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FINANCIAL, BUDGETARY AND ADMINISTRATIVE MATTERS

UNDP FINANCIAL REGULATIONS

Guidelines for the procurement of equipment, supplies and services

Report of the Administrator

Summary

This report is in response to operative paragraph 7 of Governing Council decision 81/28 in which the Council requested the Administrator to submit to its twenty-ninth session guidelines developed pursuant to UNDP Financial Regulation 15.4 regarding the procurement of equipment, supplies and services.

The report describes the actions taken by the Administrator in this respect and the reasons why the Administrator is unable to submit guidelines for procurement to the Council at this stage.



1. At its twenty-eighth session in June 1981, the Governing Council approved new Financial Regulations for UNDP (decision 81/28).

2. Regulation 15.4 states:

"Notwithstanding the provisions of Regulation 15.1,<sup>1/</sup> the Administrator may issue guidelines regarding the procurement of equipment, supplies and services in accordance with principles approved by the General Assembly and in particular the Consensus of 1970, resolution 2688 (XXV), annex, paragraphs 41, 42 and 44, and resolution 3405 (XXX), annex. Such guidelines shall be drawn up in consultation with the executing agencies which are organizations of the United Nations system, and submitted to the Members of the Governing Council in accordance with Regulation 14.1".<sup>2/</sup>

3. In operative paragraph 7 of decision 81/28 the Council requested the Administrator "to submit to the Governing Council at its twenty-ninth session the guidelines developed pursuant to UNDP financial regulation 15.4".<sup>3/</sup>

4. Since the Council adopted the new Financial Regulations, the Administrator has carried out extensive and detailed consultations on this matter both with the executing agencies which are organizations of the United Nations and with the Office of Legal Affairs of the United Nations. For reasons which are indicated below these consultations have not been conclusive and the Administrator is therefore unable to submit guidelines for procurement to the Council at this session.

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<sup>1/</sup> Regulation 15.1 provides that "The administration by executing agencies of funds obtained from or through UNDP shall be carried out under their respective financial regulations, rules, practices and procedures to the extent that they are appropriate. Where the financial governances of an executing agency do not provide the required guidance, those of UNDP shall apply."

<sup>2/</sup> Regulation 14.1 provides, inter alia, that "The Administrator shall ... establish detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy, and circulate the Financial Rules to Members of the Governing Council for information at least 30 days before they become effective".

<sup>3/</sup> Originally numbered 14.4.



5. With regard to the applicability of procurement guidelines to the executing agencies in their use of UNDP funds, members will recall that during the discussion of this item at the twenty-eighth session the question was raised as to whether the Administrator's guidelines on procurement could take precedence over agency financial regulations and the preliminary advice of the United Nations Office of Legal Affairs on this question was contained in document DP/567/Add.2. At the request of UNDP, the Office of Legal Affairs carried out a further review of this question, including a detailed study of the relevant provisions of agreements applicable to the relationships between UNDP and the executing agencies and provided its advice to UNDP in a memorandum dated 11 February 1982 to the UNDP Director of Finance. The concluding paragraphs of that memorandum read as follows:

"18. .... there appears at the present time to be no basis for considering that the executing agencies, except in the case of ICAO, are under requirement to implement the proposed guidelines.

"19. If an executing agency were to concur in the proposed guidelines, no difficulty would arise; but if an executing agency were not to concur, then negotiations with the agency with a view to obtaining its concurrence would seem the proper course. As a last resort, action by the General Assembly may be considered, but we would think that the Assembly would also wish, under applicable relationship agreements with the specialized agencies and the IAEA, to consult with the agencies before acting on the matter."

6. Following discussion of this issue with the executing agencies at the fifty-fifth session of the Consultative Committee on Administrative Questions (Financial and Budgetary Questions) in September 1981, the CCAQ secretariat requested the organizations concerned to prepare, with the collaboration of their respective legal advisers, written statements setting out their position on this matter for discussion at CCAQ's fifty-sixth session in March 1982. The report of that session states that "on the whole, the sense of the statements was that in case of conflict the regulations, rules and directives of the organizations would take precedence over the requirements of UNDP unless the former were brought into conformity with such requirements by the competent authority."

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7. In the light of the legal advice received and the inability to reach an understanding with agencies so far, the Administrator proposes the following line of action. He will now carry out a detailed review of the existing procedures which UNDP applies in procuring equipment, supplies and services in connection with its biennial budget and the projects which it executes itself. As a result of this review, he will endeavour to formulate appropriate guidelines for procurement which will fully take into account the decisions of the Governing Council and of the General Assembly and the interests of the developing countries. In particular, the proposed guidelines will attempt to reflect and reconcile the principles embodied in General Assembly resolution 2688(XXV), annex, paragraphs 41, 42 and 44, and resolution 3405(XXX), annex, as prescribed in Financial Regulation 15.4. The Administrator will at the same time identify any modifications to UNDP's existing procurements procedures which may be necessary to bring them into full accordance with the proposed guidelines. The types of problems which may call for modification of existing procedures include:

(a) Those relating to currency fluctuations, e.g. differences in rates of exchange occurring between the date of bid submission and actual payment;

(b) Those relating to procedures for comparison of bid prices, including the selection of currency to be used in bids; and

(c) Those relating to procedures for evaluating bids taking into account, in addition to price, other relevant factors, such as the availability of local servicing and spare parts, and the annual maintenance costs of equipment.

8. When the proposed guidelines have been formulated, the Administrator intends to request agencies to inform him whether, without prejudice to their legal position, they would be willing to follow the proposed guidelines (after any agreed amendments) on a voluntary basis. He will also ask to be informed as to which, if any, of the proposed guidelines the agencies find incompatible with their existing procedures. The Administrator would then be able to report to the Governing Council at its thirtieth session on those aspects of General Assembly resolutions and Governing Council decisions on procurement which the agencies find unacceptable and would request the Council to give him its directions regarding future procurement activities financed by UNDP funds in the light of this information.

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