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**Report of the Court on its assessment of alternative arrangements to further integrate maintenance and capital replacements\*****Executive Summary**

This report responds to the Committee's request that the Court explore arrangements to further integrate maintenance and capital replacements under a single contract as an alternative to current contractual arrangements.

A business model that further integrates maintenance and capital replacement services under a single contract covering multiple stages of the life cycle of building components would, thanks to the scope and financial value of the contract, be a viable solution.

Allocating primary operating risks to a new contractor would have the potential to generate efficiency gains while ensuring the continuous performance and operability of the Court's premises. Such efficiency gains could be achieved if the contract duration were to cover a large part of the building's life cycle, i.e. 20 to 30 years. The contract would provide fixed pricing for maintenance and capital replacements.

Allocating the risks to the contractor will encourage it to apply its expertise and market position to future-proof the related services and financing. The enhanced Facilities Management Unit would manage demand and monitor the risks.

Such a model would therefore require consistent and reliable funding, which means long-term financial commitment by the States Parties.

The Facilities Management Unit needs to be restructured into a contract and demand management organization with a correspondingly higher level of professional qualification of staff.

**I. Introduction**

1. At its thirty-fifth session, the Committee on Budget and Finance ("the Committee") recommended that the International Criminal Court ("the Court") explore arrangements to further integrate its maintenance and capital replacement programmes under a single contract, as an alternative to current contractual arrangements, and that it submit the results of its assessment for consideration by the Committee at its thirty-sixth session.<sup>1</sup>

2. The Court has taken due note of the Committee's request and sets out in this report the preconditions for successful integration of its maintenance and capital replacement programmes. Those preconditions are: (a) the appeal of such a contract on the market; (b) the

\* Previously issued as CBF/36/9.

<sup>1</sup> ICC-ASP/19/15, para. 106.

transfer of risks to the main contractor, (c) contract management and funding; and (d) appropriate adaptation of the structure of the Facilities Management Unit.

3. Before elaborating on the above-mentioned preconditions, it is worth reviewing the Court's current contractual arrangements and risk profile.

## **II. Current contractual arrangements**

4. The Court currently holds a contract with the maintenance contractor Heijmans, a well-established vendor on the Dutch facilities management market offering technical support and building services across a range of trades. The contract covers the Court's obligations as building owner in terms of all preventive maintenance (to a large extent required by law) and all corrective maintenance to cope with any repair needs originating from faults in building components, in order to ensure business continuity.

5. Preventive maintenance refers to the measures taken on a regular basis to ensure the continued operation of building components, so that the building continues to perform its technical functions and/or remains in operational condition. Preventive maintenance also helps to maximize the useful life of building components. Preventive maintenance services are provided on the basis of a contractually agreed plan which covers all preventive actions. Many such actions, such as the inspection of elevators and the certification of the building's fire alarm system, are required by health and safety regulations.

6. Corrective maintenance refers to the repair services organized and conducted after a defect, disruption or fault arises and prevents a component from performing the required function or providing the required level of service from a technical or functional perspective. Corrective actions must comply with contractually agreed response times for certain priority areas so as to minimize business interruptions. For example, the response time to attend a fault in the courtroom is shorter than the response time to attend a fault in an ordinary office space.

7. The contractor is also responsible for submitting to the Court, every year, an updated multi-annual long-term capital replacement plan indicating the expected remaining useful lives of various building components and the estimated costs of replacing them. Using those plans, the Court decides which building components are to be replaced as they reach the end of their technical and/or functional useful lives.

8. The contract is monitored by way of a set of key performance indicators that measure the contractor's efficiency and effectiveness against criteria such as response times, repair times, legal and regulatory compliance, and cooperation and partnership.

9. While some risk has been shifted to the contractor, the Court still bears substantial operational risks, such as the risk of business interruption, with the contractor liable only under certain circumstances, e.g. negligence, lack of care, or incorrect action.

## **III. Alternative contractual arrangements integrating maintenance and capital replacements**

10. In response to the Committee's request to explore arrangements to further integrate maintenance and capital replacements under a single contract as an alternative to the current contractual arrangements, this report sets out the preconditions for such integration, beginning with the preconditions related to the state of the market.

### **State of the market – capacity, expertise and business volume as indicators of a viable solution**

11. The Court has considered (i) whether the required technical and economic capacity exists on the market; (ii) whether the required technical, financial and management expertise exists on the market; and (iii) whether the volume of business expected under such a contract would be sufficient to attract vendor interest. Of importance is whether the volume of business expected under the contract would align with the revenue expectations of prospective contractors and, in particular, whether the volume of business would be worth their effort and expenditure in setting up the necessary organizational and financial management structure specific to the contract, for which an administrative overhead fee would be charged throughout the term of the contract.

12. It appears that the technical and economic capacity and the expertise needed to enter into such a contract are present on the Dutch and wider regional markets. The Court's own market research and feedback from other international organizations that have external facilities management contracts clearly show that such technical and economic capacity exists.

13. It can therefore be expected that the market will be responsive and that sufficient interest will be generated. In particular, the scope and scale of the request are likely to attract vendors. In the context of local investment projects and operating models, the requirement may be described as medium-sized. The expected business volume is large enough to be worth a contractor's setting up the necessary management and administrative structure.

14. The Court therefore believes that the request is within the capacity of the facilities management sector in the Netherlands and the wider region.

#### **Risk allocation in a life cycle-oriented business model<sup>2</sup>**

15. Another question is whether risks can successfully be allocated in such a way that the contractor has the freedom to introduce efficiency gains in the provision of services.

16. The science of managing business relationships teaches that the party accepting a risk generally expects to have some autonomy in deciding how it manages that risk, and to be compensated for accepting it.

17. In the case of the further integration of maintenance and capital replacement services, the responsibility for primary operational risks would need to be allocated to the contractor as an incentive to ensure that the condition and operability of the building are kept at a level that minimizes the risk of unexpected interruptions to the Court's business processes.

18. In other words, the contractor would need to assume responsibility for the non-disruption of the Court's business processes (e.g. hearings and administrative operations), continuous performance of building components, maintenance of the building in fully operable condition, adherence to adequate response times, and legal and regulatory compliance, and it would need to bear the corresponding risks, including risks of consequential losses from business disruptions, business risks associated with subcontracting, and related performance risks.

19. The allocation of these risks to the contractor will enable that contractor to use its experience, knowledge and market position to deliver appropriate future-proof solutions, efficiency gains and best value for money. This will require a long contractual term covering a large part of the building's life cycle, i.e. 20 to 30 years. A life cycle-oriented approach is consistent with the allocation of primary operational risks for business processes to the contractor so that it can effectively plan maintenance and replacements with the ultimate goal of business continuity in mind.

20. Accordingly, a business model which further integrates maintenance and capital replacement services under a single contract in a fully life cycle-oriented approach would be viable thanks to the scope and financial value of the contract.

#### **Contract management and funding**

21. The complexity of integrated maintenance and capital replacement services will require close monitoring of the contractor's performance and of its responsiveness to demand and the requirements of the Court. It will also require close financial monitoring based on revised and newly established key performance indicators reflecting the contractor's overall responsibility for the full operability of the building.

22. Financial incentives such as contractual bonus payments and penalties would be linked to performance.

#### **Periodic payments**

23. Such a contractual model would promote predictability and better estimation of costs in the medium- to long-term and would facilitate budgeting through fixed expenditures for

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<sup>2</sup> The life cycle of a building component includes stages such as design, construction or production, operation, maintenance, replacement, and demolition/disposal.

maintenance and capital replacements, in periodic payments to the contractor. This in turn will require consistent and reliable funding through the annual budget.

**IV. Changes in the structure of the Court's Facilities Management Unit (FMU)**

24. It was always expected that the structure of the Court's Facilities Management Unit would continue to change in line with the evolving and increasingly complex requirements of the permanent premises, moving from a mainly hands-on organization to the management of large scale contracts covering not only maintenance and capital replacements but also utilities and all other building support services.

25. The position of Head of FMU has already been upgraded to a higher level. After an initial period of several years in which more physical labour was needed to manage the start-up of the building's operations, the time has come to complete the transition to an organization which, rather than employing repair and service staff, fields a professional workforce with the appropriate technical and managerial expertise.

26. The move to an integrated contract will further increase the aforementioned complexity. It will therefore require a more extensive restructuring of the Court's Facilities Management Unit to enable it to deliver on the intended contractual governance model.

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