

TO: Mr. Gurpur Kumar
A: Deputy Director, Internal Audit Division
Office of Internal Oversight Services

DATE 30 June 2011

THROUGH: Neeta Tolani
S/C DE: Director *NTolani*
Office of the Under-Secretary-General for Management

FROM: *M. Baez*
DE: Chief Policy and Oversight Coordination Service
Department of Management

SUBJECT: **Assignment No. AC2010/211/01 – Audit of construction of additional facilities at**
OBJET: **UNON**

1. With regards to the above-referenced subject, please find below the comment to recommendation 32 contained in the report.

Recommendation 32:

The Assistant Secretary-General for Central Support Services should determine accountability for non-compliance with the Procurement Manual during the process of acquiring the solar photo voltaic (P-V) system and take appropriate action.

Comment:

The Assistant Secretary-General will review the material made available in the OIOS report to determine what elements are at variance with the established procedures during the remaining part of the year.

2. We are not indicating that we accept the recommendation because the determination of accountability is usually done by investigators or in disciplinary context both of which are not within the purview of the ASG, OCSS

3. Thank you for providing the opportunity to comment on the report.

*11-0165P
30 June 2011*

United Nations  Nations Unies

INTEROFFICE MEMORANDUM

MÉ MORANDUM INTÉRIEUR

TO: Mr Gurpur Kumar, Deputy Director
À: Internal Audit Division, OIOS

DATE: 11 July 2011

FROM: Sahle-Work Zewde, Director-General
DE: United Nations Office at Nairobi



SUBJECT: **Audit of Construction of additional office facilities at UNON**
OBJET:

1. Reference is made to your memorandum dated 2 June 2011 requesting comments on the findings and recommendations contained in the draft report on Audit of Construction of additional office facilities at UNON (AC 2010/211/01). I regret the delay in replying.
2. Please find attached a table containing UNON's response to audit recommendations addressed to this Office. I assume that the Office of Central Support Services will respond directly to the recommendation contained in paragraph 32 of the audit report.
3. With respect to the overall content of the report, I am pleased that OIOS acknowledged that UNON established an effective organizational and management structure for planning and execution of the construction project, that there was effective UNHQ support, that appropriate risk management approach was adopted, that a lessons learnt register was maintained, that financial management of the construction project, including controls over payments, has been adequate and communication with key stakeholders was satisfactory. I am also happy that OIOS concluded that the main contracts for NOF construction and the provision of architectural consultancy services were established, administered and executed in full accord with the Procurement Manual.
4. Notwithstanding the above, I am disappointed that the real success story of NOF construction, where UNON team achieved the completion of the main construction project on time and under budget, and ensured full occupancy of the new building three months ahead of schedule received rather limited recognition in the audit report. Instead, in the draft audit report a major emphasis is made on the UNEP-led project to install PV solar system to supply electricity to NOF building. Out of 10 pages of the main body of the report, 7 pages are dedicated to the alleged irregularities in the award and administration of PV system contract.
5. I consulted with Mr Steiner and he provided an extensive set of comments on the draft audit report, which I attach to the present memorandum. It would appear that Mr Steiner also shares my concern stated above.
6. I hope that in reviewing and finalizing the draft audit report OIOS will endeavour to achieve a greater balance in the coverage of the main objective of the construction project, as approved by the General Assembly, and an additional UNEP contract aimed at enhancing sustainable features of the building. In this context you may want to consider limiting UNON construction audit report to the main construction contracts and issuing a separate report on additional contracts approved and administered under the procurement authority of the Executive Director of UNEP.

cc: Ms Angela Kane
Mr Warren Sach
Mr Achim Steiner

RESPONSE AND IMPLEMENTATION OF RECOMMENDATIONS
Assignment No. AC 2010/211/01 – Audit of construction of additional office facilities at UNON

Para. no.	Recommendation	Risk category	Risk rating	Accepted (Yes/No)	Implementation date	Client Comments
30	The Director-General of UNON should ensure that all procurement actions relating to solicitation, receipt and evaluation of bids are undertaken in accordance with the Procurement Manual procedures	Compliance	High	Yes	Implemented	It goes without saying that UNON management and staff responsible for the procurement function are under obligation to have all procurement actions undertaken in accordance with the Procurement Manual.
31	The Director-General of UNON should draw up a formal agreement with UNEP regarding the funding and repayment of the \$1.3 million provided by UNEP for the solar photo voltaic (P-V) system.	Operational	Medium	Yes	October 2011	UNEP's Office for Operations and UNON Administration are reviewing the costs to be recovered and actual savings generated by PV system and on that basis will formulate an agreement for repayment of UNEP's investment.
32	The Assistant Secretary-General for Central Support Services should determine accountability for non-compliance with the Procurement Manual during the process of acquiring the solar photo voltaic (P-V) system and take appropriate action.	Compliance	High			ASG/CSS to respond
40	The Director-General of UNON should obtain legal advice from the Office of Legal Affairs on the Photo-Voltaic system vendor's responsibility to connect the system to the UNON power grid in light of the vendor's original offer made and the signed contract.	Operational	Medium	Yes	September 2011	
46	The Director-General of UNON and the Executive Director of UNEP should conduct a formal investment appraisal of the Photo-Voltaic system and use it as a benchmark for evaluating the success of the project.	Operational	Medium	Yes	October 2011	

Para. no.	Recommendation	Risk category	Risk rating	Accepted (Yes/No)	Implementation date	Client Comments
50	The Director – General of UNON should establish a mechanism to ensure that approval of major change orders (i.e. those exceeding \$10,000) for construction projects are always documented in writing.	Operational	Medium	Yes	September 2011	Procedures to ensure this will be added to the lessons learnt document
51	The Director – General of UNON should approve, on an <i>ex post facto</i> basis, all major change orders (i.e. those exceeding \$10,000) for the construction of new office facilities project that were not approved in writing	Operational	Medium	Yes	July 2011	

COMMENTS ON THE DRAFT AUDIT REPORT ON CONSTRUCTION OF ADDITIONAL OFFICE FACILITIES AT UNON RECEIVED FROM MR ACHIM STEINER

General Comments

1. I agree in principle with the recommendations made in this report and support their implementation; although for reasons set out below, I believe that the recommendation made in paragraph 32 is unnecessary. I do not, however, understand the overwhelmingly negative focus of the report and I do not accept the analysis and findings in relation to the photo-voltaic (PV) system.

2. The OIOS Audit Manual pledges a commitment to improved organizational processes and operations, a balanced assessment of all relevant circumstances and an assessment of risk and the effectiveness of risk management in the area being managed. Against this background, it is hard to understand how the construction-phase of this project and the delivery, on-time and under-budget, of a landmark UN building, warrants so little attention – let alone recognition. I believe this project merits an audit which at least recognizes many of the best practise elements for which I take no credit. The highly professional, innovative and diligent work of our UNON team and that of the NOF working group in managing this project must be reflected in an audit if it is to meet the OIOS objectives and commitments cited above. Yet, more than half of this report is focused on what is deemed to be the improper application of administrative processes to the acquisition and installation of a PV system that: (i) represents less than 5% of the total value of the contracts issued; (ii) was valued by the UNON Procurement Section at approximately twice the value of the amount paid by UNEP; and, (iii) promises long-term financial savings and environmental benefits. In this context, it is relevant to ask whether the accountability to be ascertained through the implementation of the recommendation in paragraph 32 should at least in part be one that commends and recognizes the exceptional commitment and professionalism our staff demonstrated in managing a complex project successfully. This is an integral part of accountability management in the UN - yet regrettably overlooked in this report.

3. The draft report appears to have ignored or dismisses information and explanations already provided by UNEP as to the processes applied to the acquisition of the PV system:

(a) The NOF was designed to incorporate a PV system but the construction budget did not provide for the acquisition of such a system. In this regard, UNEP and UNON distributed a booklet (copy attached below) aimed at identifying interest in the establishment of a partnership with UNEP/UNON to provide a PV system for the NOF. This booklet was sent out to all UN Member States and the top 20+ solar panel producers worldwide. From the outset this was not a procurement action because we hoped to acquire a PV system through a voluntary contribution to the UN. In this regard, it is inappropriate and inaccurate to compare the process applied to the solicitation of voluntary contributions – a common and core responsibility of UN programme managers – with the process applied to UN procurement actions and to suggest that the former is a violation or circumvention of the latter.

(b) Kaneka, a Japanese panel manufacturer, offered to provide one-third of the required solar panels at no cost to the UN (i.e. as a voluntary contribution). We were subsequently advised by UNON's Procurement Section that this was not classifiable as a procurement action. In this regard, UNEP accepted this contribution under the authority of the Executive Director (as defined in the Financial Rules of UNEP promulgated by the Secretary-General of the United Nations on 8 October 1998). The above-referenced draft report makes no comment on this aspect of the acquisition of the PV system despite the fact that it demonstrates: (i) that this was not a typical procurement action; and, (ii) that it resulted in tremendous savings to the UN.

(c) The above-referenced draft report focuses on that part of the desired PV system (panels, inverters and installation) that was offered, and subsequently acquired, at a concessionary cost. In so doing, the report alleges breaches in UN procurement policies and procedures without providing specifics as to precisely which policies and procedures were violated.

(d) As soon as it became clear that the acquisition of the PV system would entail some cost to UNEP (on behalf of the UN), the details of the concessionary offers received by UNEP were passed on to UNON's Procurement Section. Paragraph 24 of the draft report describes the subsequent actions taken, and the conclusions reached, by UNON and the Local Committee on Contracts (LCC). The LCC ruled that the PV system (panels, inverters and installation) was being offered at a cost below current market value by

approximately US \$1.2 million (or 48%) and as such warranted the application of the procurement procedure defined in Financial Rule 105.16 (a) (ix) – a procedure that is defined in more detail in Chapter 9, part 2, of the Procurement Manual.

4. As drafted, this report does not reflect an understanding of the fact that UNEP and UNON set out to acquire a PV system through a voluntary contribution to the UN and does not appear to recognize that the duly-designated local procurement authorities (UNON's Procurement Section and the LCC) determined that formal solicitation would not give satisfactory results because the PV system (panels, inverters and installation) represented immediate savings of approximately US \$1.2 million. This is of course in addition to the significant long-term benefits a PV system generates in financial and environmental terms. In this context, we do not know how the auditors have concluded "there is no assurance that best value for money was obtained through competitive, fair, and transparent procurement processes" (paragraph 29).

5. We recognize that this has been an innovative (public/private partnership) project and we believe that it should be objectively assessed as such. Within significant time/resource constraints, the largest PV solar system on a building in Africa has been installed on the NOF which serves as UNEP's and UN Habitat's global headquarters building and has already generated major financial, environmental and reputational benefits. More than once a week UNON/UNEP provides guided tours of this facility to schools, companies, governments and UN agencies interested in replicating this system. Staff from UN offices in New York, Panama, South Sudan and Addis Ababa are studying the project as one that showcases the UN's commitment to climate neutrality and sustainable building standards.

Specific Comments

6. Paragraphs 3 and 6 of the Executive Summary, paragraphs 22-29 and 41 of the draft report and the recommendation in paragraph 32 should be reconsidered in the light of the comments above. In addition:

(a) Paragraph 3 of the Executive Summary. UNEP was not involved in the solicitation, opening and evaluation of offers – as these matters are defined in the procurement rules and regulations (see point 3 (a) above). The proposal in question was forwarded to UNON's Procurement Section and the LCC. UNEP was not involved in the recommendation/decision made by these entities. An evaluation, as defined by the Procurement Manual, was not conducted. Rather UNEP and UNON undertook a technical evaluation at the request of the UNON Director-General. The draft audit report recognizes that while this was not a formal procurement evaluation, it was undertaken by UNEP and UNON (paragraph 23 (g)).

(b) Paragraph 21. The objective of a sustainable building was not only that of UNEP but also UNON and UN-Habitat which worked jointly in guiding the project through the NOF working group. Please see earlier comments submitted by UNEP in this regard.

(c) Paragraph 22. As stated in paragraph 3 above, the solicitation booklet was sent out on behalf, and in the name of, UNEP and UNON.

(d) Paragraph 23 (a). The feasibility of the project was assessed by UNEP and UNON staff. UNON, for example, approved the wording in the solicitation booklet, in particular in respect of the PV system target of 750,000 kWh. In NOF Working Group meetings UNEP and UNON (and UN-Habitat) had extensive discussions on this aspect of the project. UNON project staff invited GEOMAX, the electrical engineers of the NOF, to calculate the overall NOF power consumption with the purpose of establishing whether a solar system could generate the power needed for the NOF. At the invitation of UNON, GEOMAX participated in NOF working group meetings to report back on this issue. ICTS (UNON's IT Section) was also asked if a solar system would be able to generate the power needed for IT services. They presented a report thereon to the NOF Working Group. Finally, as a result of this work, UNON, UNEP and UN-Habitat agreed that it was possible to develop a building where the electricity consumption of the building would be generated by a solar system housed on the roof. GEOMAX recalculated and subsequently advised UNON that the overall annual consumption of the NOF would be 705,000 kWh/yr. On the basis of this finding it was jointly agreed to use 750,000 kWh as a target and to include this amount in the solicitation booklet sent out on behalf, and in the name of, UNEP and UNON.

(e) Paragraph 23 (b). As stated in paragraph 3 above, the solicitation booklet was sent out on behalf, and in the name of, UNEP and UNON.

(f) Paragraph 23 (e). The offer included more than the system and training – please see earlier comments submitted by UNEP and the contract itself.

(g) Paragraph 23 (f). Five offers were received of which one was simply incorrect. The review committee was briefed on the 5 offers and focused its work on the four proper offers. There was one process, not two. It is important to remember the timeline here. At this point, nobody had seen the reactions to the solicitation booklet. In due course, the committee advised that we would need to combine offers as no single proposal would be able to provide a complete system.

(h) Paragraph 23 (h). UNEP conducted a survey at the request of UNON's Procurement Section (which it subsequently received and evaluated).

(i) Paragraph 24. As stated in paragraph 3 above, the solicitation booklet was sent out on behalf, and in the name of, UNEP and UNON.

(j) Paragraph 25. The procurement aspects of this project were referred to UNON's Procurement Section and LCC.

(k) Paragraph 26. In paragraph 23 (g) this report recognizes that this evaluation was undertaken by UNEP and UNON staff.

(l) Paragraph 27. UNEP did not request procurement of the system – it referred the offers to UNON's Procurement Section. Paragraph 24 of the draft report describes the subsequent actions taken, and the conclusions reached, by UNON and the Local Committee on Contracts (LCC). The LCC ruled that the PV system (panels, inverters and installation) was being offered at a cost below current market value by approximately US \$1.2 million (or 48%) and as such warranted the application of the procurement procedure defined in Financial Rule 105.16 (a) (ix) – a procedure that is defined in more detail in Chapter 9, part 2, of the Procurement Manual.

(m) Paragraph 27. Long-term NOF energy efficiency does not benefit UNEP alone.

(n) Paragraphs 33-36. The contractor committed to provide a solar system and connection. In their agreed quotation (on the second page under system design) they indicated that the power line would be routed to the basement and connected to the building at that point. It was later found that a proper connection should be established not to the building but to the power grid on the UN compound. This meant installing a power cable from the basement of the NOF to the generator house outside the NOF. UNON initially insisted that the contractor pay the extra associated costs, but later agreed to advance this unforeseen payment on behalf of UNEP.

(o) Paragraph 40. All parties agreed that unforeseen extra work was not the responsibility of the contractor - who have delivered against the agreed quote and contract.

(p) Paragraph 43. The warranty information is included in the signed contract. The decision to buy the carpet was one to which UNON was a party. The UN owns the NOF, not UNEP.

I wish to submit this response as part of the formal record as I believe it provides important factual information in terms of the audit. It also highlights an important observation as to the focus and objectives of this audit.

With my best wishes

Achim Steiner

RESPONSE AND IMPLEMENTATION OF RECOMMENDATIONS
Assignment No.AC 2010/211/01 – Audit of construction of additional office facilities at UNON

Para. no.	Recommendation	Risk category	Risk rating	Accepted (Yes/No)	Implementation date	Client Comments
30	The Director-General of UNON should ensure that all procurement actions relating to solicitation, receipt and evaluation of bids are undertaken in accordance with the Procurement Manual procedures	Compliance	High	Yes	Implemented	<p>This audit found that UNON complied with Procurement Manual procedures for solicitation, bid submission, evaluation, contracting and payment during the establishment of contracts for the construction amounting to \$17.5 million and the provision of consultancy services for \$1.6 million. This audit also found that the procurement of a solar photo voltaic (P-V) system was not carried out in full compliance with Procurement Manual procedures and that the “United Nations Environment Programme (UNEP), instead of the Procurement Travel and Shipping Section of UNON (UNON/PTSS), conducted solicitation, opening and evaluation of offers, but these were not in accordance with the established procedures”.</p> <p>In its audit of procurement activities at the United Nations Office at Nairobi (UNON), OIOS found: (i) that the Executive Directors of UNEP and UN-Habitat are responsible for procurement funded from their extra-budgetary funds; and (ii), that there is a need to review and clarify the UNON delegation of authority with respect to procurement on behalf of UNEP and UN-Habitat and improve adherence to procurement rules and procedures.¹</p> <p>In respect of the above, please note that all</p>

¹AA2009/211/02 of 18 October 2010

Para. no.	Recommendation	Risk category	Risk rating	Accepted (Yes/No)	Implementation date	Client Comments
						<p><u>UNON procurement actions</u> relating to solicitation, receipt and evaluation of bids performed under authority delegated by the Department of Management at UN Headquarters are undertaken, and shall continue to be undertaken, in accordance with the Procurement Manual procedures.</p> <p>In the interests of clarity, and in recognition of the findings and recommendations that emerged from the audit of procurement activities, OIOS should amend this recommendation (the Executive Summary and paragraphs 20 through 29) in such a way as to show what procurement actions were performed under authority assigned to UNON by the Department of Management at UN Headquarters and what to procurement actions were performed under the authority of the Executive Director of UNEP. The quote attributed to the Director, DAS/UNON in paragraph 23 (d) likewise requires an explanation to the effect that the Director, DAS/UNON was asked to comment on a solicitation, bid submission and evaluation exercise conducted by UNEP staff under the authority of the Executive Director of UNEP.</p> <p>The readers of this report would also benefit from an early explanation to the effect that during the time in question the Executive Director of UNEP was also the Director-General of UNON. The findings reflected in paragraphs 36 through 39 and 43 through 44 would benefit from this clarification.</p> <p>Finally, please note that the new Director-</p>

Para. no.	Recommendation	Risk category	Risk rating	Accepted (Yes/No)	Implementation date	Client Comments
						General of UNON has asked the Department of Management for assistance in clarifying the assignment of responsibility and accountability between UNON, UNEP and UN-Habitat for critical and sequential elements of human, financial and physical resources management.
31	The Director-General of UNON should draw up a formal agreement with UNEP regarding the funding and repayment of the \$1.3 million provided by UNEP for the solar photo voltaic (P-V) system.	Operational	Medium	Yes	December 2011	UNEP's Office for Operations and UNON Administration are reviewing the costs to be recovered and actual savings generated by PV system and on that basis will formulate an agreement for repayment of UNEP's investment.
32	The Assistant Secretary-General for Central Support Services should determine accountability for non-compliance with the Procurement Manual during the process of acquiring the solar photo voltaic (P-V) system and take appropriate action.	Compliance	High			ASG/CSS to respond
40	The Director-General of UNON should obtain legal advice from the Office of Legal Affairs on the Photo-Voltaic system vendor's responsibility to connect the system to the UNON power grid in light of the vendor's original offer made and the signed contract.	Operational	Medium	Yes	December 2011	Legal advice will be sought from the Office of Legal Affairs (OLA). A formal request for advice on this matter will be raised by UNON in early November, in order to obtain guidance from OLA by the end of 2011.
46	The Director-General of UNON and the Executive Director of UNEP should conduct a formal investment appraisal of the Photo-Voltaic system and use it as a benchmark for evaluating the success of the project.	Operational	Medium	Yes	June 2012 (Subject to UNEP confirmation)	It is likely that additional time will be required in order to conduct a more accurate investment appraisal, as full clarity and understanding of the solar operation, and electricity produced will not be available until all solar panels are installed and the system has been in operation for at least one

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						year.
50	The Director – General of UNON should establish a mechanism to ensure that approval of major change orders (i.e. those exceeding \$10,000) for construction projects are always documented in writing.	Operational	Medium	Yes	Implemented	<p>As per paragraph 48 of the current audit report ‘...change orders were initiated by UNON, UNEP and UN-HABITAT, reviewed by the NOF Working Group, and approved by the Director-General of UNON in accordance with established change procedure. However, there was no documentary evidence that the Director-General always approved the change orders in writing’.</p> <p>As per the list of change orders included in Annex 2 of the audit report (6 in total), all change orders mentioned were documented and approved in writing except for # 2 (environmental lighting) which was clearly documented in NOF Working Group minutes, but not signed off in writing by the DG. Also #3 (processional staircase) which was documented in a formal memo from the Director of Administration to the DG, but not formally signed off in writing by the DG. Both were approved verbally by the DG.</p> <p>See email of 21 March 2011 to OIOS which includes the documentary evidence and signed approval for the other four mentioned change orders in Annex 2 of the audit report, namely #1 (carpets) & 6 (P-V system attendance) which were documented and approved as change orders 2 & 6 respectively, # 4 (roof terrace) & #5 (executive bathrooms) which were documented and signed off in writing by the DG.</p>

Para. no.	Recommendation	Risk category	Risk rating	Accepted (Yes/No)	Implementation date	Client Comments
						For future construction project all change orders will not only be documented in writing but will be signed off in writing.
51	The Director – General of UNON should approve, on <i>anex post facto</i> basis, all major change orders (i.e. those exceeding \$10,000) for the construction of new office facilities project that were not approved in writing	Operational	Medium	Yes	November 2011	A memorandum will be prepared for signature by Mr. Steiner who was the Director-General during the construction of NOF. The only major change orders agreed by Mr. Steiner verbally, were the processional staircase and the environmental lighting system. Formal written sign-off on both these changes will be obtained.