



Investigation Task Force

Irregularities in the contract for the supply and mounting of a suspended ceiling in the old part of the passenger terminal (Case 0277/04)

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 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 five specific allegations in this report of investigation:
 - Due to poor management and a lack forward planning, the contract for the supply and mounting of a ceiling in the old part of the passenger terminal was not included either in the contract for the expansion of the passenger terminal, or tendered at the same time as the contract for the heating, ventilation and air conditioning system;
 - the contract for the supply and mounting of a suspended ceiling in the old part of the passenger terminal was tendered as a single source procurement when this was not justified;
 - a single source contract procurement was authorised, when the contractor was already on site;
 - the contractor was authorised to commence work before the contract to replace the suspended ceiling in the old part of the passenger terminal had been officially signed and authorised or received capital expenditure approval;
 - The Divisional Manager signed off the contract in the sum of €40,250 in excess of his/her contractual authorisation limit of €25,000.

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 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 4 and Official 5. 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 the member state’s armed forces French Army, specifically Airport Engineer 1, 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.
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 a Contract for the supply and mounting of a suspended ceiling in the old part of the Passenger Terminal at Pristina International Airport. The value of the contract was €40,250,00.

Allegation 1

(Due to poor management and a lack forward planning by Pillar II and Airport management, the contract for the supply and mounting of a ceiling in the old part of the passenger terminal was not included either in the contract for the expansion of the passenger terminal, or tendered at the same time as the contract for the heating, ventilation and air conditioning system)

10. Two offers dated 28 October and 7 November 2002 were received for the replacement of the suspended ceiling in the old part of the passenger terminal at Pristina Airport from Vendor 1, the company undertaking the contract for the expansion and modernisation of the passenger terminal, and Vendor 2. The offer from Vendor 2 was accepted in the sum of €40,250 00 and a contract to replace the suspended ceiling in the old part of the passenger terminal dated 28 November 2002 was signed by Vendor 2 with Pristina Airport on 2 December 2003.
11. An internal memorandum from Airport Engineer 3 to the Divisional Manager dated 8 November 2002, requested to go ahead with a single source procurement for the replacement of the suspended ceiling in the old part of the passenger terminal. This was authorised by the Divisional Manager by means of a manuscript note on the memorandum on 9 November 2002.
12. Analysis of the internal memorandum from Airport Engineer 3 to the Divisional Manager indicates that it became necessary to replace the suspended ceiling in the old part of the passenger terminal due to the dismantling of the existing heating and air conditioning system and cooling pipes and the installation of the new heating ventilation and air conditioning system.

13. The memorandum adds that the dismantling of the ceiling in the old part of the passenger terminal was not foreseen in the tender for the replacement of the heating ventilation and air conditioning system.
14. This lack of foresight was confirmed by the Divisional Manager in interview, when he/she commented:
*“From my recollection, the total replacement of the ceiling should have been included in the original heating, ventilation and air conditioning contract, but for some unknown reason this appears to have been overlooked. This deficiency was highlighted in the third paragraph in my memorandum dated 12 November 2002 to the Procurement Officer on Contract Procedure Procurement, copied to Airport Engineer 3, the, PEAP Official and Official 1 which states:
“ Due to a lack of communications on the Heating and Air Conditioning Contract, the replacement of the suspended ceiling was not included in the contract.”*
15. When asked in interview whom amongst the Airport management was responsible for the project for the expansion and modernisation of the passenger terminal, the Divisional Manager indicated that the project for the expansion and modernisation of the passenger terminal would have been launched and approved by Pillar II, with DOTI Official 1 having overall responsibility for the management of the project.
16. The Divisional Manager added that Airport Engineer 3 and the technical managers at the Airport, the PEAP Official, and Official 2 would have had a role in checking the main contract.
17. The PEAP Official, when asked in interview about the replacement of the suspended ceiling, confirmed that it resulted from damage during the installation of the heating and air conditioning system and other installations.
18. However, when asked whether any thought had been given to possible damage to the suspended ceiling during the passenger terminal expansion, the PEAP Official indicated that the Slovenian company who designed the heating, ventilation and air conditioning system had not thought about this. This is unsurprising, as the company was contracted to design the mechanical installations for the system. Therefore, it would not have fallen within the company’s area of responsibility.
19. When asked who amongst the Airport management would have been responsible for approval of the project for the expansion and modernisation of the passenger terminal, the PEAP Official indicated DOTI Official 1. However, he/she denied any responsibility for checking the main contract himself/herself or approving the project, despite the fact that he/she was Manager of PEAP at the time and attended a meeting on 11 December 2000 to redefine the requirements for the upgrading and extension of the passenger airport terminal.
20. DOTI Official 2 indicated that the replacement of the existing ceiling in the old part of the passenger terminal building had been included in the tender documents for the project to expand and modernise the passenger terminal at

Pristina Airport. However, it has not been possible to verify this, and evidently it did not form part of the final contract.

21. DOTI Official 1, when asked why the tender for the expansion and modernisation of the passenger terminal did not include, inter alia, the replacement of the existing ceiling stated that the tender was beyond his/her level of control.

22. In view of the fact that the project to expand and modernise the passenger terminal at Pristina Airport entailed the demolition of two walls of the old passenger terminal, and an expansion in the floor area of the terminal from 1800m² to 4000m², the failure to consider replacing the existing ceiling in the old part of the passenger terminal building as part of the contract for the expansion

and modernisation of the passenger terminal demonstrates poor management and inadequate forward planning.

23. In addition, since the installation of a new heating, ventilation and air conditioning system, which formed an integral part of the ceiling, necessitated the demolition of the existing ceiling, the failure to include it in the contract for the new heating, ventilation and air conditioning system due to a lack of communication also demonstrates poor management and forward planning.

24. In summary, the necessity for a separate contract to replace the suspended ceiling in the old part of the passenger terminal could have been avoided if the project for the expansion and modernisation of the passenger terminal had been better planned, or if it had been included in the project for the new heating ventilation and air conditioning system. The overall picture presented in evidence provided to the ITF, is that planning of the passenger terminal project by senior and middle management in Pillar II and at the Airport was poor and managers, notably DOTI Official 1 and the PEAP Official failed to take managerial responsibility.

Allegation 2

(The contract for the supply and mounting of a suspended ceiling in the old part of the passenger terminal was tendered as a single source procurement when the conditions justifying a single source procurement had not been met)

25. Article 24 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds provides that
“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;.....”

26. A routing slip from the then KTA Auditor dated 6 March 2003, alleges that the conditions justifying single source procurement for the replacement of the

suspended ceiling in the old part of the passenger terminal had not been met. In reaching this conclusion, the then KTA Auditor raised concerns over, inter alia, incomplete documentation and the justification for a single source procurement.

27. Analysis of the interoffice memorandum from Airport Engineer 3 to the Divisional Manager dated 8 November 2002 indicates that at the time when the single source procurement was requested, pieces of the heating, ventilation and air conditioning system were hanging down from the ceiling, thereby representing a risk to passengers.
28. The memorandum also indicates that a second offer was obtained from Vendor 1, for the replacement of the suspended ceiling in the old part of the passenger terminal. However, this indicates that more than one company would have been able to provide the service.
29. The concerns expressed by Airport Engineer 3 are supported by an explanatory memorandum from the Divisional Manager to Official 3 dated 13 April 2003, concerning the refusal of the then KTA auditor to approve capital expenditure for the contract in March 2003. The memorandum states that an important part of completing the heating, ventilation and air conditioning system was the installation of the new ceiling in the departure area. It adds that the replacement of the ceiling was also necessary to make the departure area safe from a health & safety aspect for passengers and staff. The Divisional Manager confirmed this explanation in the course of two interviews.
30. A draft capital expenditure approval form signed by the Divisional Manager dated 28 November 2002 adds that the replacement of the suspended, ceiling in the departure area was “not included in the original contract.” However, it gives no reason for this.
31. When asked about the single source procurement in interview, the PEAP Official corroborated the information given by Airport Engineer 3 and the Divisional Manager. He/she added that there had been an incident involving a passenger, who had been injured by an aluminium part hanging down from the ceiling, which resulted in the note from Airport Engineer 3.
32. Due to the health and safety considerations, and to the fact that it formed part of the heating, ventilation and air conditioning system, the contract to replace the suspended ceiling in the old part of the passenger terminal had become urgent by the time the decision to proceed with it was taken. However, this was due in part to lack of forward planning and poor management. In addition, the requirement of Article 24.2 of UNMIK Finance Administrative Instruction 1999/2 stipulating that the goods, works or services could only be supplied by one company, is not fulfilled. The contract for the supply and mounting of a suspended ceiling in the old part of the passenger terminal was therefore tendered as a single source procurement when the conditions justifying a single source procurement had not been met.

Allegation 3

(A single source contract procurement was authorised, when the contractor was already on site)

33. A further allegation made in interview by the Procurement Officer is that the Divisional Manager and Airport Engineer 3 authorised a single source contract procurement, when the contractor was already on site.
34. When asked whether this was the case, the Divisional Manager stated that he/she could not recall, without a detailed examination of the file whether the contractor commenced work prior to the single source request. It will be noted that the Divisional Manager was given the opportunity to examine the Airport file relating to the contract for the supply and mounting of a suspended ceiling in the old part of the passenger terminal, but was unable to locate any relevant documents on this issue.
35. Unfortunately, the ITF has been unable to locate Airport Engineer 3 in order to clarify this issue.
36. Vendor 2 Representative, who replaced the terminal ceiling, was asked in interview when he/she commenced work on the suspended ceiling in the old part of the passenger terminal. He/she replied that he/she had commenced work two months after signing the contract. This is inconsistent with both the note from the Divisional Manager dated 13 April 2003 and the urgency of the situation indicated in the request for the single source procurement request from Airport Engineer 3, since the work would not have started until the end of January 2003 if Vendor 2 Representative's statement were accurate.
37. Evidence as to whether the Divisional Manager authorised a single source contract to go ahead after the contractor had commenced work is therefore inconclusive.

Allegation 4

*(The Divisional Manager authorised the contractor to commence work before the contract to replace the suspended ceiling in the old part of the passenger terminal had been officially signed and authorised or received capital expenditure approval);
and*

Allegation 5

(the Divisional Manager signed off the contract in the sum of €40,250 in excess of his/her contractual authorisation limit of €25,000 for contracts deviating from normal procurement procedures set out in Article 6.3 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds)

38. Analysis of the memorandum written by the Divisional Manager dated 13 April 2003, indicates that he/she authorised the work to start before the contract to replace the suspended ceiling in the old part of the passenger terminal had been officially signed and authorised, or received capital expenditure approval. In addition, the note indicates that he/she signed off the contract in the sum of €40,250 in excess of his/her contract authorisation limit of €25,000.

39. The Divisional Manager confirmed this to be the case in the course of two interviews, although he/she emphasised that he/she took the decision in order to secure the departure area from a health and safety aspect for both passengers and staff. He/she also commented in an earlier interview that there were considerable delays for procurement in the KTA, which required the then KTA Auditor's signature before Official 3 would approve expenditure.
40. Analysis of an email from Official 3 to the Divisional Manager dated 14 April 2003 confirms that capital expenditure approval was obtained after both the signing of the contract and the completion of the work. The Divisional Manager confirmed this in interview stating that work was carried out for health and safety reasons for the benefit of both passengers and staff, as the departure area was in constant use during the construction period.
41. In summary, evidence indicates that the Divisional Manager, for health and safety reasons, authorised the contractor to start work before the contract to replace the suspended ceiling in the old part of the passenger terminal had been officially signed and authorised, or received capital expenditure approval. In addition, evidence indicates that he/she signed off the contract in the sum of €40,250 in excess of his/her contract authorisation limit of €25,000.

VI. CONCLUSIONS

42. The contract to replace the suspended ceiling in the old part of the passenger terminal should have been included in the project for the expansion of the passenger terminal. Failing this, it should have been included in the contract for the new heating ventilation and air conditioning system.
43. The failure to do so demonstrates poor management and forward planning by senior and middle managers both at Pillar II and at Pristina Airport. Persons responsible are principally DOTI Official 1 and the PEAP Official, as well as staff responsible for checking the main contract and the contract for the heating ventilation and air conditioning system, specifically the Airport Engineer 3 and Official 2.
44. The responses given by DOTI Official 1 and the PEAP Official in their interviews with the ITF suggest an unwillingness to take managerial responsibility.
45. The work to replace the ceiling in the old part of the passenger terminal had clearly become urgent by the time the decision to proceed with it was taken. However, this was due in part to lack of forward planning and poor management. In addition, the requirement of Article 24.2 of UNMIK Finance Administrative Instruction 1999/2 stipulating that the goods, works or services could only be supplied by one company, is not fulfilled. The contract for the supply and mounting of a suspended ceiling in the old part of the passenger terminal was therefore tendered as a single source procurement when the conditions justifying a single source procurement had not been met.
46. Evidence indicates that the Divisional Manager, for health and safety reasons, authorised the contractor to start work before the contract to replace the

suspended ceiling in the old part of the passenger terminal had been officially signed and authorised or received capital expenditure approval.

47. In addition, evidence indicates that he/she signed off the contract in the sum of €40,250 in excess of his/her contract authorisation limit of €25,000 for contracts deviating from normal procurement procedures set out in Article 6.3 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds.

VII. RECOMMENDATIONS

48. The ITF recommends the following:

It is recommended that UNMIK Pillar IV – KTA take appropriate action against the PEAP Official for his/her management failure in not ensuring that the replacement of the ceiling was included in the project for the expansion of the passenger terminal or to include it in the contract for the new heating ventilation and air conditioning system (IV04/277/01).

It is recommended that because DOTI Official 1 and the Divisional Manager have both left the Mission, UNMIK Pillar IV should place this report on their personnel files for future reference (IV277/04/02).

It is recommended that UNMIK Pillar IV – KTA, in future projects such as the passenger terminal expansion, appoint a qualified engineer with appropriate expertise to plan and manage such activities (IV04/277/03).