

GENERAL SECRETARIAT

EXECUTIVE ORDER No. 00-1

SUBJECT: PROCUREMENT CONTRACT RULES

THE SECRETARY GENERAL,

In the exercise of the powers conferred upon him by Article 109 of the Charter of the Organization of American States ("OAS") and Articles 8, 12(f), 80(b)(8), 93, and 97 of the General Standards to Govern the Operation of the General Secretariat of the Organization of American States ("General Standards"); and

CONSIDERING:

That the Secretary General is authorized to initiate, award, and execute procurement contracts for equipment, supplies, and related services under Articles 12(e), 93, and 97 of the General Standards; and

That the existing rules, regulations, and operational procedures governing procurement contracts require substantial revision and modification to satisfy the current needs of the General Secretariat,

RESOLVES:

I. PROCUREMENT CONTRACT RULES

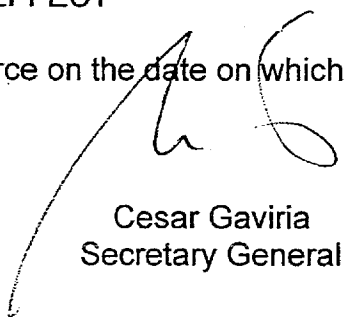
The Procurement Contract Rules attached to this Executive Order shall apply to all procurement contracts processed and awarded by the General Secretariat.

II. AMENDMENTS AND REPEALS

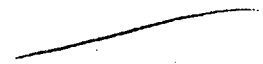
This Executive Order repeals the Contracting Manual, also known as SUC/OEA, adopted by Administrative Memorandum No. 50 (January 7, 1976), and supersedes all other present norms, rules, regulations, and practices of the General Secretariat to the contrary.

III. EFFECT

This Executive Order shall enter into force on the date on which it is signed.



Cesar Gaviria
Secretary General



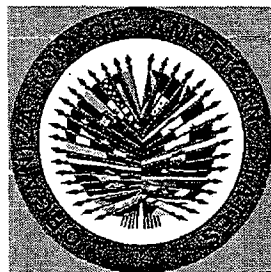
Date: August 31, 2000
Original: English
Attachment

corr. 1

PROCUREMENT CONTRACT RULES

Of the

**GENERAL SECRETARIAT OF THE
ORGANIZATION OF AMERICAN STATES**



Issued July 12, 2000

Secretariat for Management

PROCUREMENT CONTRACT RULES OF THE

GENERAL SECRETARIAT OF THE

ORGANIZATION OF AMERICAN STATES



TABLE OF CONTENTS

	Page
<u>CHAPTER I – Definitions and Scope</u>	1
1.1 Definitions	1
1.2 Scope	3
<u>CHAPTER II – Purpose, Interpretation, and Application</u>	3
2.1 Purpose of these Rules	3
2.2 Application and Interpretation of these Rules in Accordance with their Purpose	4
<u>CHAPTER III – Authority to Contract</u>	4
3.1 Authority of the Secretary General	4
3.2 Authority of the Assistant Secretary for Management	4
3.3 Authority of the Assistant Secretary General and the Executive and Assistant Secretaries	4
3.4 Authority of Directors and Specialists	4
3.5 Special Authority for Procurement Related to Conferences and Meetings	5
3.6 Authority of National Office Directors	5
3.7 Authority of the Chief of the Office of Procurement Management Services (“OPMS”)	5
3.8 Delegations of Authority	5
<u>CHAPTER IV – Prohibitions</u>	6
4.1 Prohibitions Related to Persons	6
4.2 Prohibitions for Staff Members Involved in the Contracting Process	7
4.3 Prohibitions Related to Contract Sum, Fund Availability, and Object	8
4.4 Prohibitions as to Place of Contract	8
4.5 Prohibitions as to Form	8
<u>CHAPTER V – Contract Awards Committee</u>	9
5.1 Functions	9
5.2 Composition	9
5.3 Selection Criteria	9

<u>CHAPTER VI – Responsibilities of Other Dependencies of the General Secretariat Directly Involved in the Contracting Process</u>	9
6.1 Office of Procurement Management Services	9
6.2 Requesting Dependency	10
6.3 Department of Legal Services	10
<u>CHAPTER VII – Responsibility of Individual Staff Members</u>	11
7.1 Responsibility	11
7.2 Restitution	11
7.3 Disciplinary Measures	11
<u>CHAPTER VIII – Vendors: Authority, Responsibilities, Bonds, and Limitations</u>	12
8.1 Authority	12
8.2 Information and Files	12
8.3 Quality of Performance	12
8.4 Privileges and Immunities	12
8.5 Assignment	12
8.6 Performance and Payment Bonds	13
<u>CHAPTER IX – Payment</u>	13
9.1 The Contract Sum	13
9.2 Requirements for Payments and Time of Payments	13
9.3 Payment in Local Currency	14
<u>CHAPTER X – Competitive Methods: Bids and Negotiations</u>	14
10.1 Competitive Methods Required	14
10.2 Types of Competitive Methods	14
10.3 Exceptions	17
<u>CHAPTER XI – Settlement of Disputes Arising from Procurement Contracts</u>	18
11.1 Arbitration	18
11.2 Choice of Law and Forum	18
11.3 Judicial Recourse	19

<u>CHAPTER XII – Termination of Procurement Contracts</u>	19
12.1 Termination for Cause	19
12.2 Termination for Unforeseen Circumstances	19
12.3 Termination Disputes	19
<u>CHAPTER XIII – Exceptions</u>	20
13.1 The Exceptions Process	20
<u>CHAPTER XIV – Miscellaneous Provisions</u>	20
14.1 Administrative Memoranda	20
14.2 Data Base of Vendors	20



PROCUREMENT CONTRACT RULES

CHAPTER I Definitions and Scope

- 1.1 Definitions:** For purposes of these Rules, the following definitions shall apply:
- 1.1.1 Authorizing Official:** The staff member of the General Secretariat or other duly designated person responsible for the program or project which is funding the procurement contract.
 - 1.1.2 Contract Awards Committee:** This is a Committee created under Chapter V of these Rules for the approval of all procurement contracts in excess of \$30,000.
 - 1.1.3 Contract Sum:** The Contract Sum, also known as "the Contract Amount" or the "Contract Cost," is the amount the General Secretariat of the Organization of American States ("General Secretariat" or "GS/OAS") is obligated to pay the vendor under the contract.
 - 1.1.4 CPR:** This is the acronym for the term "Performance Contract".
 - 1.1.5 Dependency of the General Secretariat:** This is a general term used to refer to General Secretariat's, Units, Departments and Offices within the General Secretariat that are managed by an officer at the P-5 level and above.
 - 1.1.6 Dollars and the sign \$:** The term dollars and the sign \$ refer to United States Dollars.
 - 1.1.7 General Standards:** These are the General Standards to Govern the Operations of the General Secretariat of the Organization of American States
 - 1.1.8 GS/OAS:** This is the General Secretariat of the Organization of American States
 - 1.1.9 Independent Contractor:** An independent contractor is a natural or legal person who, in the pursuit of an independent business, provides goods or services to the General Secretariat, using the contractor's own means and methods, without detailed supervision and control by the General Secretariat over the production of the product, result, or service required, and without the subordination, prohibitions against assignment, and exclusivity required from employees.

- 1.1.10 National of an OAS Member State:** A national of an OAS Member State is a natural person who is a citizen of an OAS Member State or a legal person whose principal office of business is in an OAS Member State or whose place of incorporation is in an OAS Member State.
- 1.1.11 Parties:** The parties to a procurement contract are the General Secretariat of the Organization of American States ("GS/OAS") and the Independent Contractor -- also known as "the vendor".
- 1.1.12 Performance Contract:** A performance contract (a "CPR") is a contract for the purchase of human services or a specific work product or result for an approved program or project in areas of specialization in which the General Secretariat does not have sufficient internal staff resources to produce the product or result required within the allotted time.
- 1.1.13 Procurement Contract:** A procurement contract is a contract for: the purchase or lease of goods, transportation, or real estate; the purchase of insurance; and the purchase of services incidental to and as part of a contract for the purchase or lease of goods or real estate. More specifically, procurement contracts include contracts for the purchase or lease of:
- a. Supplies, materials, equipment, machines, vehicles, furnishings, and other transactions;
 - b. Printing and other related services (letter press, offset, varitype, engravings and illustrations, cuts, binding, etc.);
 - c. Transportation of people and property (personal and household effects; and documents, equipment, materials, etc., for conferences, meetings, seminars, etc.);
 - d. Real property as a tenant or as a landlord;
 - e. Technical equipment and scientific materials, goods, and services, requested by the centers, institutions, national agencies, etc. participating in and benefiting from the programs implemented by the General Secretariat;
 - f. Insurance and bonds to cover: vehicles and other personal property and real property of the GS/OAS; members of the staff; persons travelling on behalf of the General Secretariat, its Institutions or Agencies; and certain kinds of functions and responsibilities; and
 - g. Buildings and grounds maintenance, construction, repairs, and renovation services.

1.1.14 Relative: Relative shall mean spouse, son or daughter, stepson or stepdaughter, father or mother, stepfather or stepmother, brother or sister, half-brother or half-sister, stepbrother or stepsister, father- or mother-in-law, son or daughter-in-law, brother- or sister-in-law.

1.1.15 Vendor: A vendor is an Independent Contractor who enters into a procurement contract to provide whatever is to be sold or leased to the General Secretariat under that Contract.

1.2 Scope: These Rules apply only to procurement contracts as defined above and as further described below. They do not apply to performance contracts or employment contracts. The former are governed by the Rules for Performance Contracts; the latter are governed by the corresponding provisions of the General Standards and the Staff Rules.

CHAPTER II **Purpose, Interpretation, and Application**

2.1 Purpose of these Rules

The purpose of these Rules is to facilitate compliance with the following management objectives, which derive from the General Standards to Govern the Operations of the GS/OAS (the "GS/OAS General Standards") and from GS/OAS' Budgetary and Financial Rules:

- 2.1.1** Protection of the interests of the Organization;
- 2.1.2** Optimization of GS/OAS' purchasing power by obtaining the best possible terms;
- 2.1.3** Competition in the selection of vendors and the awarding of contracts; and
- 2.1.4** Rationalization of the procurement process to achieve the following purposes:
 - a. Anticipation and satisfaction of demand;
 - b. Standardization, wherever possible, of equipment, office furnishings, and other equipment and supplies;
 - c. Collection of information and data on the procurement process;
 - d. Increased efficiency, simplified procedures, expedited processing, improved analysis, and systematic evaluation of vendors;
 - e. Execution of contracts which conform to the approved Program-Budget and Plans of Operation of the Organization;
 - f. Allocation of administrative responsibilities to the staff;

- g. Staff accountability in the procurement process; and
 - h. Institutionalization of procedures to ensure effective financial management and the cost efficient and economical use of resources administered by the GS/OAS.
- 2.1.5 Reduction of the General Secretariat's exposure to liability to vendors and third parties.

2.2 Application and Interpretation of these Rules in Accordance with their Purpose

These Rules shall be interpreted in accordance with the foregoing purposes and GS/OAS shall procure goods and services only by methods and procedures that are consistent with them.

CHAPTER III
Authority to Contract

3.1 Authority of the Secretary General

Article 97 of the GS/OAS General Standards authorizes the Secretary General to negotiate, award, and execute procurement contracts.

3.2 Authority of the Assistant Secretary for Management

By delegation, the Assistant Secretary for Management may negotiate, award, and execute all procurement contracts.

3.3 Authority of the Assistant Secretary General and the Executive and Assistant Secretaries

By specific written delegation, the Assistant Secretary General, and the Executive and Assistant Secretaries may negotiate procurement contracts that are in their respective areas and that are related to direct services requested by the OAS Member States.

3.4 Authority of Directors and Specialists

Directors and specialists duly assigned responsibility for the administration of specific programs and projects may, by specific written delegation from the appropriate authority, negotiate and/or participate in the negotiation of procurement contracts in their respective areas and under their supervision.

3.5 Special Authority for Procurement Related to Conferences and Meetings

By delegation from the Assistant Secretary for Management, the Director of the Secretariat for Meetings and Conferences may negotiate and/or award and execute all procurement contracts (purchase orders) related to the holding of conferences and meetings. All such contracts are subject to legal review, where applicable, under these Rules.

3.6 Authority of National Office Directors

3.6.1 The Directors of the GS/OAS Offices in the Member States ("National Office Directors") may negotiate, award and execute all procurement contracts for goods of national origin in amounts up to \$3,500. Copies of these contracts shall promptly be sent to the Chief of the Office of Procurement Management Services. Provided, however, that within any 12 month period, no National Office Director may negotiate, award, and/or execute procurement contracts totaling in the aggregate \$30,000 or more without first obtaining written approval from the Chief of the Office of Procurement Management Services.

3.6.2 By specific authority delegated in each instance in writing by the Assistant Secretary for Management, National Office Directors may negotiate, award, and execute any other type of procurement contract, as long as the requirements regarding legal review under these Rules are adhered to when applicable.

3.7 Authority of the Chief of the Office of Procurement Management Services ("OPMS")

The Chief of the Office of Procurement Management Services shall have the following authority:

1. To negotiate, award, execute, and administer procurement contracts;
2. To administer the contract rules and procedures issued by the Secretary General;
3. To delegate authority to other GS/OAS Officials in writing to negotiate and sign procurement contracts.

3.8 Delegations Of Authority

All delegation of authority under these Rules shall be subject to Chapter IV, "Delegation of Authority and Responsibility and Accountability" of the Budgetary and Financial Rules and its successor provisions. Under those Rules, the delegee assumes responsibility for its proper exercise; however, the delegor remains jointly and severally responsible for the exercise of that authority with the delegee. In the event of any conflict between the Budgetary and Financial Rules and these Rules, these Rules shall govern.

CHAPTER IV
Prohibitions

4.1 Prohibitions Related to Persons

4.1.1 No procurement contract may be awarded to the following:

1. A staff member of the General Secretariat;
2. Any person who has held the post of Secretary General or Assistant Secretary General, or a position of trust, unless he/she has ceased to hold such post for at least two years;
3. Any delegate, diplomatic representative, or other governmental employee of a Member State;
4. Any relative of a senior GS/OAS staff member (P-4 or higher), any relative of a representative or delegate of a Member State, or any relative of any other person involved directly in the execution, evaluation, or direct supervision of the program or project funding the contract ;
5. Any person, corporation, partnership, association or other business entity, which has entered into a performance or procurement contract which was terminated by the GS/OAS for cause;
6. Any person legally incompetent, under indictment for a serious crime, on trial for and/or convicted of a serious crime. A serious crime is defined as a felony and/or a crime in which a conviction carries a minimum sentence of one year in jail. However, a conviction for a serious crime in the past will not preclude a person from bidding on/and possibly being awarded a contract if, after a review of the circumstances, the Department of Legal Services concludes that the person is presently qualified to do business with the GS/OAS;
7. Any person, corporation, partnership, association, or other business entity, which has defaulted on and/or failed to perform satisfactorily an existing or previous performance or procurement contract of any kind;
8. Any person, corporation, partnership, association or other business entity which under the laws of the Member State where the contract is to be performed is not authorized to provide the goods and/or services covered by the contract;
9. A corporation or other business entity in which any of the persons mentioned in Subsections 1 through 8, above, has more than a 25% ownership interest, or which would involve by employment or otherwise any of the persons or entities described in Subsections

1 through 8, above, in performance of the work covered by a contract;

10. A former staff member of the General Secretariat who signed a currently valid agreement with GS/OAS which provides that the former staff member is ineligible to enter into any form of contract for remuneration with GS/OAS; and
11. A person who is not a national of an OAS Member State, unless:
(i) the contract is funded by specific funds and the donor or those funds or the recipient of those funds, with the donor's consent, so requires in writing; or (ii) OPMS certifies, after submitting the procurement to competitive practices in accordance with these Rules, that there is no national of an OAS Member State who can satisfy the terms of reference of the procurement at a reasonably competitive price.

4.1.2 After consultation with the Departments of Legal Services and Financial Services, the Assistant Secretary for Management may make exceptions, for good cause, to the prohibitions listed in Subsections 5 and 7 of Section 4.1 above.

4.2 Prohibitions for Staff Members Involved in the Contracting Process

- 4.2.1** Under no circumstances shall staff members accept, directly or indirectly, commissions, privileges, gifts, gratuities, loans, favors, or any other thing of monetary value from vendors of the GS/OAS. Gifts, gratuities, and favors having an annual aggregate monetary value of \$50.00 received from a prospective or actual vendor or from his/her representative or agent are considered nominal and do not fall within the proscriptions of these Rules.
- 4.2.2** Except as set forth in the second sentence of this Subsection 4.2.2, no staff member who owns or has any title, right, stock, share, interest, or other proprietary right in a firm, enterprise, or any other business entity that furnishes the GS/OAS with supplies, goods, and services through procurement contracts, shall participate in any capacity in the requisitioning, negotiation, award, or execution of the GS/OAS procurement contract(s) involving said firm, enterprise, or business entity. However, any staff member who would normally be involved in the procurement process and who owns an equity interest (e.g., stock) or other property right in a company which is under consideration for a contract with GS/OAS or which is a supplier of goods or services to the GS/OAS, shall declare that interest to the Chief of the Office of Procurement Management Services at the beginning of the procurement process. After appropriate consultation with the Department of Legal Services, a decision will be made as to whether the staff member should be excluded from all involvement in the matter.

4.3 Prohibitions Related to Contract Sum, Fund Availability, and Object

- 4.3.1 The Contract Sum shall not exceed the reasonable market value of such service or product.
- 4.3.2 No procurement contract with a contract sum greater than \$30,000¹ shall be awarded without the prior approval of the Contract Awards Committee, which was formerly known as the Selection and Awards Committee.
- 4.3.3 No construction-related contract of more than \$50,000 and no other type of procurement contract for more than \$75,000 shall be awarded without prior review by the Department of Legal Services. For this purpose, two or more contracts that are awarded to the same vendor over a period of twelve consecutive months, or procurement purchases from the same supplier over a period of twelve consecutive months, the sum of which exceeds \$75,000 in price or payments shall be considered one contract for purposes of the application of these Rules.
- 4.3.4 No contract in excess of \$10,000 shall be awarded unless accompanied by a brief written justification from the requesting dependency of the General Secretariat.
- 4.3.5 No procurement contract in excess of \$999 shall be awarded absent satisfactory compliance with the competitive methods required under in Chapter X of these Rules.
- 4.3.6 No construction contract in excess of \$250,000 shall be entered into without satisfying the bonding requirements set out in Chapter VIII, Section 8.6 below, of these Rules.
- 4.3.7 No contract for the purchase, sale, lease, or other transfer of an interest in real estate shall be awarded without prior review by the Department of Legal Services.

4.4 Prohibitions as to Place of Contract

There are no prohibitions as to the place of contract. Procurement contracts may be entered into either at GS/OAS Headquarters or at the Offices of the General Secretariat in OAS Member States.

4.5 Prohibitions as to Form

There is no standard form procurement contract. Procurement contracts may be set out in the standard boilerplate GS/OAS purchase orders, or in other legally acceptable formats approved by the Department of Legal Services.

¹ As previously noted, all dollar figures in these Rules refer to United States of America Dollars.

CHAPTER V
Contract Awards Committee

5.1 Functions

The Contract Awards Committee is responsible for recommending to the Chief of Staff and/or to the Assistant Secretary for Management, the approval of all procurement contracts above \$30,000. The Committee shall meet when necessary to open and review bids, to establish criteria for judging the bidders, to review vendor references, to ascertain the financial status of the responsive bidders, to request additional information, and to consider all relevant material.

5.2 Composition

The Committee shall be comprised of the Chair, who shall be a representative of the Secretariat for Management; a representative of the Department of Legal Services; and a representative of the Dependency which requested the contract. A representative from the Office of Procurement Management Services shall serve as the Technical Secretary of the Committee. On occasion, representatives from other areas in the GS/OAS, such as the Office of the Inspector General, may also attend, and participate as an observer, in the Committee meetings. The Chair shall be appointed by the Assistant Secretary for Management. The other members shall be appointed by the Directors or officers of equivalent rank of the Dependencies they represent.

5.3 Selection Criteria

The Committee shall recommend the winning bidder(s) to the Chief of Staff and/or to the Assistant Secretary for Management based upon the Committee's review of the bids and such factors as price, technical capability, competency, quality of work or product, references, and financial stability, etc.

CHAPTER VI
Responsibilities of Other Dependencies of the General Secretariat
Directly Involved in the Contracting Process

6.1 Office of Procurement Management Services

The Office of Procurement Management Services shall have the following responsibilities:

1. To administer these Procurement Contract Rules so as to ensure their uniform application and compliance throughout the GS/OAS;
2. To develop, recommend, and implement procedures and methods that will simplify and expedite administrative processing of procurement contracts;
3. To provide technical advisory and/or secretariat services in relation to procurement contracts;

4. To provide technical advice and administrative support to the Contract Awards Committee;
5. To certify, after the corresponding investigation, that each performance and payment bond received from vendors by GS/OAS under these Rules is issued by bonding companies rated as acceptable and reliable by the United States Treasury Department or by another rating authority of equal reliability and recognition among government contracting officers;
6. To serve as the Technical Secretariat to the Contract Awards Committee; and
7. To establish and maintain the Vendor Data Based described in Chapter XIV herein.

6.2 Requesting Dependency

- 6.2.1 The requesting dependency must include a brief written justification in the requisition for the purchase of any supplies, services, or other items listed in Subsection 1.1.13 of these Rules, when the contract amount is or will exceed \$10,000.
- 6.2.2 Through its Director or the Specialist in charge of the program or project funding the procurement, the requesting dependency shall render technical opinions on the feasibility of requests for technical equipment and scientific material, as well as provide technical advice for procurement contracts, which due to their nature, complexity or specialty require their expertise.

6.3 Department of Legal Services

The Department of Legal Services is responsible for reviewing:

1. Contracts for the purchase, sale, lease, or other transfer of an interest in real estate;
2. All construction-related contracts where the total costs will exceed \$50,000;
3. All other contracts where the total costs will exceed \$75,000;
4. Two or more procurement contracts totaling over \$75,000 which are awarded to the same vendor within a 12 month period.

CHAPTER VII
Responsibility of Individual Staff Members

7.1 Responsibility

Staff members duly authorized to initiate, negotiate, award, or execute a contract shall:

1. Obtain the most desirable terms of price, quality, service, and delivery in accordance with the interests of the GS/OAS, that is, identify and contract with "responsible" bidders rather than merely with "responsive" bidders;
2. Follow the procedures established in the Administrative Memoranda issued in accordance with these Rules; and
3. Strictly observe the policies with respect to Ethics of Conduct and Conflicts of Interest set forth in Executive Order No. 96-3, in Administrative Memoranda No. 77, rev.1, and in their successor provisions.

7.2 Restitution

- 7.2.1 Any staff member who participates in the initiation, negotiation, award, or execution of a procurement contract without the appropriate authority shall make restitution to the GS/OAS up to the entire amount of that contract, as determined by the Assistant Secretary for Management in consultation with the Department of Legal Services.
- 7.2.2 In the event that a procurement contract is invalidated because of fraud, negligence, or bad faith attributable to any staff member participating in its initiation, negotiation, award, or execution, that staff member shall be personally liable for any damages incurred by the GS/OAS resulting therefrom, and he/she shall personally make full restitution to the GS/OAS for those damages. In addition, he/she shall be subject to the disciplinary procedures set forth in the Staff Rules.
- 7.2.3 Any staff member who negligently or with malice or in bad faith certifies that a vendor has complied with the contract sufficiently to warrant payment under the contract when in fact such compliance has not occurred shall make restitution to GS/OAS in the amount of all damages incurred by GS/OAS arising out of that certification.
- 7.2.4 The obligation to make restitution is not a disciplinary measure.

7.3 Disciplinary Measures

Any staff member who commits an act of fraud, gross negligence, malice, or bad faith in the contracting process and/or fails to observe any of the prohibitions set forth in Chapter IV of these Rules, the conflict of interest policies set forth in Executive Order No. 96-3 and Administrative Memoranda Nos. 77, rev.1, their successor provisions, or any other provisions of these Rules, shall be subject to the disciplinary procedures

set forth in the Staff Rules. All disciplinary and other measures provided for under these Rules are cumulative and are not mutually exclusive.

CHAPTER VIII
Vendors: Authority, Responsibilities,
Bonds, and Limitations

8.1 Authority

8.1.1 A vendor may not legally represent the GS/OAS or sign commitments binding the GS/OAS; however, a vendor may, if so authorized in the contract, act as the GS/OAS agent in purchasing goods and services to be furnished under the contract for the sole purpose of assuring that those goods and services are exempt from taxation, provided the savings realized by the tax exemption are passed on to the GS/OAS either in the contract price or in reductions to it after the contract is signed.

8.1.2 Other than compensation for services, the vendor shall not receive, disburse and/or otherwise handle GS/OAS funds. Contracts for banking and other money management services are exempt from this provision.

8.2 Information and Files

All information, files, drawings, and other documents belonging to the GS/OAS and used by the vendor in the performance of a construction contract shall remain the property of the GS/OAS. Such information, files, and documents, and copies thereof, may not be retained by the vendor beyond the termination date of the contract unless expressly so provided in the contract.

8.3 Quality of Performance

Each vendor shall provide the goods and services required under the contract in accordance with the highest professional standards, and those goods and services shall conform to all applicable laws, regulations, and ordinances.

8.4 Privileges and Immunities

No vendor, solely by virtue of its procurement contract with the GS/OAS, shall have any right or claim to the immunities, privileges, and other benefits accorded to staff members of the GS/OAS.

8.5 Assignment

A vendor may not assign any of its obligations or rights under a contract with the GS/OAS without the GS/OAS Authorizing Official's express prior written consent.

8.6 Performance and Payment Bonds

- 8.6.1** Before any contract exceeding \$250,000 for construction, alteration, or repair of any building owned or managed by the GS/OAS is awarded to a vendor, the vendor shall furnish to GS/OAS a performance bond with a surety or sureties satisfactory to the officer awarding the contract, and in such amount as said officer shall deem adequate for the protection of the GS/OAS. The performance bond shall become binding upon the award of the contract to the vendor and no payments shall be made to the vendor until the GS/OAS receives the bond or a duly certified copy of it.
- 8.6.2** The Assistant Secretary for Management may require the vendor to obtain a payment bond prior to awarding any construction contract, so as to protect the rights of subcontractors and laborers on the project and to reduce the exposure, expense and inconvenience of dealing with mechanics' and materialmen's liens.
- 8.6.3** The Assistant Secretary for Management, in consultation with the Director of the Department of Legal Services, is authorized to waive the bonding requirement upon the written recommendation of the pertinent contracting officer, provided said waiver is in writing and supported by a memorandum setting out why the bonding requirement is impracticable or otherwise not advisable in the particular case. The acceptance of substitute security for performance in lieu of a standard performance bond is subject to prior consultation with the Department of Legal Services.
- 8.6.4** The Assistant Secretary for Management may require performance bonds and other sureties to guarantee vendor compliance for contracts other than those specified in Subsection 8.6.1 above, in those cases where the protection provided by such bonds and sureties is deemed desirable.

CHAPTER IX **Payment**

9.1 The Contract Sum

The Contract Sum shall be based on the nature of the goods, ancillary services, transportation, insurance, or real estate, as the case may be, provided in accordance with the requirements of the contract; and it shall not exceed the reasonable market value of same.

9.2 Requirements for Payments and Time of Payments

- 9.2.1** Each payment, other than contractually required "start-up" or "advance" payments, is to be made upon presentation of the vendor's invoice and certification by an authorizing official that the service or product has been satisfactorily provided as stipulated in the contract. Payment for a contract terminated under Chapter XII of these Rules

shall be made in accordance with the termination provisions contained in said contract.

9.2.2 The contract may provide for progress payments upon the completion of stages or phases of the work required under the contract. It may also provide for a start-up or advance payment, usually not to exceed 30 percent of the amount of the contract.

9.2.3 No payment, other than the initial advance, shall be made without the appropriate certification by the corresponding Authorizing Official.

9.2.4 Upon completion of a procurement contract, certification for final payment must be accompanied by an evaluation of the service or product received, signed by the corresponding Authorizing Official.

9.3 Payment in Local Currency

The contract sum may be expressed either in United States dollars or in the official currency of the OAS Member State where the goods and services purchased are to be delivered. If the contract has been expressed in dollars, and payment is to be made in local currency, the conversion shall be made at the rate of exchange utilized by the General Secretariat on the day of payment.

CHAPTER X **Competitive Methods: Bids and Negotiations**

10.1 Competitive Methods Required

Except as provided under Section 10.3 below, all procurement contracts shall be awarded through competitive methods.

10.2 Types of Competitive Methods

Competitive methods include the following:

10.2.1 Public Advertising for Sealed Bids

The GS/OAS shall use this procedure for procurement contracts over \$300,000 when competitive methods are required and:

- a. Time permits the solicitation, submission, and evaluation of sealed bids;
- b. There is a reasonable expectation of receiving more than one bid; and
- c. Procurement in accordance with the General Services Administration ("GSA") Schedule of the U.S. government is not feasible and/or desirable.

10.2.2 Competitive Negotiated Contracting Procedures Preceded by Solicitation from Qualified Sources

GS/OAS shall use these procedures where competitive methods are required and the conditions for the use of publicly advertised sealed bids are not satisfied. They include:

a. Purchases Equal to or Greater than \$100,000

For each procurement likely to result in a contract price equal to or greater than \$100,000, the GS/OAS shall publish a Request for Proposals ("RFP") which sets out the specifications for the goods or services desired and invites 5 or more qualified sources to submit written offers to provide those goods and services. The GS/OAS shall then negotiate with the qualified sources which reply as to the quality and quantity of the goods and services to be provided, their price, and other pertinent considerations, to the end of entering into the most desirable arrangement for the GS/OAS. Publication of the announcement of the RFP must be in the media (newspapers, trade journals, etc.); however, where the total contract sum is less than \$300,000 or the Assistant Secretary for Management has certified that publication by media is not practicable for reasons of emergency or extraordinary urgency, then the publication requirement may be satisfied by mailing, faxing, or emailing a copy of the RFP to at least five qualified vendors known to the GS/OAS. All replies should be summarized on a permanent record, which should be signed by the person(s) receiving the bids.

b. Medium Purchases (\$50,000 - \$99,999)

A medium purchase is a procurement that has a contract price of more than \$50,000 but not more than \$99,999. For medium purchases, the GS/OAS may solicit written bids by mailing, faxing, or E-mailing the prospective vendors a bid sheet. A minimum of five qualified sources known to the GS/OAS should be contacted. The bidders may either mail or fax their bids to the GS/OAS; however, in those instances where: (1) the specifications are complicated; or (2) there are less than three vendors known to the GS/OAS within a two hundred-mile radius of where the goods or services are to be purchased, the GS/OAS shall employ the same procedures utilized for purchases equal to or greater than \$100,000. All replies should be summarized on permanent record that should be signed by the person(s) receiving the bids.

c. Small Purchases (\$3,000 - \$49,999)

A small purchase is a procurement that has a contract price between \$3,000 and \$49,999, inclusive. For these purchases, a "short list" of vendors should be established, and in most cases the GS/OAS will solicit bids by telephone, E-mail, or fax, from three or more sources on the list. The bidders may submit their bids by fax or mail; however in those instances where: (1) the specifications are complicated; or (2) there are less than three vendors known to the GS/OAS within a two hundred-mile radius of where the goods or services are to be

purchased, the GS/OAS shall employ the same procedures utilized for purchases greater than \$50,000. The short list should be updated twice a year.

d. Purchases Under \$3,000

Procurements with a contract price between \$1,000 and \$2,999, inclusive, should be solicited by telephone, e-mail, or fax. Three bids should be requested, and the bidders may submit their bids by fax, E-mail, or by mail. All replies should be summarized on a permanent record, which should be signed by the person(s) receiving the bids. (A procurement with a contract price below \$1,000 (a direct purchase) does not have to be bid. However, it is incumbent upon the buyer to select the most responsible vendor).

e. Purchases of Supplies and Services Provided by Vendors in Accordance with GSA Schedules

Procurement of supplies and services furnished by vendors for use in the United States of America pursuant to GSA Schedules are exempt from the written and oral solicitation requirements respectively set out in Subsection 10.2.1, above, and in Sections a-d of this Subsection 10.2.2, and the GS/OAS may proceed directly to contract negotiation with those vendors. Since the GSA schedule price on a particular item is the same from all vendors who utilize the schedules, there is no need to obtain more than one bid, unless there are other concerns such as time or quality factors and/or quantity to be purchased.

f. Sole Source Negotiations

In those unusual instances where the goods and services required are such as to be available only from one responsible source, and there are no suitable substitutes on the market, the Assistant Secretary for Management, by delegation under these Rules may authorize procurement through negotiations with that vendor without requiring the solicitation of bids through the procedures outlined above written or oral solicitation processes referenced in Subsections 10.2.1 and 10.2.2 of these Rules. Such authorization may not be given, however, unless: (i) the Dependency or Authorizing Official, or other staff member recommending sole source negotiation, certifies in writing that he/she has conducted a thorough and diligent search of the market and that there are no vendors other than the vendor recommended who can provide the required goods and services or reasonable substitutes for them; and (ii) the Department of Legal Services concurs that the conditions for obtaining the goods or sources through sole source negotiations have been met. A staff member who falsely or negligently renders such a certification shall be liable to the penalties provided under these Rules, the Staff Rules, and the Rules for Ethical Conduct.

10.2.3 Special Bidding Situations

a. Late Bids

If time permits, and if a bid submitted after the bid closing date is clearly advantageous to GS/OAS, there should be a "nonselection" of the original request for bids, and a new bid closing date should be set. All of the original prospective vendors should then be given the opportunity to submit a best and final bid offer as a result of the new bid closing date established by GS/OAS' Office of Procurement Management Services or its successor entity.

b. Prospective Vendor's Request for Additional Information

If one of the prospective vendors requests additional information or clarification prior to making a bid, the other vendors should be given the same information.

c. Post-Bidding Disclosure

Unless authorized by the Assistant Secretary for Management, terms of the selected bid shall not be disclosed to the other vendors who bid on the contract.

10.3 Exceptions

10.3.1 Competitive methods are not mandatory:

- a. Where the goods to be purchased: (i) are for emergencies, such as disaster relief, emergency repairs, and other materials urgently needed to protect life and property; or (ii) are technical equipment and scientific materials for projects approved by the OAS General Assembly for execution in the OAS Member States; or
- b. Where the contract sum is less than \$30,000 and the Secretary General has determined that the use of competitive methods is not beneficial to the interests of the Organization.

10.3.2 The Secretary General must inform the Permanent Council within thirty days of all purchases in the amount of \$30,000 or more in which competitive methods were not used (including those under Subsection 10.3.1, a, above) and the reasons therefore.

10.3.3 The exception established in Subsection 10.3.1, b, above, may not be applied to any procurement contract for less than \$30,000 if the contract sum of that procurement contract, when added to the total contract sum of procurement contracts already awarded to the vendor within the preceding twelve month period, will cause that total sum to exceed \$30,000.

- 10.3.4** In the case of an exception made under Subsection 10.3.1, b, above, the determination that competitive methods are not in the beneficial interests of the Organization must be based on a reasoned analysis of the facts and circumstances in each case and recorded by way of a writing filed in the archives of OPMS.

CHAPTER XI
Settlement of Disputes Arising from Procurement Contracts

11.1 Arbitration

- 11.1.1** Any and all disputes arising out of, related to, or pertaining to a procurement contract, which cannot be amicably resolved by the parties to the contract, shall be settled through generally accepted arbitration procedures except as otherwise provided in the contract.
- 11.1.2** Procurement contracts with vendors domiciled in or having offices in the United States of America may provide for arbitration by the Inter-American Commercial Arbitration Commission, or by such other arbitration or mediation facilitators as may be agreed upon, in accordance with the appropriate procedures.
- 11.1.3** Procurement contracts with vendors who are neither domiciled nor have offices in the United States of America shall provide for arbitration by the Inter-American Commercial Arbitration Commission in accordance with its procedures or by such other arbitration or mediation authority as is located in their country of origin or elsewhere which is acceptable to the Department of Legal Services.
- 11.1.4** Unless otherwise specified in the contract, and expressly approved by the Director of the Department of Legal Services, all arbitration shall be final and binding on the parties, and it shall be stated in the contract that the agreement to submit to arbitration or designate a choice of law does not constitute a waiver, express or implied, of the privileges and immunities of the Organization of American States, the General Secretariat, and its officials under law.

11.2 Choice of Law and Forum

- 11.2.1** The choice of law for all contracts to be performed at Headquarters shall be the District of Columbia. Absent the written approval of the Director of the Department of Legal Services, no procurement contract shall designate as governing law for the contract the laws of any jurisdiction where the General Secretariat does not have an office.
- 11.2.2** The preferred choice of forum for all arbitration and other conflict resolution mechanisms provided for in the contract is the District of Columbia. Absent the written approval of the Director of the Department of Legal Services, no procurement contract shall designate a forum in a jurisdiction where the General Secretariat does not have an office.

11.3 Judicial Recourse

Any procurement contract that does not require final and binding arbitration must be submitted to the Director of the Department of Legal Services for approval.

CHAPTER XII **Termination of Procurement Contracts**

12.1 Termination for Cause

12.1.1 Cause for termination of a procurement contract includes, but is not limited to, failure to adhere to the provisions of the contract; failure to provide goods and services in accordance with professional standards; failure to meet deadlines; failure to conform to the standards for vendors under these Rules; failure to deliver conforming goods; bankruptcy; criminal indictment; or conduct that could damage relations between the GS/OAS and the government of a Member State or the public image of GS/OAS.

12.1.2 Provisions for termination for cause in procurement contracts may contain a reasonable notice period, to be determined given the facts and circumstances in each case.

12.2 Termination for Unforeseen Circumstances

12.2.1 Either party may terminate a procurement contract for unforeseen circumstances by giving notice to the other party under reasonable terms and conditions to be specified in the contract.

12.2.2 For purposes of these Rules, unforeseen circumstances include, but are not limited to: changes in the Program-Budget of the OAS; lack of sufficient approved funds for the corresponding program or project in the Program-Budget; an act of God; a Member State's desire to discontinue a project or other service it has been receiving; and the failure of the donor financing the contract to provide the necessary funding on a timely basis. For technical projects, an unforeseen circumstance may include, for example, failure of the Member State to comply with applicable GS/OAS requirements after a procurement contract has been awarded for a project in that State.

12.3 Termination Disputes

All disputes that arise out of the termination of any procurement contract and which cannot be remedied by agreement between the parties shall be subject to the provisions of Chapter XI of these Rules.

CHAPTER XIII
Exceptions

13.1 The Exceptions Process

- 13.1.1 Exceptions to these Rules with regard to any procurement contract, unless otherwise provided for herein, are permissible only if reviewed by the Director of the Department of Legal Services and then authorized in writing by the Chief of Staff. Each request for an exception shall be submitted in writing to the Director of the Department of Legal Services and to the Chief of Staff and shall contain a clear statement of the reasons requiring the exception sought.
- 13.1.2 Copies of the administrative actions granting those exceptions shall be sent to the Department of Legal Services and maintained in its files for a reasonable time.

CHAPTER XIV
MISCELLANEOUS PROVISIONS

14.1 Administrative Memoranda

- 14.1.1 The Assistant Secretary for Management may issue by administrative memorandum additional administrative regulations for initiating, awarding executing, supervising, and processing procurement contracts consistent with these Rules.
- 14.1.2 The Director of the Department of Legal Services shall review all such administrative memoranda before they are published, including but not limited to their inclusion in these Procurement Contract Rules to ensure their consistency with these Rules, other rules and regulations of the General Secretariat, and custom and usage in the procurement process.

14.2 Data Base of Vendors

OPMS shall establish and maintain an electronic relational data base on all vendors contracted by the General Secretariat. The data base shall include the name, address, telephone number, facsimile number, E-mail address, and web page (if any) of all vendors awarded procurement contracts beginning after December 31, 2000, through OPMS. It shall also include data which will enable users throughout the General Secretariat to determine which vendors are most appropriate for the goods and services they need, the names of the authorizing officials who have worked with those vendors, and information regarding the performance of those vendors based on the evaluations from the dependencies that procured

goods and services from them. The data base shall be accessible to all GS/OAS dependencies through the Intranet.

