

**Distr.
RESTRICTED**

**TRADE/CEFACT/2002/INF.8
24 May 2002**

ENGLISH ONLY

UN/CEFACT Service Provider -Request for Proposals (RFP)

United Nations General Legal Division Recommendations

SOURCE: UN/ECE secretariat
STATUS:
ACTION: For information, 8th UN/CEFACT session
Agenda Item 3

2002-05-24

UN/CEFACT Service Provider - Request for Proposals (RFP)

United Nations General Legal Division Recommendations

The UNECE secretariat has received, on 23 May 2002, from the Director of the General Legal Division of the United Nations (hereafter-mentioned Legal Office), comments, advice and recommendations concerning the UN/CEFACT Service Provider Request For Proposal (RFP), developed by the UN/CEFACT Steering Group (CSG). This note contains a summary of the communication from the Legal Office for information to the UN/CEFACT Heads Of Delegations.

Introduction

1. Following the instruction by the Legal Office regarding UN/CEFACT -OASIS cooperation in July 2001, that the office responsible for procurement should carry out such a process, the secretariat, at the request of the CSG, arranged meetings with the UNOG Purchase and Transportation Section and members of the CSG. The CSG presented the RFP to the Purchase and Transportation Section at the end of February 2002.
2. That Section subsequently informed the secretariat that the "Statement of Work" seemed to suggest that UN/CEFACT sought to establish an extended relationship with a private-sector organization that would provide resources and services to support the activities of the entire Forum. As this would be a form of outsourcing for "conference management" services, even if without financial implications for the United Nations, it appears that the RFP cannot be considered as a commercial transaction under the UN Financial Rules. As the legal and policy issues raised in the RFP are by no means straightforward, the UNECE secretariat has therefore referred the matter to the UN Legal Office.

Summary of the Legal Office communication on the CSG proposal for private support for the Forum

3. From the outset, the Legal Office noted that the responsibilities contemplated for the Service Provider (SP) go beyond the mere provision of services. The Legal Office therefore advises that, in view of the unique modalities proposed for the operation of the Forum, that the proposals set out in the RFP should, in addition to being reviewed by the ECE Secretariat, be also reviewed and approved at the inter-governmental level of ECE.
4. The Legal Office noted that the proposals in the RFP represent outsourcing of all administrative and other support services required for the operation of the Forum. However, it would seem that some of the services constitute core UN activities that cannot be outsourced and would require prior clearance to ensure consistency with UN policies on outsourcing.

5. The Legal Office noted that the responsibilities contemplated for the SP would put it in a position to influence the work of the Forum. For example, the proposals that the SP would identify “new membership and involvement in Forum activities” and would be a member of the Advisory Board that “would approve the Financial plans” and “develop operating procedures and by laws for the Forum”. Further, the Legal Office noted that it is unclear what would happen if the SP were unable to continue provision of required operating capital for the Forum, or to raise sufficient contributions to cover Forum requirements. The Legal Office therefore expressed their concern that such events could result in disrupting or interrupting the operation of the Forum and thus, possibly, the implementation of an ECE-approved work programme.
 6. In view of the unusual nature of the financial arrangements in the RFP, the Legal Office strongly recommends that they should be cleared with the UN Controller in order to ensure that they would be consistent with the UN Financial Regulations and Rules, and with UN financial policies.
 7. The Legal Office made also the following main comments:
 - a) It should be verified that the charging of fees to participants in UN meetings, which is proposed as one of the cost-recovery means available to the SP, would be consistent with UN policy;
 - b) Further, if the UN were to agree, as it is proposed, to the SP raising funds to support the operation of the Forum, the Legal Office believe that the UN would have vis-à-vis the donors a fiduciary responsibility to ensure that their contributions are properly used for their stated purpose; and that these issues should be carefully considered before a final decision is made on whether to proceed with the proposal;
 - c) Any contract or agreement resulting from the RFP should be signed by a UN official duly authorized to that effect in accordance with the UN Financial Regulations and Rules and, in view of the complexity and unusual character of the arrangements proposed for servicing the Forum, should be submitted for review by the Legal Office before it is concluded;
 - d) The Legal Office is the office designated by the Secretary-General to grant authorizations to use the UN name and emblem.
 8. Finally, it should be recalled that in its 26 July 2001 memorandum, the Legal Office had commented in this respect that “we assume that a determination was made at the appropriate policy level ... that the XML standards cannot be supported and funded by the UN, including trust fund and other arrangements similar to those established for UN/EDIFACT” and was reported to the UN/CEFACT CSG. It is still unclear to the Legal Office that the proposed financial arrangements cannot be supported and funded by the UN, whether by a trust fund or other similar arrangements.
-