International Civil Aviation Organization

WORKING PAPER

TECHNICAL ADVISORY GROUP ON MACHINE READABLE TRAVEL DOCUMENTS (TAG/MRTD)

TWENTIETH MEETING

Montréal, 7 to 9 September 2011

Agenda Item 3: Activities of the ICBWG
Agenda Item 3.6 Procurement of MRTD-related systems

ICBWG GUIDANCE ON PROCUREMENT OF MRTD-RELATED SYSTEMS

(Presented by the ICBWG)

1. **INTRODUCTION**

1.1   The purpose of this working paper is to outline the Implementation and Capacity Building Working Group's (ICBWG) intended approach for providing advice and guidance on the procurement of Machine Readable travel Document (MRTD)-related systems (e.g. passports and border control).

1.2   Participants at the ICAO Regional Seminar held in Mozambique in November 2010 showed significant interest in improving their knowledge and capability in the area of procurement. The ICAO Secretariat noted this interest and approached the ICBWG to investigate the development of guidance material.

2. **CURRENT DIRECTION**

2.1   At the Sixth Meeting of the ICBWG, the working group agreed to proceed with draft material for the TAG/MRTD to consider. The two drafts of this working paper at Appendix A and B are intended as a basic introduction to procurement processes.

2.2   Clear synergies have been identified with the ICAO Procurement Section, which operates within the Technical Cooperation Bureau (TCB). ICAO's procurement section is currently managing a large number of projects for the procurement of equipment and services that include radar systems, ADS-B, communications, runway lighting, aviation security equipment, feasibility studies and airport/infrastructure development. MRTD-related equipment and services are not currently covered by the Procurement Section.

2.3   States gain a number of benefits in using ICAO's procurement services; including: assured compliance with ICAO standards and recommended practices; economies of scale; turnkey project management with dedicated technical experts; legal support; and financial management.

2.4   The ICBWG proposes to work with ICAO's Procurement Section to develop an approach that leverages and aligns with their current services both practically and strategically. This collaborative approach will be of mutual benefit to both groups, and will ultimately provide an avenue for states to channel their MRTD procurement needs through ICAO.

2.5   The Procurement topic will be discussed at the upcoming ICAO Seventh MRTD Symposium. As the first step towards a strategic collaborative approach, ICBWG and ICAO's Procurement Section intend to work together to deliver presentations and workshops as part of the Symposium programme.

3.   **ACTION BY THE TAG/MRTD**

3.1   The TAG/MRTD is invited to:

   a)   note the draft procurement material developed by ICBWG to date; and

   b)   approve in principle the ICBWG's ongoing work with the ICAO Procurement Section to develop a collaborative approach to the provision of MRTD-related procurement guidance material and advice.

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APPENDIX A

PROCUREMENT TIP SHEET

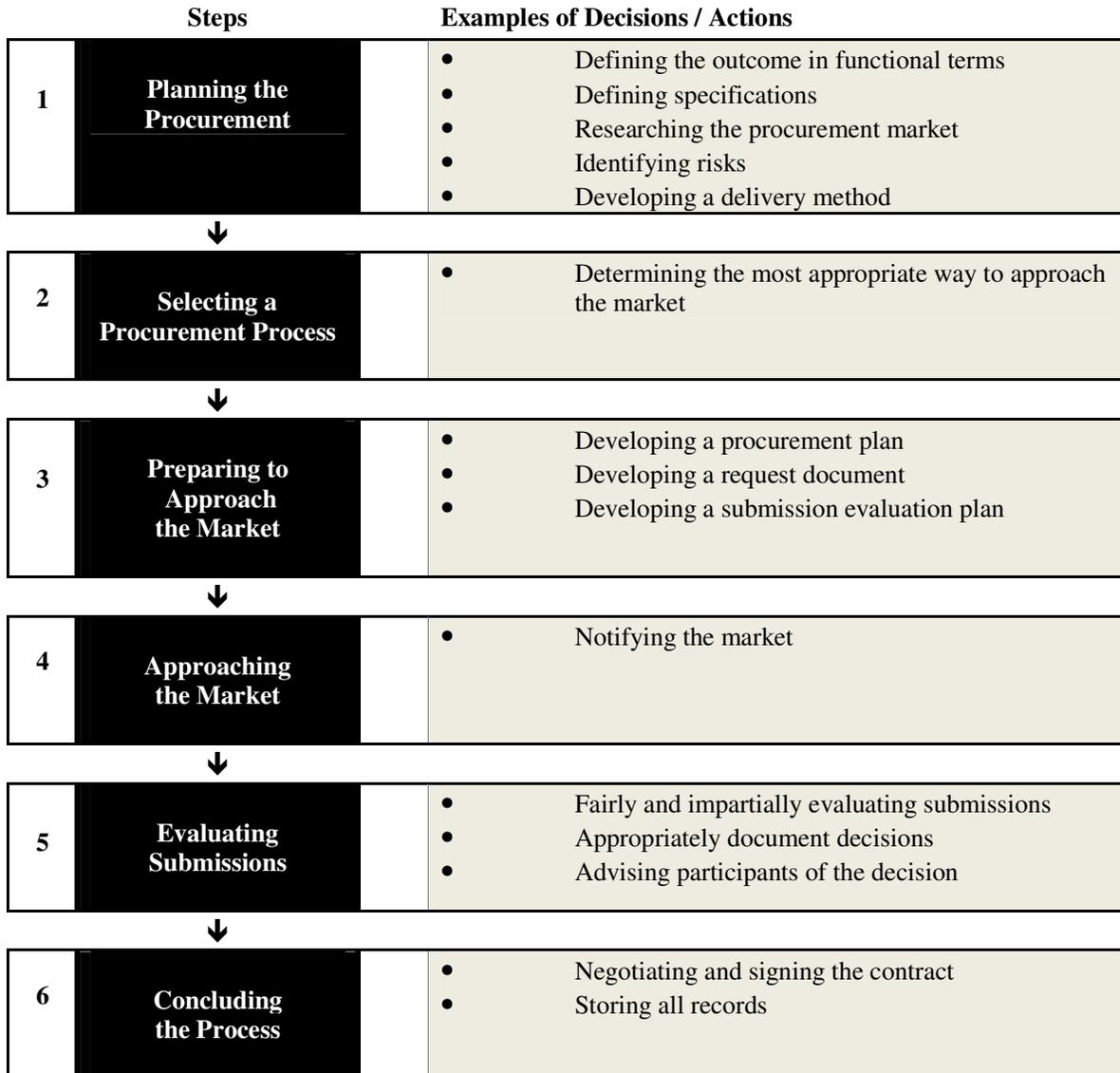| Possible Issue	Suggested Treatment
Risk Assessment • Risk assessment and risk mitigation strategies can sometimes be treated as an academic exercise. Failure to properly scope/cost risk likelihood and consequence, and draft tender and legal documents accordingly can increase the risk of project failure.	**Undertake a genuine risk assessment** • The inherent nature of risk cannot predict unexpected events; however, the benefit of gaining a strong understanding of likely risks (and associated costs) positions an Agency to draft tender requirements and legal documents accordingly. This provides protection of the Agency's interests, and attributes contractual liability to the appropriate party. Constructing a strong legal instrument/platform to support the requirements helps to engender project delivery success.
Price Model Considerations • The type price model (e.g. Time and Materials or Fixed Price) included in the tender document and resultant contract can have a significant impact on the way a contract performs during its duration, as well as affect total contract expenditure.	**Use most appropriate price model** • The most common pricing approaches can be split into two broad models – 'Time and Materials' or 'Fixed Price'. There are key differences between the two models. • Within a 'Fixed Price' model, there is greater ability to estimate in advance the total project cost; however, there is far greater risk of budget blow-out if the scope of the project/deliverables is not accurately scoped in the tender document and resultant contract. Failure to do so can result in frequent and costly change requests, incurring significant additional cost. • Using a time and materials model allows flexibility; however, costs can accrue quickly. • Prior to approaching the market, it is therefore vital to determine the price model which will best suit the goods/services being procured, and how the project will function once a contract is in place.
RFT Technical Considerations - Agencies procure in excess of requirements • Agencies should be mindful not to contract services or goods which exceed the actual need. Vendors may propose functionality, flexibility, variability or performance which exceeds the stated need. Excessive capability has an associated cost which vendors pass on to Agencies through the tendered/contract price.	**Understand and articulate actual need** • Having a thorough understanding of current and projected requirements is vital. Tender documents should include as much detail as possible in this regard, and include metrics to guard against paying for excess functionality, flexibility or performance which is excess to requirements. • In a passport/technical context – ensure requirement is scale-able both ways (that is, functionality and performance can be increased or decreased in scale, depending on point in time need).

Assessing Vendor submissions - Tender Compliance • Vendors may state they are 'Compliant' against Mandatory Requirements when they are not compliant.	**Undertake a thorough risk assessment of tenders, and the process.** • It can be difficult to assess the veracity of Vendors' claim regarding compliance. If a tender includes Mandatory Requirements, where possible, utilise relevant industry standards or other quantifiable metrics and require Vendors to provide evidence (e.g. certification, evidence of relevant qualifications etc).
Assessing Vendor submissions – Overall tender response • Through tender submissions, Vendors often do not actually address the tender criteria, requirements or questions. Commonly, tender submissions merely paraphrase the Statement of Requirement, and include broad motherhood statements, without detailing the mechanism through which they propose to meet the requirements, and without providing sufficient or appropriate evidence to support their claims. • Vendors often assume knowledge and/or (if an incumbent) do not provide sufficient detail.	**Conduct Industry Briefing Sessions** • Conducting an Industry Briefing (an open or mandatory forum for potential Vendors) after tender release is useful to provide additional information, answer queries and outline expectations from a requirements or evaluation perspective. • At an industry briefing or through tender documents, Agencies can emphasise that Evaluation Committees are obliged to assess all tender submissions on their merit, against the specified evaluation criteria, and – importantly – only using the detail Vendors include in the tender response which objectively demonstrates their ability to meet the stated requirement. • Vendors often state they can meet a requirement without providing substantiation - this should not be treated as a sufficient demonstration of how a requirement will be met.
Assessing Vendor submissions - Capability • It can be difficult to make an accurate assessment against a Vendor's true ability to deliver the required services.	**Consider Vendor site visits/demonstrations** • Agencies can consider including product/service and practical demonstrations as part of the evaluation process. • If appropriate/practicable states could include the option to visit vendor sites (either all, shortlisted or preferred vendor) as part of the evaluation process.
Assessing Vendor claims - Referees and Reference Projects • Vendors may include referees who are unable to provide appropriate or relevant comment against the requirement. • Vendors may include supporting projects which are not of comparable scope, expenditure or complexity to the requirement. • Both of these reduce the value of references and do not enable an Evaluation Committee to make an assessment against the Vendor's claims.	**Advise re referee/project requirements** • Include a requirement in the tender documents that Vendors are to provide contact details of referees who can comment appropriately against the requirements, and against comparable projects. • Require Vendors to provide to cite comparable projects (scope expenditure, complexity etc), their specific role in the project, and details of the deliverables. It can be useful to ask Vendors to detail any challenges which arose during the course of the project, how the Vendor addressed the issue and what, if any, mechanisms the vendor employed to prevent the issue from re-occurring.

Contractual Considerations • Use a contract which includes a good balance of flexibility and certainty, to allow for growth/changes of the project duration, as well as providing sufficient protection for the Agency.	**Carefully consider contract provisions** • Depending on size/complexity of project worth engaging legal subject expert to provide advice/draft appropriate contract. • Areas to consider in a passport/technical contract may include (as well as general contract terms and conditions): — Design phase — Implementation phase — Acceptance testing — Service Level Agreements/Key Performance Indicators — Support (e.g. 1st, 2nd, 3rd level), maintenance and warranty — Intellectual property rights — Disaster recovery and business continuity — Security considerations (e.g. document, national etc) — Relationship management — Fees and Charges (including process of submitting and approving change requests)
Contract Compliance/Contract Negotiation • Through the tender process, Vendors may identify areas of non-compliance with the draft contract. Depending on the nature of the non-compliance, it may affect the ability to ratify a contract.	**Determine a considered position early** • Vendors cannot be precluded from raising issues with the contract during the tender process or contract negotiations. Vendors typically challenge provisions relating to liability (e.g. capped liability amounts), indemnities, warranties and insurance amounts. Agencies should be prepared for this, determine in advance its position against any threshold terms and conditions (i.e. provisions which are non-negotiable), and seek legal advice where appropriate. • There are particular Australian Government legal, financial and procurement requirement considerations which pertain to ICT procurement. Full details of these can be found at: http://www.finance.gov.au/procurement/ict-procurement/index.html
Post Contract: Contractor's bid team do not deliver services • In any commercial bid, Vendors may base its proposal on a highly skilled and experienced team; however, after a contract is in place, a less skilled or experienced team may perform the required tasks.	**Require details in tender response/Incorp into Contract** • Rather than only requiring Vendors to provide details or CVs of proposed staff, require a breakdown against specified personnel's actual proposed involvement in the project and/or a detailed activity breakdown (including estimated effort and cost) against personnel. • The specified personnel and/or activity schedule against personal can be incorporated into the contract prior to commencement of the services. • Ensure the contract is formally tied closely to the successful Tenderer's proposed approach and service deliverables (including key performance indicators).

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APPENDIX B

STEPS IN PROCUREMENT

There are six major steps that are generally followed when procuring a property or service. Within each of these steps there are also a number of decisions or actions that are usually taken. These steps are outlined in the following diagram:

	Steps	Examples of Decisions / Actions
1	**Planning the Procurement**	• Defining the outcome in functional terms • Defining specifications • Researching the procurement market • Identifying risks • Developing a delivery method
2	**Selecting a Procurement Process**	• Determining the most appropriate way to approach the market
3	**Preparing to Approach the Market**	• Developing a procurement plan • Developing a request document • Developing a submission evaluation plan
4	**Approaching the Market**	• Notifying the market
5	**Evaluating Submissions**	• Fairly and impartially evaluating submissions • Appropriately document decisions • Advising participants of the decision
6	**Concluding the Process**	• Negotiating and signing the contract • Storing all records

PLANNING THE PROCUREMENT

While all procurements require some planning, the degree of planning is dependent on the complexity and size of the procurement. Simple procurements do not generally require details planning; whereas, by virtue of their size (i.e. scope, expenditure, and complexity) complex procurements will generally require a more detailed planning process.

Defining the Outcome

The development of a clear and precise description of the outcome is an important first step in every procurement. By defining the outcome, the agency will be describing what need is to be satisfied, and how it will be satisfied.

This description allows the agency to describe the property or service required, quantities required, and how the property or service is to be delivered.

Defining the Specifications

Any specifications should be in terms of performance and functional requirements, rather than design or descriptive characteristics. Similarly, procurements which are technical in nature, should be prescribed by the technical specifications, rather than be prescribed by a particular property or services.

If there are relevant national or international standards that apply, the specifications should meet these. A good specification set will state the requirement clearly, concisely and logically in functional and performance terms – unless specific technical requirements are needed.

Researching the Market

Researching the market assists the procurement official to understand how the market works, competition within the market, recent developments, supply issues and innovation opportunities. It should also reveal key potential suppliers and whether the market contains sufficient expertise to deliver the property or service in a form which accords with the prescribed outcome.

Identifying Risk

Risk is the chance of something happening which will have an impact upon objectives and outcomes. Risk management involves the systematic identification, analysis, treatment and, where appropriate, acceptance of risks. Risk management is integral to efficiency and effectiveness, enabling agencies to proactively identify, evaluate and manage risks, opportunities and issues arising out of procurement-related activities. As a general principle, risks should be borne by the party best placed to manage them.

Most procurements contain some sort of risk and, while risk cannot be eliminated, in most cases it can be managed. In the procurement context, there are risks associated with the procurement process itself and risks associated with the property or service once it has been procured.

Risks associated with the procurement process relate to events, issues or features of a property or service that could jeopardise the successful delivery of the procurement outcome. Throughout all stages of the procurement process agencies need to be cognisant of risks and their potential impacts.

SELECTING AN APPROPRIATE PROCUREMENT METHOD

Any procurement process represents an investment with costs arising from the process itself and benefits in terms of the outcomes achieved. There are different ways to source Goods/Services, and this depends on the type of services, contract value and complexity. The higher the contract value or risk, the more rigorous should the selection process be.

When deciding which procurement procedures to apply agencies should -

- encourage competition to deliver the most favourable submissions;

- ensure that rules and procedures adopted do not operate to limit competition by discriminating against particular classes of suppliers, particularly in regard to small and medium enterprises, new entrants to the market or foreign suppliers;

- adopt procedures consistent with the complexity of the procurement while also enabling suppliers to develop reliable, informed and competitive proposals;

- consider options for reducing costs to industry in contesting a procurement;

- be aware of general industry practices and expectations that should be incorporated into any process to encourage effective competition; and
- recognise any industry regulation and licensing requirements and how they affect the availability of suppliers.

PREPARING TO APPROACH THE MARKET

Once the decision has been made as to the type of tender process that is appropriate, it is necessary to begin preparing the documents required for the market approach.

There are three main documents which will support the procurement process, namely -

   i.   a procurement plan;

  ii.   a request document; and

 iii.   a submission evaluation plan.

These documents are described below.

Procurement plan

A procurement plan details the process which will be undertaken. It explains *how* the procurement is to be undertaken. An indicative list of elements which can be included in a procurement plan is:

- a description of the procurement;
- the evaluation criteria;
- the type of procurement process to be used;
- a probity plan, if appropriate;
- governance arrangements;
- risk assessment; and
- indicative time-lines.

The level of detail in a procurement plan should reflect the size and complexity of the procurement. In the case of simpler procurements, some of the above sections may not be necessary.

Request Document

In essence, the request document provides the `ground rules´ for the evaluation of submissions. It describes to the potential suppliers the specifics of the procurement, the manner in which submissions are to be forwarded to the agency and how the submissions will be evaluated.
The request document is usually the primary source used by potential suppliers when developing a submission. After reviewing the request document the potential supplier should be able to understand the agency's procurement requirements. The request document should include all information necessary to permit suppliers to prepare and lodge responsive submissions.
An indicative list of elements which can be included in a request document includes:

- a description of the procurement;
- conditions for participation;
- evaluation criteria;
- process rules; and
- a copy of the draft contract.

The request document can also provide a brief overview of the evaluation methodology, such as an explanation of whether submissions are to be shortlisted before a supplier is chosen.

Evaluation Criteria

Evaluation criteria set the foundations for a fair and equitable assessment of eligible submissions. Some examples of criteria that can be considered as appropriate are:

- a demonstrated ability to provide the property or services;
- the financial viability and capability of the supplier;
- any warranties and guarantees offered;
- the potential supplier's ability to manage risk;
- submission price;
- compliance with stated contract conditions; and
- specific criteria to the individual acquisition.

Evaluation of suppliers should be based on the relative importance of each criterion. It is good practice for the request document to clearly identify any criteria that are to be treated as essential in the evaluation of submissions.

APPROACHING THE MARKET

An approach to market is when an agency formally issues a notification to invite potential suppliers to participate in a procurement.

There are different ways to formally notify the market of an upcoming procurement process, which includes:

- Electronic dissemination (the Australian Government has a tender specific website – www.austender.gov.au);
- Press advertisements;
- Industry journals, relevant sector publications etc.

The purpose of notifying the market is to generate interest amongst industry to achieve as many appropriate submission responses as possible. Agencies should provide a reasonable length of time for suppliers to respond to the request documentation.

A general principle is all suppliers should to be provided with an equal opportunity to make a submission. Accordingly, all eligible suppliers should have equal access to the procurement information.

EVALUATING SUBMISSIONS

'Value for money' is the core principle which underpins Australian Government procurement. In a procurement process this principle requires a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement cycle (whole-of-life costing). This core principle is supported by open competition, non-discrimination, efficiency, effectiveness and an ethical use of resources.

In this regard, the evaluation of submissions is the most important aspect of the value for money consideration. When evaluating submissions agencies must apply the procedures and criteria they have outlined in the request document and submission evaluation plan. Submissions should be evaluated against the evaluation criteria rather than against other submissions.

Agencies should maintain appropriate documentation of the decision-making process for each procurement. As a general rule, officials should ensure that there is sufficient documentation to provide an understanding of why the procurement was necessary, the process that was followed and all relevant decisions made, including authorisations, and the basis of those decisions.

It is usual for a submission evaluation report to be prepared which documents the evaluation process and to identify a `preferred supplier´ or `selected suppliers´. The report can also assist in the provision of feedback to unsuccessful tenderers.

The submission evaluation report can contain:

- a summary of the evaluation process;
- a summary of each received submission;
- a summary of the assessment of each submission;
- reasons for any elimination of a submission from further consideration;
- recommendations concerning the preferred submission(s); and
- details of any issues which need resolution during subsequent contract negotiations.

Advising Participants of the Decision

Suppliers who make a submission should be promptly advised by the agency of the final procurement decision. If requested, agencies should also provide participating suppliers with a debrief.
In the case of an expression of interest process, unsuccessful suppliers may request a written debrief. In the case of tender processes, agencies should provide a debrief when requested (by either unsuccessful or successful suppliers) but debriefs may be oral. In such cases, the debrief should be documented by the agency.

The debriefs can include, as appropriate:

- an explanation of why the submission was unsuccessful;
- areas of weakness or non-compliance in the offer;
- suggestions as to how future submissions can be improved; and
- if the contract has already been successfully negotiated, the name of the successful supplier and total price of the successful submission.

CONCLUDING THE PROCESS

The final stage in the procurement process relates to the awarding of the contract.

Negotiating the Contract

Notwithstanding whether a chosen supplier has totally complied with the draft contract, there can still be matters open for negotiation between the supplier and the agency. These should be settled and, if appropriate, incorporated into the final contract before signature.

Storing Records

Once the procurement process is concluded all documents should be collected and filed together, thereby providing a record of procurement activities and how they have been conducted. The records should facilitate an understanding of the reasons for the procurement, the process that was followed and all relevant decisions, including approvals and authorisations.

Note -
The principles expressed in this document are based on the Australian Government's Department of Finance and Deregulation (DoFD) documents. DoFD is responsible for developing and implementing procurement policy across the Australian Government.
For more detailed information, please consult the following resources:

- Australian Government's Department of Finance and Deregulation
    Commonwealth Procurement Guidelines
- Australian Government's Department of Finance and Deregulation
    Guidance on Procurement Publishing Obligations

Probity

Probity is the evidence of ethical behaviour in a particular process. Probity is defined as complete and confirmed integrity, uprightness and honesty. It contributes to sound procurement processes that accord equal opportunities for all participants. A good outcome is achieved when probity is applied with common sense. Probity should be integrated into all procurement planning, and should not be a separate consideration.

Procurement must be conducted with probity in mind to enable purchasers and suppliers to deal with each other on the basis of mutual trust and respect. Adopting an ethical, transparent approach enables business to be conducted fairly, reasonably and with integrity. Ethical behaviour also enables procurement to be conducted in a manner that allows all participating suppliers to compete as equally as possible. The procurement process rules must be clear, open, well understood and applied equally to all parties to the process.

Agencies should not seek to benefit from supplier practices that are objectionable, dishonest, unethical or unsafe. Procurement of services should be conducted in a way that recognises that agencies are accountable for the delivery of services in the same way as if the agency carried out the service itself. Conflicts of interest may arise in the course of business operations, especially during the procurement process. Possible conflicts are extremely varied but include pecuniary interests, legal interests, associations with external associations and non-direct personal interests. In carrying out one's duties, officials must not allow themselves to be improperly influenced by family, personal or business relationships.

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