



**OIOS**

Office of Internal Oversight Services

## **INTERNAL AUDIT DIVISION**

# **AUDIT REPORT**

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### **Audit of the CMP construction manager's procurement process**

**The procurement process includes checks and balances to ensure accountability, but further actions are needed to promote procurement opportunities for contractors and vendors from the developing countries and countries with economies in transition**

**27 August 2009**

**Assignment No. AC2009/514/02**

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United Nations  Nations Unies

INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

OFFICE OF INTERNAL OVERSIGHT SERVICES · BUREAU DES SERVICES DE CONTRÔLE INTERNE  
INTERNAL AUDIT DIVISION · DIVISION DE L'AUDIT INTERNE

TO: Ms. Angela Kane, Under-Secretary-General for  
A: Management

DATE: 27 August 2009

REFERENCE IAD: 09- 02782

*Fatoumata*  
FROM: Fatoumata Ndiaye, Acting Director  
DE: Internal Audit Division, OIOS

SUBJECT: **Assignment No. AC2009/514/02 – Audit of the CMP construction manager's procurement**  
OBJET: **process**

1. I am pleased to present the report on the above-mentioned audit.
2. In order for us to close the recommendations, we request that you provide us with the additional information as discussed in the text of the report and also summarized in Annex 1.
3. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as high risk (i.e., recommendations 1, 2, 5 and 7) in its annual report to the General Assembly and semi-annual report to the Secretary-General.

cc: Mr. Michael Adlerstein, Assistant Secretary-General, CMP  
Mr. Paul Buades, Director, Procurement Division  
Mr. Swatantra Goolsarran, Executive Secretary, UN Board of Auditors  
Ms. Maria Gomez Troncoso, Officer-in-Charge, Joint Inspection Unit Secretariat  
Mr. Moses Bamuwamye, Chief, Oversight Support Unit, Department of Management  
Mr. Byung-Kun Min, Programme Officer, OIOS  
Mr. William Petersen, Chief, Headquarters Audit Service, OIOS

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## INTERNAL AUDIT DIVISION

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### **FUNCTION**

*“The Office shall, in accordance with the relevant provisions of the Financial Regulations and Rules of the United Nations examine, review and appraise the use of financial resources of the United Nations in order to guarantee the implementation of programmes and legislative mandates, ascertain compliance of programme managers with the financial and administrative regulations and rules, as well as with the approved recommendations of external oversight bodies, undertake management audits, reviews and surveys to improve the structure of the Organization and its responsiveness to the requirements of programmes and legislative mandates, and monitor the effectiveness of the systems of internal control of the Organization” (General Assembly Resolution 48/218 B).*

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## **EXECUTIVE SUMMARY**

### **Audit of the CMP construction manager's procurement process**

OIOS conducted an audit of the construction manager's procurement process. The overall objective of the audit was to examine the procurement process to determine whether the construction manager has been in compliance with contractual obligations, has employed best practices, and has promoted procurement from developing countries and countries with economies in transition. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

The procurement process includes checks and balances to ensure accountability and a formal process for approving recommended trade contractors by the Procurement Division and the Office of the Capital Master Plan (CMP).

The major findings of OIOS were as follows:

- a) Review and approval of construction management agreements with guaranteed maximum price (GMP contracts) took an average of 105 calendar days. Further improvements are needed to facilitate timely sign-off of GMP contracts to eliminate the risk of processes of the Office of CMP causing delays to the project.
- b) The CMP procurement team has at times been under resourced causing delays in processing requests for approval, and other CMP activities.
- c) Leveling meetings are conducted by the construction manager to negotiate trade contractors' best and final prices. The project manual requires documentation of leveling meetings. Minutes of these meetings were not always documented or filed. The production of such records would aid transparency, and help to reduce the risk or appearance of partiality to particular contractors or vendors.
- d) Some leveling meetings conducted by the construction manager are attended by the CMP consultant programme manager, but not by members of the CMP procurement team. OIOS believes that the attendance of procurement staff, at least for the larger procurements, would aid transparency and could be a factor in the Office of CMP's advantage in case an objection is lodged by a contractor that is dissatisfied with the outcome of a procurement.
- e) No trade contracts had been awarded to international contractors at the time of the audit. There are recognized practical difficulties, but further efforts to promote procurement

opportunities for contractors and vendors from developing countries and countries with economies in transition would help support this United Nations policy goal.

OIOS has made recommendations that include documenting leveling meetings, the timely filling of vacancies (including temporary vacancies in the CMP procurement team), and the preparation of an action plan to promote possible procurement opportunities from contractors and vendors from the developing countries and countries with economies in transition.

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## I. INTRODUCTION

1. The Office of Internal Oversight Services (OIOS) conducted an audit of the construction manager's procurement process. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.
2. The United Nations has entered into a Preconstruction Services Agreement and more recently a Coordination Agreement with Skanska USA Building Inc. Skanska is now referred to as the construction manager. The United Nations and the construction manager will enter into approximately 25 construction management agreements with guaranteed maximum price (GMP contracts) for the different projects that together comprise the entire CMP project. At the time of the audit, the United Nations had signed seven GMP contracts in the total amount of \$139 million. For each GMP contract, the construction manager procures the services of a number of trade contractors for elements of the work. At the time of the audit the construction manager had entered into 81 separate contracts with trade contractors, who will undertake the construction work. The procurement of trade contracts was the main focus of the OIOS audit.
3. Comments made by Procurement Division are shown in *italics*.

## II. AUDIT OBJECTIVES

4. The main objectives of the audit were to:
    - (a) Determine whether procurement carried out by the construction manager has been in compliance with contractual obligations, and United Nations policies and procedures where applicable;
    - (b) Examine the construction manager's processes for selecting contractors and ascertain (i) whether the market has been tested by seeking adequate competition, (ii) whether suitable contractors have been selected, and (iii) whether the processes have been well controlled and promote ethical behavior;
    - (c) Ascertain whether value for money has been achieved;
    - (d) Review whether procurements have been carried out in a timely manner and have not resulted in delay to the project schedule;
    - (e) Ascertain if the 'parceling' of works into GMP contracts has been logical, and contract amendments and extensions have been appropriate;
    - (f) Assess whether the level of oversight afforded by the United Nations has been adequate;
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(g) Determine whether competition was open to emerging markets, where practicable; and

(h) Report on factors that may restrict the diversification of the origin of vendors, in compliance with draft resolution of the General Assembly, A/C.5/63/L.34.

### III. AUDIT SCOPE AND METHODOLOGY

5. OIOS reviewed relevant records including GMP and trade contracts and files related to the procurement of trade contracts. OIOS interviewed personnel of the Procurement Division, the Office of CMP, the Office of Legal Affairs, the construction manager and the consultant programme manager. OIOS reviewed the responsibilities of the construction manager, the Office of CMP, the Procurement Division and consultants. OIOS attended and observed bid opening procedures for the procurement of audio visual equipment for the North Lawn Conference Building. The audit covered a period from August 2007 (when the first procurement was made by the construction manager) to March 2009.

### IV. AUDIT FINDINGS AND RECOMMENDATIONS

#### A. Approval of GMP contracts should be speeded up

6. OIOS reviewed seven GMP contracts submitted by the construction manager to the Office of CMP for review and approval. The approval process involved the Office of Legal Affairs, the Procurement Division, Office of CMP, the consultant programme manager and the Headquarters Committee on Contracts (HCC) and took an average 105 calendar days.

**Table 1: Number of calendar days to review and approve GMP contracts.**

GMP Ref	Submitted to CMP	HCC Presentation	Contract Executed	Contract Amount (US\$)	No. of cal days
NL #1	25 Apr 2008	10 June 2008	18 July 2008	29,009,179	84
B#1	2 July 2008	19 Aug 2008	9 Oct 2008	12,645,161	99
NL#1A	30 May 2008	20 June 2008	8 Aug 2008	6,495,536	70
AB#1	3 July 2008	16 Sept 2008	21 Nov 2008	22,220,151	141
ML#1B	3 July 2008	2 Oct 2008	21 Nov 2008	19,203,968	141
CS#1	14 July 2008	7 Oct 2008	9 Dec 2008	8,588,900	148
NL#1C	21 Oct 2008	13 Nov 2008	12 Dec 2008	41,313,763	52

7. The Office of CMP took steps to reduce the time required for review and approval with a target of 20 days. The new review procedure resulted in a decrease from 148 days to 52 days for the last approved GMP contract. However, a review of GMP contracts not yet approved shows that review and approval times have again increased.

**Table 2: GMP contracts over 20 days pending review and approval.**

<b>GMP Ref</b>	<b>Submitted to CMP</b>	<b>HCC Presentation</b>	<b>Contract Executed</b>	<b>Estimated Amount</b>	<b>No. of cal days</b>
G#1	24 Nov 2008	23 Dec 2008	Not executed	136,926,442	88
B#2	12 Dec 2008	-	Not executed	21,651,883	70

8. According to the Procurement Division and the Office of CMP, the delay is attributed to the fact that the GMP contract referenced G#1 is a curtain wall package estimated at \$136,926,442 that required complex technical analysis. The second GMP contract (B#2) was submitted at the time when the CMP procurement team was under resourced and trying to fulfill competing priorities. The consultant programme manager monitors the status of GMP contracts and notifies senior managers when delays occur and expediting actions are required.

#### **Recommendation 1**

**(1) Office of the Capital Master Plan should set realistic targets for review and approval of guaranteed maximum price contracts and continuously monitor their status to facilitate timely sign off. The status of guaranteed maximum price procurements should be monitored within the consultant programme managers' monthly reports, and at the monthly progress meetings.**

9. *The Office of the Capital Master Plan accepted recommendation 1 and stated that implementation will take place by 31 December 2009. Recommendation 1 remains open pending follow up by the Internal Audit Division to review targets, performance against them, and monitoring and reporting procedures.*

10. The OIOS review also showed that it takes an average of 50 calendar days to sign a contract after the HCC review. The Procurement Division explained that it takes between one to two weeks to receive minutes of the HCC meetings. However, the decision of HCC is usually known right after the meeting. *Procurement Division stated that negotiations are undertaken with vendors after HCC approval is obtained for a GMP contract. This could delay the finalization process, depending on the issues.*

#### **Recommendation 2**

**(2) Procurement Division in consultation with the Office of Legal Affairs should expedite the review and signing of guaranteed maximum price contracts after they have been reviewed by the Headquarters Committee on Contracts.**

11. *The Office of the Capital Master Plan accepted recommendation 2 and stated that implementation will take place by 31 December 2009.*

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Recommendation 2 remains open pending follow up by the Internal Audit Division at that time.

12. GMP contracts have a standard format and it is only necessary to change a few clauses and attachments from contract to contract. However, the practice is for each page to be reproduced and signed by the Director of Procurement and construction manager's executive. This is significant and may contribute to delays as each GMP contract includes over 100 standard pages. *The Procurement Division has clarified that the standard pages are not re-reviewed [each time], but the contract is a legal document that has to be reviewed and signed in its entirety.*

### **Recommendation 3**

**(3) As standard pages are already agreed, the Director of Procurement and Office of Legal Affairs should consider referring to the standard pages in each contract and reproducing and signing only the pages that are not standard.**

13. *The Office of the Capital Master Plan accepted recommendation 3 and stated that implementation will take place by 31 December 2009.* Recommendation 3 remains open pending follow up by the Internal Audit Division at that time.

### **B. Vacancies in the CMP procurement team have contributed to procedural delays**

14. CMP finances five posts in the Procurement Division: 1 P-4, 3 P-3 and 1 GS staff. There have been extended periods when the CMP Procurement Division posts have been vacant, or when staff has been on extended leave.

15. Vacancies in the CMP procurement team have resulted in delays to CMP activities. For example, it took between 40 to 70 calendar days for the procurement team to review and approve the sample of 32 recommendations for award examined by OIOS. Although, OIOS found the reviews by procurement officers valuable, these reviews should not be the cause for delays to CMP activities.

### **Recommendation 4**

**(4) The Procurement Division should make every effort to fill all vacancies, including temporary vacancies, in the Capital Master Plan procurement team without delays.**

16. *The Office of the Capital Master Plan accepted recommendation 4 and stated that implementation will take place by 31 December 2009.* Recommendation 4 remains open pending a review of CMP's procurement staffing by the Internal Audit Division at that time.

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### **C. The procurement process has been well controlled**

17. The construction manager follows a process that was established in consultation with the Procurement Division and the Office of CMP, and is described in the project manual. OIOS reviewed the procurement process and procedures related to bidder pre-qualification, bid opening and evaluation, and concluded that the process includes checks and balances to ensure accountability.

18. The process for the bidding and award of trade contracts is carried out by the construction manager in consultation with the Procurement Division and the Office of CMP. The process includes:

- (a) Establishing pre-qualification criteria.
- (b) Approval of procurement strategy.
- (c) Establishing bid lists of trade contractors that have been pre-qualified in the construction manager's database and those that responded to invitations for expressions of interest. The construction manager usually includes between five and ten companies in the bidders list to ensure that at least three companies will respond to a request for proposal.
- (d) Competitive tendering with public advertising through the construction manager's project website.
- (e) Bid analysis and scope verification.
- (f) Negotiation with low bidders and recommendation for award.

19. OIOS also reviewed the standard trade contract and found that it has common clauses with the GMP form of contract.

#### Test of controls

20. OIOS selected three GMP contracts and examined whether the procurement of trade contracts associated with these GMP contracts was in accordance with procedures established by the construction manager in consultation with the Procurement Division and the Office of CMP. In total, the procurement of 32 out of 81 trade contracts signed at the time of the audit were examined and the following observations were made:

- (a) In one case, a trade contractor was not pre-qualified in the trade category for which it won an award. However, it was pre-qualified for another trade category.
- (b) In three cases, the contract amount exceeded the pre-qualification limit. However, limits were raised prior to contract execution and OIOS received reasonable assurance that the agreed procedures were followed to raise pre-qualification limits.

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(c) In all but one case, a contract was awarded to the lowest bid. One lowest bidder was disqualified due to insufficient surety provisions.

(d) Leveling meetings conducted by the construction manager with trade contractors are used to correct scope and provide best and final prices. These meetings have not always been documented, or records filed with relevant requests for approval.

(e) Leveling meetings are attended by the consultant programme manager, but not by the CMP procurement team.

(f) OIOS found that the overall process was well controlled by the Procurement Division, the Office of CMP and its consultant programme manager who reviewed all bidders' lists and recommendations for award.

#### **Recommendation 5**

**(5) The Office of the Capital Master Plan should instruct the construction manager to document and file minutes of the leveling meetings in accordance with established procedures described in the project manual.**

21. *The Office of the Capital Master Plan accepted recommendation 5 and stated that summary guidelines and requirements to document and record the leveling process will be provided to the construction manager 30 September 2009.* Recommendation 5 remains open pending the issuance of the summary guidelines and requirements.

#### **Recommendation 6**

**(6) The Capital Master Plan procurement team should attend leveling meetings on a judgmental basis, including for example, cases when bids received cover a range of value, or exceed estimates.**

22. *The Office of the Capital Master Plan accepted recommendation 6 and stated that it has been implemented and that staff of Procurement Division attend leveling meetings.* Recommendation 6 remains open pending Internal Audit Division's follow up of recommendation 5 (above) when minutes of leveling meetings will be examined, and attendees determined.

23. OIOS attended a bid opening meeting organized by the construction manager with personnel from the Procurement Division and consultant programme manager in attendance. OIOS observed that all bids were in sealed packages/envelopes, representatives from the construction manager, the Procurement Division and consultant programme manager signed all pages in the original bids that had a monetary value on them, and a summary sheet with financial bids was prepared and signed by those in attendance.

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**D. An action plan should be prepared to promote procurement from countries with developing economies and economies in transition**

24. The draft resolution of the General Assembly, A/C.5/63/L.34 requested OIOS to include in its report factors that may restrict the diversification of the geographical origin of vendors. The factors could include the current subcontracting process, local regulations, labour laws and sustainability options, as well as vendors' compliance with existing regulations and rules of the United Nations and general conditions of contract. The resolution requested OIOS to report to the General Assembly at its sixty-fourth session.

Host country regulations

25. Section 7 of Article III of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations inter alia states that: "Except as otherwise provided in this agreement or in the General Convention, the federal, state and local law of the United States shall apply within the headquarters district."

26. The Office of CMP applies all Host Country regulations regarding asbestos abatement and voluntarily applies the New York City Building Code. This requires the use of licensed contractors for asbestos removal, electrical, mechanical and plumbing trades to ensure the safety of staff, delegates and visitors as well as emergency response officers such as police and firefighters. Although the legal framework does not expressly forbid the United Nations bringing overseas contractors on the project, there are practical difficulties that make this unlikely. This is amplified below.

Initiatives by the construction manager and United Nations departments

27. The construction manager is a union affiliated company like all major construction management companies in New York, and has to employ unionized labour on its projects. The construction manager has negotiated a Project Labour Agreement with the unions that prohibits unions from striking or organizing picket lines in front of the United Nations in the event the United Nations directly employs non-unionized labour. According to the construction manager, it would complete its work and vacate the area if the United Nations elects to use directly contracted non-unionized workers, including workers from overseas. It is however, highly impractical for the United Nations to start procuring separate parts of the project independently from the construction manager. It would entail a transfer of risks from the construction manager to the United Nations and would overstretch the resources of the Office of CMP and the Procurement Division. Further impracticalities involving contracts with a labour element from overseas would involve immigration regulations, cost of transportation, provision of housing, medical services, security background checks, bonding and insurance, quality control and possible language barriers.

28. The Office of CMP in cooperation with the Procurement Division has communicated to Member States through Notes Verbale on the upcoming

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procurement exercises for large purchases. The Office of CMP, the Procurement Division and the construction manager have provided presentations to Permanent Missions and consulates of countries that requested information on CMP procurement opportunities. The construction manager has also made efforts to make the procurement of trade contracts transparent by posting all Expressions of Interest (EOIs) on the construction manager's project website. The websites of the Procurement Division and the Office of CMP provide links to the project website. The Procurement Division also undertakes outreach efforts in the form of business seminars to facilitate the registration of vendors from developing countries and countries with economies in transition. Since 2008, the Procurement Division conducted around 30 seminars in countries with developing economies and economies in transition. Business opportunities and requirements specific to CMP were highlighted during these seminars. Starting from the third quarter of 2009, CMP procurement opportunities and requirements will be included in the procurement seminars as a separate agenda item.

29. The Office of the Capital Master Plan, the Procurement Division and the construction manager are making an effort to bring in international contractors for bulk purchases. The construction manager's website, in soliciting EOIs for the supply of bulk purchases, contains a statement that "all materials provided in response to this solicitation must meet the applicable building codes, reference standards and technical specification requirements. International vendors, especially from developing countries and countries with economies in transition, are strongly encouraged to participate." The Office of CMP, in consultation with the construction manager and design teams, is reviewing specifications for bulk purchases with an aim to broaden them in order to allow international vendors to participate in bidding exercises. The deadlines for EOIs have been extended several times with EOIs for phase 3 bulk purchases extended to 30 June 2009. OIOS reviewed the EOIs received at the time of the audit that included 16 companies from developing countries and countries with economies in transition. According to the construction manager, all companies that submitted EOIs for matching materials will be invited to bid. A post qualification process of suppliers will be conducted after completion of the bidding exercises. Post qualification requirements are currently being developed by the construction manager.

30. Under the 'coordination agreement' with the United Nations, the construction manager is required to create opportunities for procurement from countries with developing economies and countries with economies in transition. The construction manager also requires the trade contractors to report bi-monthly the country of origin of each product installed as part of the works. However, the construction manager is experiencing difficulties in identifying countries of origin for some main components. For example, a piece of equipment could be assembled in one country, but most of the components or raw materials could come from other countries, including countries with developing economies and economies in transition. The construction manager is working on ways to improve reporting on country of origin.

31. OIOS further noted that the construction manager logs all vendors that responded to EOI and their country of origin. The database should be further

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populated with the information on whether these companies were pre-qualified/post-qualified, as well as the winning vendors and value of the contracts.

#### **Recommendation 7**

**(7) OIOS reiterates its recommendation that the Office of the Capital Master Plan should ensure that the construction manager, in consultation with the Procurement Division, prepares an action plan to promote procurement opportunities for contractors or vendors from the developing countries and countries with economies in transition.**

32. *The Office of the Capital Master Plan accepted recommendation 7 and stated that the action plan will be presented to member states, as part of the deliberations with the fifth committee, during the budget review session. Recommendation 7 remains open pending the presentation of the action plan to the member states.*

#### **Recommendation 8**

**(8) The Office of the Capital Master Plan should instruct the construction manager to log relevant information related to international procurement, including the number of international expressions of interest and bids per contract, countries of origin and winning bids to facilitate reporting to the Office of Capital Master Plan and Member States.**

33. *The Office of the Capital Master Plan accepted recommendation 8 and stated that it has been implemented as the construction manager has been instructed, and has provided a preliminary list of contracts executed by geographical area. Recommendation 8 remains open pending Internal Audit Division's review of the list.*

## **V. ACKNOWLEDGEMENT**

34. We wish to express our appreciation to the Management and staff of the Office of CMP, the Procurement Division, the Office of Legal Affairs, the consultant programme manager and the construction manager for the assistance and cooperation extended to the auditors during this assignment.

## STATUS OF AUDIT RECOMMENDATIONS

Recom. no.	Recommendation	Risk category	Risk rating	C/O <sup>1</sup>	Actions needed to close recommendation	Implementation date <sup>2</sup>
1	Office of the Capital Master Plan should set realistic targets for review and approval of guaranteed maximum price contracts and continuously monitor their status to facilitate timely sign off. The status of guaranteed maximum price procurements should be monitored within the consultant programme managers' monthly reports, and at the monthly progress meetings.	Operational	High	O	Preparation of realistic targets, control of performance against targets, and monitoring and reporting procedures.	31 Dec 2009
2	Procurement Division in consultation with the Office of Legal Affairs should expedite the review and signing of guaranteed maximum price contracts after they have been reviewed by the Headquarters Committee on Contracts.	Operational	High	O	Faster review and signing of GMP contracts.	31 Dec 2009
3	As standard pages are already agreed, the Director of Procurement and Office of Legal Affairs should consider referring to the standard pages in each contract and reproducing and signing only the pages that are not standard.	Operational	Medium	O	Faster review and signing of GMP contracts.	31 Dec 2009
4	The Procurement Division should make every effort to fill all vacancies, including temporary vacancies, in the Capital Master Plan procurement team without delays.	Human Resources	Medium	O	Adequate level of CMP's procurement staffing.	31 Dec 2009
5	The Office of the Capital Master Plan should instruct the construction manager to	Operational	High	O	Issuance of the summary guidelines and requirements.	30 Sept 2009

Recom. no.	Recommendation	Risk category	Risk rating	C/O <sup>1</sup>	Actions needed to close recommendation	Implementation date <sup>2</sup>
6	document and file minutes of the leveling meetings in accordance with established procedures described in the project manual. The Capital Master Plan procurement team should attend leveling meetings on a judgmental basis, including for example, cases when bids received cover a range of value, or exceed estimates.	Operational	Medium	O	PD attends leveling meetings. Internal Audit Division will confirm this prior to closing this action.	Implemented
7	OIOS reiterates its recommendation that the Office of the Capital Master Plan should ensure that the construction manager, in consultation with the Procurement Division, prepares an action plan to promote procurement opportunities for contractors or vendors from the developing countries and countries with economies in transition.	Operational	High	O	Presentation of the action plan to the member states, as part of the deliberations with the fifth committee, during the budget review session.	30 Oct 2009
8	The Office of the Capital Master Plan should instruct the construction manager to log relevant information related to international procurement, including the number of international expressions of interest and bids per contract, countries of origin and winning bids to facilitate reporting to the Office of Capital Master Plan and Member States.	Operational	Medium	O	Implemented. The construction manager has been instructed, and has provided a preliminary list of contracts executed by geographical area. This action will be closed after the Internal Audit Division has reviewed the list.	Implemented

<sup>1</sup> C = closed, O = open

<sup>2</sup> Date provided by the Procurement Division in response to recommendations