Operational Instruction Ref. OI.RCG.2024.02 Contracts and Property Committee Submissions and Reviews

Authority:

This Operational Instruction (OI) is promulgated by the Director a.i. of the Risk and Compliance Group (RCG) pursuant to the UNOPS Financial Regulations and Rules, on the basis of a delegation of authority from the Executive Director.

Purpose:

The purpose of this OI is to provide instructions regarding submissions and reviews by UNOPS Contracts and Property Committee (CPC).

Effective Date:

This OI shall become effective on 20 September, 2024.

Promulgation Date:

16 Sep 2024

Consequential changes:

This revised OI shall abolish and supersede OI.RCG.2024.01 of 8 March 2024. It implements the following changes:

- Revision in the list of approval authorities
- Revision in the thresholds for submissions to CPC
- Revision in the calculation of the cumulative value of contracts
- Abolishment of the pre-clearance stage for procurement submissions

[signature redacted]

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1. Introduction

1.1 Pursuant to UNOPS Financial Rules[1], the Executive Director has established a Contracts and Property Committee (CPC).

1.2 The purpose of this OI is to provide instructions regarding submissions to and reviews by CPC.

2. Mandate

2.1 CPC is an advisory body that provides advice and recommendations to the relevant UNOPS official that has been delegated the authority to make decisions regarding the matters listed in paragraph 2.3 below. After considering CPC's recommendations, the decision-maker decides whether or not to approve a submission.

2.2 The purpose of CPC reviews is to confirm that the submission fully complies with the applicable UNOPS regulations, rules and procedures.

2.3 CPC renders written advice to the Executive Director, the Deputy Executive Director (Management and Policy), the Executive Chief Procurement Officer (ECPO), the Regional Directors (RD), Procurement DOA holders, the Director of People and Culture Group (PCG), and HR DoA holders as applicable[2], in respect of:

a. Subject to section 3 below, the following procurement activities:

i. Proposed contracts (and their subsequent amendments), further to the use of formal or informal methods of solicitation (competitive process), including those proposed for award on the basis of pre-selection by the funding source, involving awards to a single supplier in respect of a single request, or a series of requests issued by a same business unit, that in aggregate have a value greater than or equal to the thresholds indicated in section 4 below in the last 12 months;

ii. Proposed contracts (and their subsequent amendments) resulting from the direct contracting of a source of supply as per FRR 118.05 a) exceptions (ii) to (x) (excluding contracts further to pre-selection), that have a value greater than or equal to the thresholds indicated in section 4 below, issued by a same business unit;

iii. Proposed contracts that could reasonably lead to a series of related contracts (for example leases and indefinite quantity contracts) totaling a value greater than or equal to the thresholds indicated in section 4 below;

iv. Long Term Agreements (LTAs) regardless of their value;

v. Any request to increase by more than 10%, the prices charged under any LTA;

vi. Post facto and retroactive cases with total value greater than or equal to the thresholds indicated in section 4 below, in order to provide advice to the ECPO on ratification of actions not conforming to the established review and award processes; and

vii. Such other matters relating to procurement, as may be referred to CPC by the Executive Director, the Deputy Executive Director (Management and Policy), the ECPO or the PCG Director;

b. The engagement of Individual Contractor Agreements (hereinafter ICAs), up to the levels (and value) 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 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;

d. The establishment of corporate dwelling facilities; and

e. Write-Offs.

2.4 When determining whether the thresholds referred to in paragraph 4.1 below have been reached:

a. Contracts and amendments for the same supplier that have been previously reviewed and approved following CPC reviews shall not be included in determining cumulative amounts unless the cumulative value exceeds either the threshold of the local Procurement Authority (PA) and/or RD delegation of procurement authority. In that case, a new submission to CPC shall be required. An award by ECPO always resets the counters back to zero in terms of cumulative contracts value calculation.

b. Contracts and amendments awarded (and to be awarded) on the basis of direct contracting of a source of supply as per FRR 118.05 a) exceptions (ii) to (x) (excluding contracts further to pre-selection) shall be counted separately from contracts awarded (and to be awarded) on the basis of formal or informal methods of solicitation (competitive process) including pre-selection.

c. For multiple requested awards against the same solicitation exercise that require CPC review, the highest value recommended contractor will determine which unique PA shall review the requested awards.

3. Exceptions

3.1 Notwithstanding sub-paragraph 2.3(a) above, CPC review is not required (irrespective of the contract amount) when all of the following conditions are met:

a. The funding source is an International Financial Institution (IFI);

b. The project agreement specifies that a designated representative(s) of the IFI is authorised to issue a letter to UNOPS stating that:

i. the IFI's designated representative(s) has reviewed the evaluation process conducted by UNOPS and approved the award of the proposed contract in accordance with the IFI's regulations and rules;
ii. under the IFI's regulations and rules, the approval is enough in its own right to award a contract and a separate review by the UNOPS Contracts and Property Committee would be redundant and is not needed; and
iii. UNOPS is authorised to issue the contract;

c. UNOPS has received such a letter from the designated representative(s) of the IFI; and
d. The Director of Procurement Group has, at the Project Engagement Stage, provided prior clearance for the above arrangement.

Please note that in this situation, the contract may only be signed by an individual having delegated procurement authority of the level specified by the Director of Procurement Group.

4. Thresholds for Submissions

4.1 For Contracts, Amendments and LTA

Accumulated values of Contracts and their subsequent amendments within 12 calendar months under the same business unit further to the use of formal or informal methods of solicitation (competitive process - ie RFQ, ITB, RFP), and contracts further to pre-selection.	Accumulated values of Contracts and their subsequent amendments within 12 calendar months under the same business unit further to the use of direct contracting of a source of supply as per FRR 118.05 a) exceptions (ii) to (x) (excluding contracts further to pre-selection) **Post facto and Retroactive** Post facto, retroactive and amendments cases have no time limit.
USD 250,000 or above the business unit DOA	USD 100,000 or above.

For award of LTA, please refer to paragraphs 2.3 (a) (iv) and (v).

4.2 For CPC ICA hiring reviews, refer to the **New PQMS process 7.3.32**.

4.3 For Assets disposal
For CPC assets disposal reviews, refer to **OI.FG.2018.02 Fixed and Intangible Asset Management** and **PQMS Managing disposal**.

For CPC Write offs reviews, refer to **OI.FG.2018.08 Establishment and Approval of Write-Offs and Provisions for Write-Offs**.

5. Making a Submission: Submitting Officer, Pre-clearance Officer, Clearing Authority

5.1 Submissions to CPC shall be made via the online CPC system using the appropriate form and including the required attachments. CPC shall maintain an active list of minimum documents required for each type of submission.

5.2 Prior to accepting a submission for review, CPC may require missing key documents/Information (such as a valid Defect Notification Period, Design Review Certificates, approved exceptions, etc.). CPC will also assess whether sufficient funds are available and the project duration is sufficient to cover the scope of the submission. In instances where missing documents/information are not promptly provided, the CPC chair may postpone the review of a submission until the next scheduled committee meeting. A submission that is incomplete may be returned to the Submitting Officer by the CPC prior to review.

5.3 Any UNOPS personnel may make a CPC submission. The person making a CPC submission is known as the Submitting Officer (SO), and the unit that the SO is making the submission for is known as the Submitting Unit (SU). The SO may designate in the submission another colleague to act as Contact Person and to whom the CPC will address queries in respect of the submission. By such a designation, the SO authorizes the Contact Person to speak on his/her behalf. The SO shall 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. Notwithstanding the clearance (described below) of each submission, the SO is fully accountable for his/her submission.

5.4 Each submission needs to be cleared in the CPC online system by the relevant Clearing Authority (CA) before the submission can be reviewed by CPC. The purpose of clearance is to ensure that the CA is aware of the procurement process and approves its purpose.

a. Where the SU is an HQ unit: the CA is the Director of that HQ unit (or his/her designate).

b. Where the SU is part of a region:

i. Where the Procurement Authority who will decide whether to approve or reject the submission is the Executive Director, the Deputy Executive Director (Management and Policy), the ECPO or the PCG Director: the CA is the Regional Director (or his/her designate).

ii. Where the Procurement Authority who will decide whether to approve or reject the submission is a Regional Director: the CA is the head of the SU (or his/her designate).

iii. Where the Procurement Authority who will decide whether to approve or reject the submission is a Country Director or Multi Country Office Director, the CA is the Head of Programme (HOP), or in the absence of the HOP, the project manager.

5.5 No SO or CA can be the Procurement Authority for a submission. No one may be both the SO and the CA for a submission.

5.6 If a Regional Director cannot serve as the Procurement Authority for a procurement submission because of a conflict of interest, the submission shall be referred to the ECPO for a decision.

5.7 If the ECPO cannot serve as the Procurement Authority for a procurement submission because of a conflict of interest, the submission shall be referred to shall be referred to the Deputy Executive Director (Management and Policy) for a decision.

5.8 If the PCG Director cannot serve as the Procurement Authority for an ICA submission because of a conflict of interest, the submission shall be referred to the Deputy Executive Director (Management and Policy) for a decision.

6. CPC Meetings, Direct Reviews and Withdrawal of Submissions

6.1 CPC submissions are usually reviewed by a panel consisting of several members (including a CPC chair).

6.2 Notwithstanding the above, a CPC chair is authorized to review the following types of submissions without involving other CPC members and forward his/her recommendations directly to the applicable procurement authority (ECPO/RD) for decision (such reviews are called “direct reviews”):

a. Cases conducted under Emergency Procurement Procedures (EPP) (procurement and ICA);

b. Requests for amendments (contracts, LTA, ICA);

c. Proposed contracts the value of which do not exceed USD 250,000;

d. Post ECPO requests (incl. appeal, contract descoping and any other correction to a recommended award);

e. Any other types of submissions as authorized by the ECPO

When carrying out a direct review, a CPC chair may request the assistance of a qualified advisor.

6.3 An SO may withdraw a submission only[3] when the goods or services or individual contractors that are the subject of the submission are no longer needed.

7. Key Elements Of Each Type Of Submission

7.1 Procurement Submissions

a. In respect of the review of a submission pertaining to procurement activities, the purpose of the CPC review is to:

i. Confirm that the proposed procurement action is in accordance with UNOPS Financial Regulations and Rules, procurement procedures and instructions;

ii. Confirm the proposed vendor's eligibility in accordance with UNOPS’ Policy on Vendor Eligibility, including criteria established by such bodies as the UN Security Council and the UN Procurement Division;

iii. Ensure that the procurement process was fair, competitive (where applicable), transparent, ethical, provides best value for money and meets UNOPS sustainability principles;

iv. Examine the financial and legal implications of the proposed action;

v. Assess potential risks from the procurement process and the proposed procurement action, including, but not limited to, environmental impacts and UNOPS reputational risks and how those risks will be mitigated;

vi. Validate that appropriate funds sufficient for project duration are available to cover a contract; and

vii. Ensure that all actions are in the best interests of UNOPS.

b. 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.

c. 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 the tender provisions.

d. CPC 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 shall 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.PG.2021.02: Vendor Sanctions.

e. In the event that an award is proposed in favor of a contractor listed on one of the suspended vendor lists, CPC shall not make a positive recommendation without the SO first seeking guidance from the Procurement Group Director or making its recommendation subject to the no-objection of the Procurement Group Director.

f. Where CPC is recommending that the ECPO/RD/DoA holders reject a submission made on the basis of the use of formal or informal methods of solicitation (competitive process), it will advise the ECPO/RD/DoA holder as to what his/her determination should be under the UNOPS Financial Regulations and Rules.

7.2 Post facto and retroactive submissions

a. 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.

b. Notwithstanding paragraph 7.2(a), when reviewing a submission, the CPC shall disregard the post facto or retroactive nature of the request and shall assess it against the same standards and policies as if it had been made in good time. Thus:

i. The CPC shall not make a positive assessment where policies were not followed (for example, an exception ground is not substantiated) simply because it is unsure of how the SU will manage the relationship with the supplier; and

ii. The CPC shall not make a negative assessment simply because it concludes that the SU was particularly negligent in having allowed the post facto or retroactive situation to arise.

c. When making a recommendation to the relevant UNOPS official, the CPC shall include advice on how to prevent the recurrence of such post facto or retroactive submissions.

7.3 ICA submissions

a. For ICA submissions, the purpose of the CPC review is to assess the ICA award request for compliance with applicable policies and procedures. The scope of CPC review does not include reviewing reference checks.

7.4 Asset disposal submissions

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

i. Follow the general procedures set out in this OI together with the specific procedures set out in the relevant policy (see para 3.3);

ii. 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

iii. Seek the Legal Group findings as to whether there was any negligence on the part of any UNOPS personnel.

7.5 Write-off and Corporate dwelling facility submissions

a. For write-off submissions, CPC reviews whether the requirements of OI.FG.2018.08 Establishment and Approval of Write-Offs and Provisions for Write-Offs have been fully complied with.

b. For corporate dwelling facility submissions, CPC reviews whether the requirements for establishing a corporate dwelling facility have been fully complied with.

8. Recommendations, Decisions and Appeals

8.1 With the exception of the ECPO and RD, no other procurement DOA holder shall be able to make an award contrary to the recommendation of CPC. However, for auditing purposes, the ECPO and RD must record in writing his/her reason(s) for departing from any CPC recommendation.

8.2 In the event a Procurement DOA holder (other than the ECPO and RD) disagrees with the CPC's recommendation to reject, he/she may authorize the SO to submit to the CPC chair to appeal the recommendation. CPC shall then make its recommendation to ECPO.

8.3 If a SO wishes to appeal a decision made further to a CPC recommendation, CPC 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 CPC Chair's determination as to whether the SO has shown the existence of such information shall be final.

8.4 A SU cannot appeal a decision made by a RD to the ECPO or by any DoA holder to a RD. CPC has no authority to recommend that ECPO and RD overturn a decision by another DoA holder.

8.5 CPC does not have authority to declare that a decision or determination made by a Procurement Authority within the terms of that PA's DOA is invalid. This paragraph shall not prevent 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).

8.6 If, in the course of its review of a submission, CPC encounters a previous determination by a Procurement Authority which appears to be misguided (such as an award made despite manifest flaws in a formal method of solicitation), the Procurement Authority's award nonetheless remains valid. In such instances, the CPC should highlight in its minutes the flaws and bring this to the attention of the Procurement Authority.

Footnotes

[1] UNOPS Financial Rule 117.01(c) provides "Contracts and property committees may be established by the Executive Director at headquarters and, as the case may be, in regional offices. The Executive Director shall specify the authority, purpose and powers of the committee(s), including the types and monetary values of proposed procurement activities, subject to review by the committee."

[2] CPC will review each submission and refer it to the appropriate decision-maker (as per the DOA Master table) for decision.

[3] An SO cannot withdraw a submission because he/she anticipates, in the light of exchanges with the CPC during review of his/her submission, that the award request will be rejected ("tactical withdrawal").

This is because such withdrawals pre-empt the making of a decision by the RD or ECPO and also distorts the data used to analyse UNOPS' performance.