND REVIEWS

1. Authority

- 1.1. This Operational Instruction (OI) is promulgated by the General Counsel, Legal Group under Organizational Directive Ref. OD.LG.2018.01 – Legal, on the basis of a delegation of authority from the Executive Director.

2. Purpose

- 2.1. The purpose of this OI is to provide instructions regarding submissions to and reviews by UNOPS Contracts and Property Committees (CPCs).

3. Effective Date

- 3.1. This OI shall become effective **immediately**.

4. Consequential Changes

- 4.1. This OI shall abolish and supersede the provisions of Organizational Directive 16 (rev.1) – Procurement Framework of 19 April 2010, regarding the CPCs.

[signature redacted]

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1. Introduction

- 1.1. Under UNOPS Financial Regulations and Rules (FRR), the Executive Director has created a Headquarters Contracts and Property Committee (HQPC), and the Deputy Executive Director – acting as Executive Chief Procurement Officer (ECPO), has created Local Contracts and Property Committees (LCPCs) (together, CPCs).
- 1.2. OILG.2018.05: Contracts and Property Committees - Members and Duties, provides instructions regarding CPCs' members and duties. The purpose of this OI is to provide instructions regarding submissions to and reviews by the CPCs.

2. MANDATE and scope of review

- 2.1. CPCs are advisory bodies and do not make decisions.
- 2.2. HQPC shall render written advice to Executive Director and/or the Deputy Executive Director - acting as Executive Chief Procurement Officer (ECPO), as applicable, in respect of:
 - a) the following procurement activities:
 - i. proposed contracts, including those on the basis of pre-selection by the funding source, involving awards to a supplier in respect of a single request for a specific project or purpose, or a series of requests relating to the same specific project or purpose, which in aggregate have a value greater than or equal to the thresholds indicated in section 3 below in the last 12 months;
 - ii. proposed contracts and contract amendments that result from an exception to the use of formal methods of solicitation, and the value is greater than or equal to the thresholds indicated in section 3 below. In the case of amendments, only the value of the additional goods or services or works shall be taken into account to determine the thresholds indicated in section 3;
 - iii. proposed contracts of any value which could reasonably lead to a series of related contracts, the total of which may be greater than or equal to the thresholds indicated in section 3 below, including other indefinite quantity contracts;
 - iv. amendments and exceptions shall be aggregated separately to formal awards, in accordance with amounts pursuant to section 3 below;
 - v. if in the last 12 months an award was made by the ECPO after receiving written advice from HQPC and a contract was issued to the supplier for the same project or purpose, the amount so approved by the ECPO for contract award and all preceding awards must be excluded for the purpose of calculating the aggregate amount; i.e. the most recent award made by ECPO after receipt of written advice from HQPC will “reset the aggregate count to zero”;
 - vi. for multiple requested awards against the same solicitation exercise that require Committee Review, the highest value recommended contractor will determine the review body for those awards. The appropriate CPC, determined by the highest value contractor, will then review the award for each recommended contractor regardless of individual thresholds.
 - vii. Long Term Agreements (LTAs) regardless of their value, shall follow a competitive process; however the following exception grounds may be used when justified:

1. FRR 118.05 (a)(ii): There is no competitive market place for the requirement, etc.
 2. FRR 118.05 (a)(iii): There has been a previous determination with regard to an identical procurement activity, or there is a need to standardize the requirement following a recent procurement activity.
 3. FRR 118.05(a)(iv): The proposed contract is the result of cooperation with other organisations of the United Nations System, pursuant to Financial Rule 118.02 (c) or governments and organizations other than those of the United Nations system pursuant to Rule 118.02 (d).
 4. Use of any other exception ground as stated in FRR 118.02 shall require the no objection of the General Counsel;
- viii. any request to increase by more than 10% the prices charged under any LTA awarded by ECPO which provides for annual price adjustment;
- ix. review of post-facto and retroactive situations with total value greater than or equal to the thresholds indicated in section 3 below, in order to provide advice to the ECPO on ratification of actions not conforming to the established review and award processes; and
- x. such other matters relating to procurement, including policy issues, as may be referred to HQCPC by the Executive Director or ECPO;
- b) the engagement of Individual Contract Agreements (hereinafter ICAs), up to the limits stated in associated policies and subject to any special directions given by ECPO when approving the use of Emergency Procurement Procedures for ICA recruitment under a particular project;
- c) the disposal, loss, damage or other discrepancy in relation to property, plant or equipment in the Region, in accordance with the limits set out in associated policies on the Management of Property, Plant and Equipment or such other policies as may be issued by ECPO in this respect from time to time; and
- d) the monitoring of the performance of LCPCs as per OI.LG.2018.05 - Members and Duties.
- 2.3. When HQCPC renders its written advice to the Executive Director, it shall do it through the ECPO.
- 2.4. HQCPC review is not required (irrespective of the contract amount) when the following conditions apply:
- a. the funding source is from the United Nations system or an International Financial Institution; and
 - b. the project agreement specifies the official(s) authorised to notify UNOPS of the funding source's no-objection to contract issuance; and
 - c. the funding source's authorised representative has already reviewed the evaluation process conducted by UNOPS and approved the award in accordance with the funding source's internal procedures; and
 - d. the funding source's authorised representative has provided, in writing, his/her no objection to UNOPS for the issuance of contract and such is in accordance with the provisions of the project agreement; and
 - e. Director of Procurement Group has provided prior clearance at Project Engagement Stage; and

- f. when the funding source is an International Financial Institution, the waiving of CPC review is subject to a letter from the client stating that in accordance with the client’s procedures, the International Financial Institution’s no objection is enough in its own right to award a contract and a separate review by UNOPS’ CPC would be redundant and is not needed. In such situations, the contract may only be signed by an individual having the required level of delegation of authority to be specified by the Director, Procurement Group.
- 2.5. In accordance with the ECPO decision in respect of each LCPC and the terms of the delegation of authority (DOA) issued by ECPO to each Regional Director (RD), each LCPC shall render written advice to the relevant RD in respect of all or any of the following;
- a. procurement activities within the Region, up to the limits established by ECPO and subject to any special directions given by ECPO when approving the use of Emergency Procurement Procedures for a particular project;
 - b. the engagement of ICAs in the Region, up to the limits stated in associated policies and subject to any special directions given by ECPO when approving the use of Emergency Procurement Procedures for ICA recruitment under a particular project;
 - c. the disposal, loss, damage or other discrepancy in relation to property, plant or equipment in the Region, in accordance with the limits set out in the policy on the Management of Property, Plant and Equipment or such other policies as may be issued by ECPO in this respect from time to time; and
 - d. submissions in respect of another Region in the circumstances described in OILG.2018.05 - Members and Duties.
- 2.6. With the agreement of all relevant RDs and ECPO, an LCPC may be established to service more than one Region.
- 2.7. Each LCPC provides written advice to the RD of the Region to which the SU is attached.

3. PROCUREMENT MONETARY THRESHOLDS

3.1. For HQCPC review including headquarters groups:

Accumulated values of Contracts within 12 calendar months under the same project or for the same purpose further to the use of formal methods of solicitation, and contracts further to pre-selection.	Contracts and amendments further to exceptions to the use of formal methods of solicitation (other than pre-selection) within 12 calendar months under the same project or for the same purpose. Post facto and retroactive cases have no time limit.
USD 250,000 or above in the case of HQ Groups. For other Business Units (BUs) with a DOA 3 it is USD 500,000 or above and for DOA 4 it is USD 1,000,000 or above.	USD 50,000 or above in the case of HQ Groups. For other BUs USD 250,000 or above.
Note: For the award of LTAs, please refer to section 2.2 (a) (vii) and (viii) above.	

3.2. For LCPC review, BUs, other than HQ Groups, shall submit to their respective Regional LCPC (noting appropriate DOA considerations):

Accumulated values of Contracts within 12 calendar months under the same project or for the same purpose further to the use of formal methods of solicitation, and contracts further to pre-selection.	Contracts and amendments further to exceptions to the use of formal methods of solicitation (other than pre-selection) within 12 calendar months under the same project or for the same purpose. Post facto and retroactive cases have no time limit.
USD 250,000 or above up to USD 500,000 (DOA 3), or up to USD 1,000,000 (DOA 4).	USD 50,000 up to USD 250,000

4. LCPC REVIEWING SUBMISSIONS FROM ANOTHER REGION

- 4.1. Unless otherwise directed by the relevant Secretariat, a Submitting Officer (SO) making a submission falling within the threshold for LCPC review shall make that submission to the LCPC established for the Region to which the Submitting Unit (SU) belongs.
- 4.2. Only in the event of the non-availability of the LCPC to which a submission would normally be made, for example due to conflict of interest or absence of an LCPC mandate, the submission may be reviewed by another LCPC, subject to the consent of the Chair of the other LCPC.
- 4.3. Before accepting any such submission the RD of an LCPC may decide to levy a fee for the review of submissions from another Region, which may be the subject of an on-going arrangement (outsourcing).
- 4.4. Where an LCPC reviews a submission coming from another Region, it shall render its written advice to the RD of the Region to which the SU belongs.
- 4.5. Unless otherwise specified by ECPO, the authority of an LCPC when reviewing a submission from another Region shall be:
 - a. the same as in respect of submissions from SUs from within its own Region; or, if lower
 - b. up to the authority of the RD of the Region to which the SU belongs.

5. MAKING A SUBMISSION: SUBMITTING OFFICER, PRE CLEARANCE OFFICER, CLEARING AUTHORITY

- 5.1. Submissions to each CPC shall be made via the online CPC system using the appropriate form and including the required attachments. Great care must be taken in completing the online submission form, ensuring that submissions are self-contained and do not contain contradictory information. A submission which is incomplete may be returned by the CPC prior to review.
- 5.2. Any UNOPS personnel may be a SO. There are no restrictions on who can make a submission. The SO is fully accountable for his/her submission. The SO may designate in the submission another colleague to act as Contact Person and to whom the CPC shall address queries in respect of the submission. By such a designation, the SO authorises the Contact Person to speak on his/her behalf. The SO should ensure that any Contact Person is knowledgeable about the submission and its background. The SO shall use his/her best efforts to be available (or shall ensure that the Contact Person, if one is nominated, is so available) to respond to any queries which the CPC may have in respect of the submission during the CPC meeting itself and, if necessary, in the period following the meeting.

- 5.3. Submissions will not be accepted for review unless they have been pre-cleared by a UNOPS personnel:
- a. nominated by the Procurement Group Director in the case of procurement submissions;
 - b. nominated by the People and Change Group Director in the case of ICA submissions;
 - c. nominated by the RD to which the SU is attached in the case of asset disposal, write-off and corporate dwelling facility submissions.
- 5.4. The purpose of pre-clearance is to ensure that the submission is clear, complete, does not contain any obvious errors or any contradictory information. It is technical assistance provided by a pre-clearance officer to the SO. It is encouraged that a pre-clearance officer provides comments to the Clearing Authority (CA) in terms of any potential concerns relating to the process. It should facilitate the review by the CPCs and lead to the CPC having to ask less questions. It is strongly recommended that new pre-clearance officers observe at least one HQCPC meeting before carrying out the pre-clearance of a CPC submission for the first time.
- 5.5. The pre-clearance officer should work in collaboration with the SO and should not, without the agreement of the CA, refuse pre-clearance as this would pre-empt CPC review and the opportunity for the RD or ECPO to make a decision in respect of a matter submitted for his/her approval.
- Submissions will not be accepted for review by the CPC unless they have been cleared by a valid CA. The CA for submissions to HQCPC is the RD (or his/her designate) of the Region to which the SU is attached or, in the case of a submission from an HQ unit, the relevant HQ Director (or his/her designate). The CA for submissions to an LCPC is the head of the SU.
- 5.6. Notwithstanding the pre-clearance and clearance of each submission, the SO is fully accountable for his/her submission.
- 5.7. Permissible multiple roles are as follows:
- a. SO and pre-clearance officer may be the same in respect of the same submission.
 - b. Pre-clearance officer and CA may be the same in respect of the same submission.
 - c. It is not permissible to be an SO and CA in respect of the same submission.

6. MEETING SCHEDULE AND WITHDRAWAL OF SUBMISSIONS

- 6.1. Each CPC shall hold two regular meetings per week on fixed days, save at year end and other exceptional periods when scarce resources may be reserved for urgent cases. The meeting schedule for each CPC shall be advertised on its intranet page.
- 6.2. The Secretariat will notify each SO via the online CPC system of the acceptance of his/her submission for review.
- 6.3. The Secretariat may request additional information prior to accepting a submission for review at a meeting if the Secretariat spots that a required attachment (such as an evaluation report) is missing.
- 6.4. A SO may withdraw his/her submission at any time up to the start of the meeting at which the submission is scheduled for review.

- 6.5. Once the meeting has taken place, withdrawal is only permitted where the Secretariat determines that the submission does not require CPC review or if the goods or services or recruitment are no longer needed or in other exceptional circumstances. In particular, the SO may not withdraw the submission because he/she anticipates, in the light of exchanges with the CPC after review of his/her case, that the case will be rejected (tactical withdrawal). This is because tactical withdrawals pre-empt the making of a decision by the RD or ECPO and can also distort the CPC statistics.

7. POST FACTO AND RETROACTIVE REVIEW

- 7.1. When reviewing a submission requesting post facto or retroactive ratification, the CPC shall consider the reasons advanced by the SO for the occurrence of the post facto or retroactive situation.
- 7.2. Notwithstanding clause 7.1, in determining whether to make a positive recommendation to the RD or ECPO, the CPC shall disregard the post facto or retroactive nature of the request and shall assess the request against the same standards and policies as if it had been made in good time. Thus:
- a. the CPC shall not make a positive recommendation where policies were not followed (for example an exception ground is not substantiated) simply because it is unsure of how the SO will manage the relationship with the supplier after a rejection (in other words, no “rubber-stamping”); and
 - b. the CPC shall not recommend rejection simply because it concludes that the SO was particularly negligent in having allowed the post facto or retroactive situation to arise.
- 7.3. Where a post facto or retroactive request reviewed by a CPC has resulted in rejection by the RD or ECPO and the CPC is approached by the SU for advice regarding the next steps, the CPC shall refer the SU to the Legal Group.

8. REVIEW OF PROCUREMENT SUBMISSIONS

- 8.1. In respect of the review of a submission pertaining to procurement activities, pursuant to FRRs, the purpose of the CPC review is to ensure that:
- a. appropriate authority has been obtained for the commitment of funds;
 - b. the best interests of UNOPS and its clients are protected;
 - c. procurement activities are carried out in conformity with the Financial Regulations and Rules, relevant policies; and
 - d. procurement activities are in accordance with generally recognised leading business practices.
- 8.2. The CPC is not responsible for reviewing or providing advice on the adequacy or necessity of the requirement being met under the proposed procurement action.
- 8.3. The CPC shall systematically review the solicitation documents relating to those submissions where the need to corroborate the contents of the solicitation document is identified, as well as to confirm that the evaluation of the bids received was conducted in accordance with ITB/RFP provisions.
- 8.4. CPCs shall also on occasion request further information regarding background checks in order to verify that these were effectively conducted. In each instance where the

information provided on a submission form suggests that full background checks were not carried out, the CPC should query the reasons for not doing so. In the event that the CPC is not satisfied with the justification provided then, in the case of a positive recommendation, the award will be subject to a waiver obtained further to the provisions of the OI on Vendor Sanctions.

- 8.5. In the event that award is proposed in favour of a contractor appearing on one of the suspended vendor lists indicated by the Procurement Group Director from time to time, CPC shall not make a positive recommendation without first seeking guidance from the Procurement Group Director or making its recommendation subject to the no-objection of the Procurement Group Director.
- 8.6. Where HQCPC is recommending that the ECPO reject a submission made on the basis of the use of a formal method of solicitation, it will advise ECPO as to what his/her determination should be under the FRRs (i.e. whether UNOPS should undertake a new solicitation, or negotiate a contract directly pursuant to the FRRs, or terminate or suspend the procurement activity).

9. REVIEW OF ICA SUBMISSIONS

- 9.1. In respect of the review of a submission pertaining to the engagement of an individual contractor (ICA), the purpose of the CPC review is to review the request for ICA award for compliance with applicable policies and procedures and to make recommendations to the relevant procurement authority to approve or reject the request for award. The scope of CPC review does not include reviewing reference checks.
- 9.2. The CPC is not responsible for reviewing or providing advice on the necessity of the position being filled under the proposed recruitment action.
- 9.3. When a CPC is reviewing a submission pertaining to the engagement of an ICA, one of the panel members shall be a Human Resources (HR) Member (if the CPC has any members designated as such). If the CPC has no such designated member or if an HR Member is not available, then, at the Chair's discretion, the presence of an HR colleague may be required to advise the panel.
- 9.4. The role of the HR Member or HR CPC advisor includes advising the CPC whether the proposed individual contractor, on the basis of the information presented in the submission, meets the vacancy announcement or terms of reference requirements and calculation of the fee. The HR CPC advisor will also be included on any email exchanges amongst the panel members after the meeting and shall provide advice as necessary.
- 9.5. If ECPO has approved the use of emergency recruitment procedures there is no requirement for a full committee review of any CPC submission made under such procedures. Instead, the Chair of the relevant CPC reviews and provides written advice to ECPO (in the case of HQCPC) or the RD (in the case of LCPC). Alternatively, and at the discretion of the Chair, either an ad hoc meeting of the relevant CPC can be convened or the Chair can review the submission with the advice of an advisor from PCG.

10. REVIEW OF ASSET DISPOSAL SUBMISSIONS

- 10.1. In respect of the review of a submission pertaining to loss, damage or other discrepancy in relation to UNOPS property, plant and equipment, the CPC shall:

- a. follow the general procedures set out in these TOR together with the specific procedures set out in the relevant policy;
- b. ask the SU if, in its view, there is a possibility that the loss, theft or damage was caused or contributed to by negligence of UNOPS personnel; and
- c. seek to ascertain whether the Legal Group has been asked to consider whether there was any negligence on the part of any UNOPS personnel and, if so, to obtain a copy of the Legal Group findings.

11. REVIEW OF WRITE-OFF AND CORPORATE DWELLING FACILITY SUBMISSIONS

- 11.1. When HQCPC is reviewing a submission requesting the establishment of a corporate dwelling facility, one of the panel members shall be a Finance Member. If no Finance Member is available, then, at the HQCPC Chair's discretion, the presence of a Finance Advisor may be required.
- 11.2. When HQCPC is reviewing a submission requesting write-off, one of the panel members shall be a Finance Member. If no Finance Member is available, then, at the HQCPC Chair's discretion, the presence of a Finance Advisor may be required.

12. RECOMMENDATIONS, DECISIONS AND APPEALS

- 12.1. The ECPO is not obliged to follow any recommendation of HQCPC, whether it be to approve or reject a request. For auditing purposes, ECPO is requested to record in writing his reasons for departing from any HQCPC recommendation.
- 12.2. If the LCPC recommends that the RD approve a request and the RD disagrees with the LCPC's advice, the RD may reject the request. For auditing purposes, the RD is requested to record in writing his reasons for departing from any LCPC recommendation to approve.
- 12.3. The RD shall not make an award contrary to the recommendation of an LCPC. In the event a RD disagrees with the LCPC's recommendation to reject, he/she may authorise the SO to make a submission to HQCPC to appeal the recommendation of the LCPC. HQCPC shall then make its recommendation to ECPO.
- 12.4. If a SO wishes to appeal a decision by ECPO made further to an HQCPC recommendation, HQCPC will review such appeal only if the SO can show that he/she has additional substantive information that was not made available to the original panel. The HQCPC Chair's determination as to whether the SO has shown the existence of such information shall be final. Nothing in this clause shall be interpreted as restricting the right of ECPO to revise his own previous decision without further HQCPC review.
- 12.5. If a SO wishes to appeal a recommendation by the LCPC to the RD to reject, LCPC will review such appeal only if the SO can show that he/she has additional substantive information that was not made available to the original panel. The LCPC Chair's determination as to whether the SO has shown the existence of such information shall be final. Nothing in this clause shall be interpreted as restricting the right of the RD to revise his/her own previous decision without further LCPC review in the case where the LCPC had recommended award but the RD decided to reject.
- 12.6. If a SU is unhappy with a RD's decision taken in respect of a submission reviewed by the LCPC, there is no right to appeal to HQCPC. The decision made by the RD is valid.

In view of HQCPC's role in monitoring the LCPCs, the SU may share its concerns with the HQCPC Chair to be considered regarding the performance of the LCPC. However, it is stressed that HQCPC has no authority to recommend that ECPO overturn a decision by the RD.

- 12.7. The CPCs do not have authority to declare that a decision or determination made by a Procurement Authority ("PA") within the terms of that PA's DOA is invalid.
- 12.8. If in the course of its review of a submission, a CPC encounters a previous determination by a PA which appears to be misguided (such as made on the basis of a formal method of solicitation where there were manifest flaws in the formal process), the PA's award nonetheless remains valid. In such a case, the CPC should highlight in its minutes the flaws and bring this to the attention of the PA.
- 12.9. This paragraph shall not prevent a CPC from declaring invalid a previous determination by a PA which was outside the PA's DOA (for example a purported award made without CPC review where CPC review was required).

13. OTHER DUTIES OF HQCPC

- 13.1. HQCPC shall prepare statistics, analyse trends and provide analysis to ECPO.
- 13.2. HQCPC shall proactively address issues identified with during review and coordinate with respective practices in order to contribute to continuous improvement of policies and processes;
- 13.3. The HQCPC Chair and Secretariat shall also be responsible for each of the following:
 - a. uploading to the HQCPC intranet page generic authoritative interpretation of the procurement/ICA policies received from PG Director or PCG Director in response to a request from a CPC;
 - b. liaising with ICT regarding the continual improvement of the online submission system, including the use of such system to generate statistics regarding submissions reviewed by the CPCs (including without limitation submission volume and value, rejection rates, processing times, exception grounds);
 - c. liaising with ICT regarding the regular updating and renewal of the online submission forms, in order to reflect changes in policies, and feedback from stakeholders;
 - d. issuing general recommendations regarding trends seen in the review of submissions and common errors encountered;
 - e. the publication of statistics on its intranet page.
- 13.4. Issues relating to the thresholds/authority of HQCPC or an LCPC shall be determined by the HQCPC Chair, in consultation with the General Counsel if necessary.

14. MISCELLANEOUS

- 14.1. Nothing in this OI shall be interpreted as preventing HQCPC from acting as the contracts committee for another UN agency, if so authorised by ECPO. In such a case HQCPC advice shall be provided to the relevant procurement authority in that agency.