

International Civil Aviation Organization



**THE SECOND MEETING OF THE COMMON
REGIONAL VIRTUAL PRIVATE NETWORK
TASK FORCE (CRV TF/2) OF APANPIRG**

Seoul, Republic of Korea, 12 May 2014



Agenda Item 2: Review draft documents DOA, CRV CONOP and RFI

**DRAFT MANAGEMENT SERVICE AGREEMENT (MSA)
FOR CRV PROCUREMENT**

(Presented by the Secretariat)

SUMMARY

This paper introduces the draft Management Service Agreement and associated States consultation process for review by the meeting.

1. Introduction

1.1 The APAC Common Regional VPN project aims at procuring network services for carrying aeronautical data between APAC States.

1.2 The APANPIRG CRV/TF-1 meeting held in Bangkok December 2013 decided to use the TCB services for selecting the single regional Communication Service Provider, for which TCB Services would be contracted through a Management Service Agreement.

2. Discussion

2.1 The MSA was drafted by ICAO Technical Cooperation Bureau in coordination with the ICAO APAC Regional Office. A draft is placed at Attachment A.

2.2 The MSA rules how TCB Services shall be provided to the Pioneer States during stage 1 and are subject to all necessary funds having been made available to ICAO.

2.3 Provisions inside this document are standard and proposed in accordance with ICAO's policies, practices, procedures and rules.

2.4 The list of Signatories has to be finalized at the earliest and not after the cut-off date, expected to be set to end 2014. Signatories are referred to as Participating States, and may be CIVIL AVIATION AUTHORITIES or RELATED ANSPs.

2.5 This document is expected to be an attachment to the Document of Agreement, both documents forming a consistent package enabling the procurement process (stage 1) and implementation (stage 2).

Formal consultation of States by ICAO

2.6 It is proposed that after CRV TF/2 and ACSICG/1 meetings it be sent out along with the DOA to all States and Administrations by State letter, formally asking for comments before 20 June 2014.

2.7 The consolidated version of draft DOA and MSA would then be submitted to the ICAO legal bureau, and the result of consultation be submitted to the CNS SG/18 meeting, if time allows, or to APANPIRG/25 else.

2.8 A final or close to final version could then be proposed to APANPIRG/25 for endorsement and DOA - MSA be signed during or after the meeting, and in any case before the cut-off date.

Deadline for funding

2.9 According to CRV planning rev06, TCB services are expected to start in June 2015. In order to give sufficient time to the hiring process and administrative arrangements to take place, the necessary funds as per MSA should be paid by States in April 2015 at the latest.

Cost allocation

2.10 Furthermore, it is proposed that the State letter requests States and Administrations to indicate their intention to participate in the procurement process. This would allow in turn to know with a good confidence in APANPIRG/25 the number of shares and hence the individual amount to be paid by States, which in turn would facilitate the commitment by States/Administrations.

3. Action by the Meeting

3.1 The meeting is invited to:

- a) note the information in this paper;
- b) review the draft Management Service Agreement in Attachment A;
- c) discuss the process of formal consultation by ICAO and;
- d) discuss any relevant matter as appropriate.



MANAGEMENT SERVICE AGREEMENT

BETWEEN
THE INTERNATIONAL CIVIL AVIATION ORGANIZATION
AND
THE CIVIL AVIATION AUTHORITIES AND/OR RELATED ANSPs OF THE PARTICIPATING
STATES

The CIVIL AVIATION AUTHORITIES AND/OR RELATED ANSPs, hereinafter referred to as the “*Participating States*”, represented by their respective authorities and

The International Civil Aviation Organization, hereinafter referred to as “ICAO”, represented by the Secretary General;

Hereinafter referred to as the “Parties”;

AGREE ON THE FOLLOWING:

1. GENERAL PROVISIONS

1.1 The Parties agree to enter into an agreement regarding management and other support services to be provided by or through ICAO, as specified in this Management Service Agreement (hereinafter referred to as “this Agreement”).

1.2 A detailed description of the Project(s) in relation to which specific Services are going to be provided will be set out in and designated as Annex(es) to this Agreement.

1.3 Services to be provided by or through ICAO under this Agreement in response to requests submitted by the *Participating States* shall be furnished under the direction of the Director, Technical Co-operation Bureau of ICAO on behalf of the *Participating States*. Nevertheless, the *Participating States* shall retain overall responsibility for the implementation of the Project(s).

1.4 The services shall be approved by ICAO and shall be specified in the Annex(es) to this Agreement (hereinafter referred to as “the Services”). Such Services shall be provided in accordance with ICAO’s policies, practices, procedures and rules and subject to all necessary funds having been made available to ICAO.

1.5 The specific responsibilities of the Parties with regard to the contribution for the implementation of Project(s) shall be outlined as inputs in the Annex(es) to this Agreement.

1.6 ICAO and the *Participating States* shall maintain close consultations respecting all aspects of the provision of the Services contemplated under this Agreement.

1.7 Any change to the duration of the Agreement and/or the scope of the Project(s) shall require negotiations between the Parties.

1.8 ICAO shall, on behalf of the *Participating States*, contract for inputs required for the provision of the Services specified in the Annex(es) to this Agreement. The recruitment of personnel and the signature of contracts shall be subject to prior approval by the *Participating States*.

1.9 In the performance of the duties the personnel or contractors shall collaborate closely with officials of the *Participating States* and shall help to execute the Project(s) in conformity with such general guidelines as the *Participating States* may establish in consultation with ICAO. The latter shall furnish to the above-mentioned personnel or contractors whatever guidance ICAO deems necessary for the successful implementation of the Services.

1.10 Unless agreed otherwise by the *Participating States* and ICAO in the Annex(es) to this Agreement, the *Participating States* shall be solely responsible, using funds other than those specified in the Annex(es), for the recruiting of local personnel and payment of their salaries and benefits, as well as for the administrative support (local secretarial and personal services, offices, locally produced equipment and supplies, transportation within the country, and communications) required for the execution of the Project(s) and the provision of the Services and related support.

1.11 The funds and activities under this Agreement shall be administered according to applicable ICAO regulations, rules, directives, procedures and practices.

1.12 The obligations assumed by the parties under this Agreement shall continue to exist after termination of this Agreement to the extent necessary to permit the orderly finalization of activities, the withdrawal of personnel, the distribution of funds and assets, the liquidation of accounts existing between the parties, and the settlement of contractual obligations. Additional funds, if necessary, to cover the above-mentioned expenditures shall be provided by the *Participating States*.

2. FINANCING PROVISIONS

2.1. The estimated total cost of the Services will be indicated in the Annex(es) to this Agreement. For management of the Services, ICAO shall be paid Administrative Charges as indicated in the Annex(es). The total cost (Services and Administrative Charges) of the Project(s) may not exceed the amount reflected in the Annex(es) without the prior agreement of the *Participating States*.

2.2. Upon signature of the Annex(es), the *Participating States* shall deposit the amounts detailed in the Annex(es) to cover the estimated cost of the Services and Administrative Charges.

2.3. All cash receipts to, and payments made by, ICAO under this Agreement shall be recorded in a separate account, opened, *inter alia*, in order to place on record the receipt and administration of payments. All payments made to ICAO shall be made in U.S. dollars and deposited in ICAO's bank account

as follows:

Pay to: //CC000305101
 Royal Bank of Canada
 Ste. Catherine and Stanley Branch
 1140 Ste. Catherine Street West
 Montreal, Quebec
 Canada H3B 1H7

For credit to: 05101 404 6 892
 Project: **Common Regional Virtual Private Network (CRV)**.
 ICAO Pool Account

Swift code: ROYCCAT2

2.4. ICAO shall not be obliged to begin or continue the provision of the Services until the payments mentioned in paragraphs 2.2 and 2.6 of this Agreement have been received and ICAO shall not be obliged to pay or commit any sums exceeding the funds deposited in the aforementioned account.

2.5. ICAO shall furnish the *Participating States* with unaudited financial statements concerning the Services covered in this Agreement, showing the status of the funds in U.S. dollars as at the end of March, June, September and December. After ICAO has concluded the provision of the Services, it shall submit to the *Participating States* a final financial statement. In the event that the *Participating States* request that a special audit/evaluation of its account or project under this Agreement be performed by the Internal or External Auditor of ICAO, the *Participating States* shall bear the cost of such audit.

2.6. If due to unforeseen circumstances the funds received under this Agreement should prove insufficient to cover the total cost of provision of the Services and Administrative Charges, ICAO shall inform the *Participating States* to that effect and additional funds, if required, shall be made available to ICAO before the continuation of the project.

2.7. Any balance of funds not disbursed and not committed at the conclusion of the Services shall be returned to the *Participating States* on request, or be retained in the account for future use as defined by the *Participating States*.

3. PROCUREMENT SERVICES PROVISIONS

3.1. ICAO shall acquire, at the request and on behalf of the *Participating States* and in conformity with this Agreement and ICAO's Procurement Code, the necessary equipment and supplies described in the Annex(es) to this Agreement or requested directly from the *Participating States* through an official communication to ICAO:

3.1.1. Following the (site) acceptance of the service by ICAO on behalf of the *Participating States*, title of ownership, and all associated risks of loss or damage, shall pass automatically from the supplier of the service to the *Participating States*.

3.1.2. The *Participating States* shall be responsible for the custom clearance process. Should the costs resulting from tariff duties, taxes or similar fees directly related to the release from customs of the equipment and supplies not be subject to exemption by the Government, the *Participating States* shall be responsible for defraying such costs using funds not proceeding from those specified in the Annexes.

3.1.3. The Administrative Charge fees will be phased according to the degree of advancement of the procurement process (20% at the issuance of the tender, additional 30% when the evaluation process has been completed and the balance upon signature of the purchase order/contract). Should an on-going Purchase Requisition approved by the *Participating States* be cancelled before the purchase is effected, ICAO shall be entitled to recover its costs based on the amount of work that has been completed in the implementation of the said Purchase Requisition. ICAO will invoice the corresponding amount to the *Participating States*.

3.1.4. An amendment to a Purchase Order/Contract shall not decrease the Administrative Charges associated with the issuance of the original Purchase Order/Contract.

4. DISPUTES RESOLUTION (SETTLEMENT OF DISPUTES)

4.1 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled, in the first instance, by direct negotiations between the parties. If unsuccessful, such dispute, controversy or claim shall be settled by arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, as in force at the time of arbitration. The place of arbitration shall be Montreal, Province of Quebec, Canada, conducted in the English language. Arbitration shall be conducted by one arbitrator. The arbitral award shall contain a statement of reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

5. ICAO PRIVILEGES AND IMMUNITIES

5.1 Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any immunity from suit or legal process or any privilege, exemption or other immunity enjoyed or which may be enjoyed by ICAO, its officers, staff, assets and funds either pursuant to the *Convention on the Privileges and Immunities of the Specialized Agencies, 1947* or other applicable conventions, agreements, laws or decrees.

6. CORRESPONDENCE

6.1 All correspondence relating to the implementation of this Agreement other than this signed Agreement or the amendments thereto, shall be addressed to:

ICAO:
Regional Director
Asia and Pacific Office
P.O. Box 11, Samyaek Ladprao
Bangkok 10901
Thailand

6.2 The *Participating States* shall keep ICAO duly informed of all measures which it adopts for the fulfilment of this Agreement or which may affect this Agreement.

7. ENTRY INTO FORCE, AMENDMENTS AND TERMINATION

7.1 This Agreement shall come into force on the date on which it has been signed by both parties. It shall continue to be in force until terminated under paragraphs 1.12, 7.2 and 7.3 below. Upon coming into force, it shall supersede existing Agreements concluded between the parties on the same subject matter.

7.2 This Agreement may be amended at any time by written agreement between the parties.

7.3 This Agreement may be terminated at any time, by either Party, giving to the other a written notification. This Agreement shall terminate sixty (60) calendar days after receipt of the notification.

Agreed on behalf of the International Civil Aviation Organization:

Signed _____
by:
Name: _____
Title: _____
Date: _____

Agreed on behalf of the *Participating States*:

Signed Australia
by: _____
Name: _____
Title: _____
Date: _____

Signed China
by: _____

Name: _____

Title: _____

Date: _____

Signed Fiji
by: _____

Name: _____

Title: _____

Date: _____

Signed France
by: _____

Name: _____

Title: _____

Date: _____

Signed Hong Kong China
by: _____

Name: _____

Title: _____

Date: _____

Signed **India**
by: _____
Name: _____
Title: _____
Date: _____

Signed **Japan**
by: _____
Name: _____
Title: _____
Date: _____

Signed **Malaysia**
by: _____
Name: _____
Title: _____
Date: _____

Signed **New Zealand**
by: _____
Name: _____
Title: _____
Date: _____

Signed Singapore
by: _____
Name: _____
Title: _____
Date: _____

Signed Thailand
by: _____
Name: _____
Title: _____
Date: _____

Signed United States of America (USA)
by: _____
Name: _____
Title: _____
Date: _____