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**OFFICE OF INTERNAL OVERSIGHT SERVICES
PROCUREMENT TASK FORCE**

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**REPORT ON
MR. WALTER CABRERA**

Report no. PTF-R001/06

Case no. PTF/026/06

STRICTLY CONFIDENTIAL

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REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

This is a report dealing with the matters raised (1) in the audit report dated 26 January 2006 PD/155/02 and (2) raised in other referrals concerning Mr. Walter Cabrera, procurement officer, Headquarters Procurement Section, at relevant times.

The following sets forth the findings of the Procurement Task Force concerning United Nations staff member Walter Cabrera.

INTRODUCTION

The Procurement Task Force was created on January 12, 2006 to address all procurement matters referred to the Office of Internal Oversight Services (OIOS). The creation of the Task Force was the result of perceived problems in procurement identified by the Independent Inquiry Committee into the Oil for Food Programme (IIC), and the arrest and conviction of UN procurement officer Alexander Yakovlev.

Under its Terms of Reference, the Task Force operates as part of OIOS, and reports directly to the Under Secretary General of OIOS. The remit of the Task Force is to investigate all open and pending procurement cases, including all matters involving the procurement bidding exercises, procurement staff, and vendors doing business with the United Nations (hereinafter “UN” or “Organization”). The mandate of the Task Force also includes a review in some procurement matters which have been closed, but it is nevertheless determined that further investigative effort is warranted.

The Task Force’s investigations have also focused upon a myriad of individuals and vendors doing business with the Organization. Some of these matters are particularly complex and span significant periods of time. Since its inception, more than 200 matters, involving numerous procurement cases in various UN Missions and UN Headquarters have been referred to the Task Force. The Task Force will report on matters individually. The Task Force has given priority to the matters involving the eight staff members placed on special leave with pay.

The purpose of this report is to address the matters raised in the audit findings of January 2006 concerning Walter Cabrera, a United Nations procurement officer, and another matter brought to the attention of the Task

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

Force through a separate referral. First, Mr. Cabrera is alleged to have improperly provided notification to a prospective vendor that approval had been granted in favor of the vendor, Thunderbird LLC (Thunderbird) for a contract to provide manpower support in UN Missions, prior to the official award of the contract. Secondly, the audit report found that Cabrera engaged in misconduct in connection with the procurement exercises in substantial contracts ultimately awarded to the firm Telecommunications Consultants of India (TCIL). The audit report found significant fraud indicators in connection with the procurement exercises in these contracts, a conclusion with which the Task Force agrees. (The Task Force will report on these issues in much more detail in a subsequent report addressing related matters). However, the focus of this report is upon the conduct of Mr. Cabrera individually, and whether Mr. Cabrera acted improperly in his participation in these matters.

APPLICABLE RULES AND REGULATIONS

This matter is examined within the confines of the applicable United Nations regulations and rules, and in particular, the following:

Rule 1.2(b) which requires Staff Members to “uphold the highest standards of efficiency, competence, and integrity.” The regulations define the concept of integrity to include, but not limited to, “probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.”

Rule 1.2(i) which requires that Staff members “shall exercise the utmost discretion with regard to all matters of official business. They shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General.”

METHODOLOGY

The Task Force has examined the discussion and findings in the audit report, and spoken with both the auditors responsible for the matter, and, on several occasions, Mr. Cabrera. The Task Force has examined the file from

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

the procurement department (“PD”) in connection with the Thunderbird matter, and the TCIL contracts. However, substantial portions of the files concerning both of these cases were found to be missing. Nonetheless, the Task Force has examined relevant email communication, electronically stored records, and hard copy documents received through a variety of sources. The Task Force has spoken with the officials in DPKO responsible for requisition of the items underlying the contracts at issue, and other United Nations procurement officers involved in these matters.

With regard to the TCIL contracts, the investigation of Mr. Cabrera’s involvement in the laptop procurement, more fully discussed below, has faced a number of significant challenges including the procurement department’s policy of short term retention of cancelled bids and the turnover and movement of staff. Nevertheless, forensic data recovery has been an important tool utilized to examine the circumstances and the relevant communication on the issue. In connection with the Thunderbird matter, significant portions of the Thunderbird file are also missing. In that case as well, the Task Force has been able to use forensic resources to gather significant relevant information and evidence.

DISCUSSION**Notice of the Award to Thunderbird LLC**

The facts of this matter as they relate to Mr. Cabrera are not in dispute. In May, 2002, Thunderbird LLC (Thunderbird), through Mr. Nishan Kohli, its Managing Partner, had submitted an application in support of registering with the Organization as a vendor authorizing it to submit proposals on upcoming UN contracts. In July, 2002, after successfully being registered by PD, Thunderbird, through Nishan Kohli, submitted a proposal for the supply of engineering manpower to various UN Missions in response to the RFP issued by the Procurement Department. Ultimately, Mr. Sanjaya Bahel, Chief of Field Procurement, had made a presentation to the Headquarters Committee on Contracts (HCC) in favor of the award to Thunderbird. The matter had not been assigned to Mr. Cabrera until late December, 2002, and he was involved in the case only peripherally until that time.

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

However, after the presentation by Mr. Bahel to the HCC on 4 September 2002, the HCC granted expedited approval for an extension of the existing contract being performed at the time by IECS-IRCON (“IECS”), and a subsequent award to Thunderbird to replace IECS. The circumstances surrounding the request for expedited approval and the basis for it are not fully clear. There is no record of such a request, and there is no reference to any such request in the minutes of the HCC. Mr. Cabrera has denied making the request, and there is no information in the procurement department’s files on the issue or to suggest Mr. Cabrera made the request. However, it is clear that the request is required to come from the procurement department, either the officer making the presentation, or the supervisor. The line officer who attended the HCC meeting with Mr. Bahel has denied making the request at any time, and there is not evidence to suggest that she did.

However, the investigation has revealed Mr. Bahel’s personal involvement in ensuring that the vendor, Thunderbird, received advanced notice of the likely award. Other than the HCC secretary, Mr. Bahel is also the only individual associated with the request for expedited approval in a position to seek it. The need for expedited approval for Thunderbird in the first instance and the effort to notify Thunderbird quickly of a likely award is questionable in light of the fact that in the same HCC meeting the current vendor, IECS, was granted an extension to continue for an additional two months, and that Thunderbird had failed to submit audited financial statements and was given an additional four weeks to accomplish the task. (However, Thunderbird took over eight weeks to file the forms). Thus, the basis for the intensive effort by Mr. Bahel to notify Thunderbird is problematic, especially in light of the fact that Thunderbird’s application was still not yet complete. Curiously, there is no request for advanced notification to IECS of the expedited approval of their extension.

While the minutes of the HCC meeting were pending and not yet finalized, however, a one page form had been issued by the HCC granting expedited approval for both the continuation of the current contractor, and for the replacement, Thunderbird. The circumstances surrounding the creation of this form and the request for expedited approval in the first instance are troubling, and are a continued subject of the Task Force’s investigation. However, at present, there is no evidence in the possession of

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

the Task Force which demonstrates Mr. Cabrera participated in this aspect of the matter.

After the HCC presentation, Mr. Bahel, who was scheduled to leave New York for annual leave, convened a meeting with Ms. Jane Redfern, a UN procurement officer, and Mr. Walter Cabrera prior to his departure. In this meeting, Mr. Bahel instructed them to notify Thunderbird of the recommendation to award the contract to them. According to Mr. Cabrera, he understood that he was not able to provide a Letter of Intent (LOI) to Thunderbird, but was able to give verbal notification of the HCC's action based upon the document issued by the HCC. Mr. Cabrera's understanding that this action was permissible was based upon the fact that his supervisor, Mr. Bahel, directed him to do it, as well as his independent understanding at the time. At the direction of Mr. Bahel, Mr. Cabrera did in fact notify Mr. Nishan Kohli that the HCC had recommended that the contract be awarded to Thunderbird and that Thunderbird would likely receive the contract. Mr. Cabrera asserts that he further notified Mr. Kohli that PD could not issue an LOI prior to receiving the approved HCC minutes and formal award of the contract. (Mr. Kohli's explanation of the events in his written submission to the Organization through his attorney materially differs, however the Task Force does not find Mr. Kohli's representations credible).

Mr. Cabrera concedes that he provided notice to Nishan Kohli at the express direction of Mr. Bahel after the HCC had issued a notice of expedited approval. According to Mr. Cabrera, Mr. Bahel left instructions to await a copy of the approval in his inbox in the procurement office. Further, according to Mr. Cabrera, Mr. Bahel explained to Mr. Cabrera that he would be out of the office and requested that Mr. Cabrera should retrieve the document and notify the vendor of the likely award. Mr. Cabrera acknowledges that he followed the direction, and in the course of contact with Mr. Kohli, he provided the notification.

While the salient facts as they relate to Mr. Cabrera set forth above are not in dispute, the propriety of his actions has been questioned. The Task Force has examined whether Mr. Cabrera's conduct ran afoul of any relevant United Nations regulations or rules, particularly the prohibition against improper communication of proprietary information to those outside of the Organization not authorized to receive it (Regulation 1.2(i)), the prohibitions

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

against favoring particular vendors in bidding exercises, and the procurement rules in general. Mr. Cabrera's contention in defense of his actions is that in instances in which the HCC grants expedited approval, and thereafter issues the approval form, notification to the vendor that an award is likely does not contravene existing rules.

The Task Force has not been able to identify any precise procurement rule on this point in existence at this time and requests of numerous departments in the Organization have failed to produce anything relevant. Hence, there does not seem to be any clear directive either permitting or prohibiting such action. Further, several witnesses within the Organization with significant experience in procurement matters have informed the Task Force that in circumstances in which expedited approval is sought, it is not improper to provide such conditional notice to allow a contractor to prepare to comply with its obligations under the contract and allow them to adequately prepare themselves to perform in a timely fashion. While it is certainly questionable whether in this instance notice of expedited approval was truly exigent in light of the fact that the vendor was not going to perform under the contract for two months and Thunderbird had yet to submit audited financial statements, there is no evidence that suggests Mr. Cabrera shared responsibility for the request in the first instance, or was otherwise aware of the unexplained circumstances of the request for expedited approval and the basis for it.

Therefore, in light of the foregoing, and the absence of a clear regulation to the contrary demonstrating that Mr. Cabrera should have known his actions were improper, the notification Mr. Cabrera provided cannot form the basis of an adverse finding against him.

The TCIL Contracts

The contracts awarded to the firm Telecommunication Consultants of India (TCIL) have been the subject of extensive examination by the Task Force. Again, while these matters will be discussed in much more exhaustive and comprehensive detail in a subsequent report, they are addressed herein only as they relate to Mr. Cabrera.

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

The Task Force has examined the five contracts set forth in Table 11 of the audit report AP2005/600/20 of January 19, 2006, at paragraph 123. While the Task Force acknowledges that the auditors quite correctly found that strong indications of fraud existed in connection with these contracts, an examination of Mr. Cabrera's role in these matters has not resulted in evidence of improper conduct on his part. The investigation has found that Mr. Cabrera was not involved in the bidding procedures in these matters, with the exception of one contract. While an extensive discussion of all of these cases is therefore unnecessary, an analysis of Case #5, PD/155/02, the laptop computers, requires discussion as Mr. Cabrera was the case officer.

In this matter, the audit report found at paragraph 125 that “[t]here were indications that Walter Cabrera distorted communication to DPKO for the purpose of canceling the initial bid where TCIL was not the lowest bidder, and the Compaq brand of computers offered by TCIL was not going to be selected as a standardized brand. TCIL won the replacement bid.”

In addressing this issue, some background is necessary. First, it should be noted that the procurement file in this matter was found to be incomplete, missing documents and relevant information. The Task Force was able to identify more details as a result of forensic analysis of electronic media. However, it cannot be said that the Task Force is comfortable that all information involving this matter has been gathered. That said, the Task Force was able to reconstruct the following facts concerning this matter from various documents and searches of electronic media, and discussions with relevant parties.

In February, 2002, DPKO Communications and Technology Services Division (CITS) sought to obtain a new systems contract for laptop computers. Mr. Cabrera was the procurement officer in the procurement department (PD) assigned to this matter. The Chief of CITS communicated his request to PD, and on February 25, 2002 an expression of interest was issued by PD. An invitation to bid followed on April 15, 2002 which was transmitted to 36 vendors from nine countries.

CITS advised PD that they desired only “IBM, Dell and Compaq” based on ITSD standards for desktop computers. On the other hand, PD and the Information Technology Services Division (ITSD), involved in the

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

process by Mr. Bahel, recommended adding Toshiba, Sony, Fujitsu and NEC to the list. In a subsequent exchange of emails between PD and the requisitioner (CITS and ITSD), CITS continued to assert that they sought only the three major brands of computers to avoid “inferior products,” laptops from “questionable manufacturers,” “clones” and “home built computers.” Ultimately, however, CITS agreed that they were amenable to expanding the field to include other major brands of computer manufacturers who were recognized industry leaders. As a result, on April 24, 2002, the case officer, Mr. Cabrera, issued a bid amendment notification to the vendors correcting the anticipated quantity of the computers sought, and clarifying that that only “Compaq, Dell, IBM, Toshiba, Sony, Fujitsu and NEC” brands would be considered for solicitation.

On May 15, 2002 the bids were read publicly. La Cresta Communications of California submitted the lowest priced bid based upon a Pentium III Toshiba model. TCIL was the next lowest bidder offering a Compaq model, followed by Dell, and then SSDI with an IBM, and finally Manchester Technologies offering a Fujitsu model. On May 30, 2002, Mr. Cabrera notified La Cresta that the company needed to resubmit the specifications for the Toshiba model they were offering as the table of compliance with the bid technical terms was absent and specification pages from La Cresta’s submission were contrary to the proper format. Nevertheless, Mr. Cabrera allowed La Cresta to resubmit the pages.

In its response, La Cresta informed PD that Toshiba was discontinuing the Pentium III model offered in its original submission, but that they would upgrade the model proposed to a Pentium IV at no extra cost to the Organization. La Cresta informed PD that because Toshiba was discontinuing the Pentium III model, they therefore could not provide the anticipated quantity of Pentium III laptops called for in the RFP. However, La Cresta informed PD of its ability to fill the order for the guaranteed quantity with the currently proposed model and of its readiness to fill the remainder with an upgraded model at no extra cost.

The investigation has revealed that Mr. Cabrera forwarded to CITS, by email, La Cresta’s updated offer of an upgraded model. Email communication reflects that Mr. Cabrera’s dialogue with DPKO continued with respect to La Cresta’s offer. The Task Force has expended

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

considerable effort to reconstruct the sequence of events that followed. A three week lapse existed between the time of the finding that La Cresta was determined to be compliant, and the initiation of the re-bidding exercise. In the interim period, email correspondence confirms that DPKO found LaCresta to be technically compliant even after the offer of an upgrade. Mr. Cabrera was further in the midst of preparing the presentation to the HCC.

Procurement Department officials concede that at this point there was no further issue and there was no justification not to award the contract to LaCresta. Indeed, no justification is provided to La Cresta, or found in the file. It seems that La Cresta was not formally informed of the cancellation. (Typically the case officer maintains the responsibility for communicating the cancellation to the vendor.) In this case, there is no correspondence in the case file from procurement to the vendor notifying them of the cancellation. A DPKO official involved in the process has informed the Task Force that in conversations with PD in this interim period, it was represented to him that PD had expressed a view that there was an “issue” with LaCresta’s submission. According to the official, the Procurement Department suggested a re-bid because of a “technicality.” While the official objected, he was told that because the matter is a commercial one it is only within PD’s prerogative to cancel the bid on the basis of commercial non-compliance. This explanation is not persuasive as there was no commercial or technical issue with LaCresta’s bid. DPKO had found La Cresta to be compliant and the firm was the lowest bidder. Mr. Cabrera agrees that the reasoning proffered by PD to the DPKO official is not sound, but takes issue with any claim participation by him in the exchange or decision.

Nonetheless, it is clear that a new invitation to bid (ITB) was issued. The basis for this renewed ITB however is not clear, nor is the identity of the individual(s) who sought it. The Task Force has not identified any evidence to support a finding that Mr. Cabrera was involved in the decision and the documents demonstrate that Mr. Cabrera continued to maintain a dialogue with DPKO concerning its requests. Further, the Task Force has not identified evidence which suggests Mr. Cabrera sought to cancel the bid, and then seek a re-bidding exercise.

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

The investigation has revealed however that Mr. Cabrera's supervisor, Sanjaya Bahel, was intimately involved in the matter, and interjected himself in it, communicating with ITSD officials and DPKO officials. The DPKO official referred to above stated that he had conversations with Mr. Bahel in which Mr. Bahel confirmed that PD was of the view that there was a technical issue with LaCresta's bid, and there should be a new bidding exercise.

The proposal was re-bid in early July. The supplemental ITB ultimately limited the solicitation to the three brands requested by CITS. The ITB was based upon the upgraded specifications, the Pentium IV model. Ten companies responded, and two companies, TCIL and Danoffice, were the most competitive both offering the same Compaq model. TCIL offered the lowest price, followed by Danoffice. Of the initial bidders, TCIL was the only company to offer a lower price for the computer model it offered. All other vendors raised their prices from the initial bid. Although La Cresta offered a Compaq brand, and the second lowest bid, the model it was offering was inferior to the models offered by TCIL and Danoffice, and was in fact determined by CITS to be non-compliant.

On July 18, 2002, Sanjaya Bahel, the Officer in Charge of Procurement at the time, recommended the award to TCIL for a systems contract in the amount of US\$5,340,000. In the presentation of the matter to the HCC, officials questioned the basis for limiting the bidding exercise to the three specified brands and intimated that the PD violated UN rules and regulations by the use of brand names in its ITB. Email communication after the event describes a circumstance in which DPKO officials are questioned about the limitation of the re-solicitation to the three preferred brands. The HCC stated that "were it not for the imminent loss of funds, the Committee would have recommended that a re-bidding exercise be conducted inviting all brands of laptops that met the UN's requirement." Nevertheless, the proposed contract award to TCIL was ultimately approved, and signed.

The cancellation of the first bid, and the invitation for vendors to re-submit further bids in light of the cancellation, allowed the other vendors a second opportunity to bid on the laptop contract. While it is unclear what precipitated this action, the re-bidding exercise is questionable in light of the fact that LaCresta was held to be technically compliant and offered the

REPORT ON WALTER CABRERASTRICTLY CONFIDENTIAL

lowest bid. On that basis, it appears that they should have been awarded the contract in the absence of objection by the requisitioner. Mr. Cabrera concedes that this is the case. Nevertheless, there is a lack of evidence in possession of the Task Force that Mr. Cabrera was a factor in causing the re-bidding exercise. Indeed, he did not have the authority to do it, and past practice suggests that such a decision could only come from a supervisor. As such, the Task Force's investigation cannot conclude that Mr. Cabrera engaged in this act to favor TCIL, notwithstanding the fact that cancellation of the initial bid and the re-bidding exercise allowed TCIL, and the other vendors, a second opportunity for the contract.

CONCLUSION

Based upon the foregoing, the Task Force's investigation has been unable to identify a sufficient basis to support a finding that procurement officer Walter Cabrera acted in violation UN rules and regulations of the Organization in connection with 1) his involvement in the Thunderbird matter in 2002, and 2) his participation in the TCIL contracts, and in particular the laptop contract, which were the subject of the audit report.