



UNMIK

Investigation Task Force

Alleged irregularities in a contract for the construction of garages and a parking area for Air Traffic Control Services at Pristina Airport and in an annex agreement for the supply of new offices, training room and maintenance garage for the Rescue Fire Fighting Service (Case 0276/04)

I. INTRODUCTION

1. This case arises out of an audit report dated 28 February 2003 into the financial statements of Pristina International Airport conducted by the Chartered Accountants, which led to an investigation concerning alleged corruption and irregularities arising in the course of procurements and contracts at Pristina International Airport.
2. There are four specific allegations in this report of investigation:
 - Extra work to the value of €25,935.74 was added to the main contract without any supporting documentation;
 - The Divisional Manager of the Airports Sector KTA authorised the Annex Agreement to proceed in spite of the fact that the contract exceeded his/her authorisation limit of €25,000 to sign and approve a contract which deviated from the normal procurement procedure;
 - Extra work to the value of €1,390 was added to the Annex agreement without any supporting documentation indicating either the nature of the extra works or appropriate authorisation.
 - The Divisional Manager of the Airports Sector KTA failed to secure funding approval prior to authorising expenditure for the annex agreement.

II. APPLICABLE TERRITORIAL LAWS AND UNITED NATIONS PROCEDURAL RULES

Section 1 of UNMIK Regulation 1999/24 dated 12 December 1999 as amended, states that the law applicable in Kosovo shall be:

- a) "The regulations promulgated by the Special Representative of the Secretary General (SRSG) and subsidiary instruments issued pursuant to those regulations; and
- b) The Law in force in Kosovo on 22 March 1989."

UN Staff Regulations 1.2 (b) stipulates, "Staff members shall uphold the highest standards of efficiency, competence and integrity"

UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds provides that:

Article 6.3 1—"When the total estimated value of the contract does not exceed DM 50,000, (25,000 Euro) the Authorising Officer of the requesting entity may

approve... the use of Direct-Single Source Procurement or Single-Source Selection of Consultants.”

Article 8.2 –“Procuring entities shall maintain records of Public Procurement in sufficient details for the PPRB to verify that the provisions of this Instruction have been followed. For each procurement, the record shall contain as a minimum: justification pursuant to 6.3, (a) of the method of procurement chosen if that method differs from the normal method specified by this Instructions, or (b) of the procedures followed if they differ from the normal procedures specified by this instructions for the method of procurement chosen...”

Article 24 – “Direct Single Source Procurement may be used for Goods, Works or Ancillary Physical Services:

24.1 - If such Direct Single Source Procurement is not used to

24.1.1 - Avoid Competition

24.1.2 – Discriminate against other suppliers and

24.2 – Direct Single Source Procurement is the appropriate method to be used:

24.2.1 as the Goods, Works or Services can be provided by only one supplier;.....”

III. METHODOLOGY

3. This investigation was conducted pursuant to Executive Decision No 2003/16 on the establishment of the Investigation Task Force. The ITF investigators conducted an enquiry into the allegations raised by interviews with persons indicated to be witnesses and persons potentially implicated in the allegations; by obtaining documents from the Pristina Airport administration and from Pillar IV, which were then analysed for relevance to the inquiry at hand.

IV. BACKGROUND INFORMATION

4. Pristina International Airport constitutes a state owned enterprise under Yugoslavian law. The assets of the airport include the runways, terminal buildings, hanger, fuel storage facilities and equipment. During the period covered by this investigation, from 2001 until 2003, they were maintained by the Public Enterprise Airport Pristina, (PEAP) in cooperation with Military Units of the Kosovo Force (KFOR). Pursuant to United Nations Security Council Resolution 1244 dated 10 June 1999, and UNMIK Regulation No 1/1999 dated 25 July 1999. UNMIK is mandated to administer the territory of Kosovo, including state owned and publicly owned assets. This includes Pristina International Airport.
5. Until the end of June 2002, responsibility for the administration of the Pristina Airport was entrusted to the Civil Administration Pillar (Pillar II) of UNMIK, including Official 1 and Official 2. Pillar II supervised the Department of Transport and Infrastructure (DOTI) Official 1. The DOTI was later known as the Transport Sector of the UNMIK Directorate of Infrastructure Affairs. DOTI Official 1 left UNMIK at the end of June 2002. DOTI Official 2 was recruited by the DOTI as an international staff member on 31 July 2000 in charge of airport operations, reporting to DOTI Official 1, and continued in this role until 30 September 2001. Engineering expertise was provided by a series of engineers seconded from a member state’s armed forces specifically Airport Engineer I, Airport Engineer 2 and Airport Engineer 3, and later by the Consultant from the Consulting Firm

6. On 1 July 2002, the responsibility for the administration of the Airport passed from Pillar II to the Kosovo Trust Agency (KTA) and Pillar IV. The Divisional Manager was appointed at the Airport Sector, KTA at the same time. Under him/her were the PEAP Official and the Air Traffic Control Services (ATCS) Official 1.
7. On 1 April 2004 Pristina International Airport, which had until that time been under the jurisdiction of KFOR, was handed over to civilian jurisdiction, under ICAO regulations.
8. It is against this background of change that procurement procedures relating to the following contract have been examined.

V. INVESTIGATION DETAILS

9. This report relates to Contract Ref ATCS/PA/COC W 02-02 for the construction of garages and a parking area for Air Traffic Control Services (ATCS) at the Pristina Airport. It also deals with a further single source contract Annex Agreement Ref ACTS/PA/COC/W 02-02 for the supply of new offices, training room and maintenance garage for the Rescue Fire Fighting Service. The value of the main contract was €263,093 and the Annex Agreement €33,927 .

Allegation 1

(Extra work to the value of €25 935.74 was added to the main contract for the construction of garages and a parking area for Air Traffic Control Services, without any supporting documentation detailing the nature of the extra works or appropriate authorisation)

10. A bid evaluation report dated 30 September 2002 indicates that following an evaluation of 9 bids the contract for the construction of garages and a parking area for Air Traffic Control Services was awarded to a the company in Pristina. A bid evaluation report letter from the ATCS Procurement Officer at Pristina Airport dated 1 October 2002 indicates that the Vendor was selected as having the lowest price (€263,093) of the three companies selected for further evaluation.
11. A contract dated 30 September 2002 was signed with the Vendor by ATCS at Pristina Airport on 11 October 2002.
12. A schedule of payments for the main contract indicates that a sum of €25, 935.74 was added to the cost of the contract. However, there are no documents in the contract file indicating the nature of the extra works or under what procedure they were authorised.
13. When asked about this issue by the ITF, the Divisional Manager stated that he/she would have expected to see a schedule of extra works in the contract file. However, it was not in the file. He/she therefore could not state to what the extra works related or under what procedure they were authorised.
14. ATCS Official 1, when asked about the nature of the works and the whereabouts of supporting documentation, stated that the request for the extra expenditure came from KFOR. He/she added that he/she was sure there was a justification

from KFOR to carry out the extra works and that it had been agreed in all the meetings between KFOR, UNMIK and the Airport.

15. On 6 October 2004, an ATCS Employee, provided ITF Investigators an explanation for the extra work and produced a spreadsheet detailing how the figures had been determined.
16. According to the ATCS Employee, there had been an arithmetical error in the bill of quantities for the main contract, which had not been picked up by the evaluation committee. This had resulted in a reduction in the price of the contract from €263,093 to €260,726.81.
17. ATCS Official 2 had subtracted the sum attributable to this arithmetical error from the contract, (€2366.19) and then carried out a review of the specifications. The review had resulted in a figure of €265,034.62 (€1941.62 more than the stated contract price of €263,093) due to items missed in the bill of quantities.
18. Additional ground stabilisation work totalling €23,994.08 was then added to the specification review work, amounting to the difference between the original contract price of €263,093 and the final invoice price of €289,028.74, giving a total of €25,935.57 for extra work.
19. This explanation was later confirmed by ATCS Official 2 in a further meeting with the ITF on 20 October 2004. ATCS Official 2 also confirmed that the extra work had not been recorded in written form, as it followed a visit to the construction site by the Divisional Manager and ATCS Official 1.
20. In summary, there are no documentary records to support the extra works. The only financial documentation on file authorising the extra works appears to be a signed schedule of payments, which includes the provision of €25,935.74 for extra works.

Allegation 2

(The Divisional Manager authorised the Annex Agreement to proceed in spite of the fact that the contract exceeded his authorisation limit of €25, 000 to sign and approve a contract which deviated from the normal procurement procedure under Article 6.3 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds);

and

Allegation 3

(Extra work to the value of €1,390 was added to the Annex Agreement without any supporting documentation indicating either the nature of the extra works or appropriate authorisation)

21. A note from KFOR to ATCS Official 1 and the Divisional Manager dated 21 January 2003 attaching minutes of a meeting dated 7 January 2003, indicates that an urgent request was made for construction of a fire-fighters office and maintenance offices, in anticipation of Iceland taking over from Italy as "Lead Nation" in March 2003.
22. An annex agreement in the sum of €33,927 was signed with the Vendor for construction of a fire-fighters office and maintenance offices on 7 February 2003,

supported by a justification from the Divisional Manager also dated 7 February 2003.

23. A schedule of payments dated 19 March 2003 relating to the annex agreement indicates that a sum of €1,390 was added to the cost of the contract. However, there are no documents in the contract file indicating the nature of the extra works or under what procedure they were authorised.
24. When asked about the extra payment in interview, the Divisional Manager indicated that from the documents presented to him/her (specifically the contract file) he/she could not say what the extra works were. He/she added that without looking at the works covered by the contract he/she could not know whether or not there was any provision for extra expenditure.
25. ATCS Official 1, when asked about the extra payment in interview stated that he/she would have to check airport administration records and provide this information. On 27 September 2004, ATCS Official 1 had a meeting with the ITF at which he/she indicated that the extra work related to a request from KFOR for a stair rail and the creation of a storage space under the stairs of the training offices for fire fighter's breathing equipment, together with office partitioning for the fire-fighter's offices. In support of this, he/she produced a copy of a manuscript diary entry and a note dated 27 September 2004, drawn up by the Vendor, listing these items as the extra works carried out. This indicates that there was no supporting documentation for the extra work when it was carried out. The only financial documentation on file authorising the extra works appears to be a signed schedule of payments, which includes the provision of €1,390 for extra works.

Allegation 4

(It is alleged that the Divisional Manager failed to secure funding approval prior to authorising expenditure for the Annex Agreement to construct a fire-fighters office and maintenance offices)

26. A capital expenditure approval dated 4 March 2003 shows that the Divisional Manager authorised the Annex Agreement to proceed in spite of the fact that the contract exceeded his/her authorisation limit of €25,000. In addition, the document indicates that the work had already been completed by the time that financial approval was sought for the expenditure.

VI. CONCLUSIONS

27. There is no supporting documentation or appropriate authorisation for the extra works in the sum of €25,935.74 arising from the main contract for the construction of garages and a parking area for Air Traffic Control Services. This is contrary to Article 8.2 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds.
28. The same is applicable to the extra works in the sum of €1,390 relating to the Annex Agreement for construction of a fire-fighters office and maintenance offices. This is again contrary to Article 8.2 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds.

29. In addition, the Divisional Manager authorised the Annex Agreement to proceed in spite of the fact that the contract exceeded his/her authorisation limit of €25,000 to sign and approve a contract which deviated from the normal procurement procedure under Article 6.3 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Fund.
30. Evidence indicates that the Divisional Manager failed to secure funding approval prior to authorising expenditure for the annex agreement to construct a fire-fighters office and maintenance offices. This is contrary to Article 8.2 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds.
31. In mitigation, the construction of a fire-fighters office and maintenance offices do appear to have been required as a matter of urgency.

VII. RECOMMENDATIONS

32. The ITF recommends the following;

Given that the Divisional Manager has left the Mission and cannot be sanctioned for his/her actions, it is recommended that UNMIK (Pillar IV) should place a copy of this report on his/her personnel file for future reference. (IV04/276/01)

It is recommended that UNMIK Pillar IV take appropriate action against ATCS Official 2 as the official having responsibility for the ATCS for his/her failure to ensure that the extra work was adequately documented and authorised. (IV04/277/02)