

Investigation Task Force

Irregularities in the procurement for the extension of the Cargo Apron at Pristina Airport (Case 0282/04)

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:
 - tender specifications produced by the Pristina Airport for the cargo apron extension were insufficiently specific and without clear instructions for bidder contrary to UNMIK Finance Regulation 1999/2;
 - three persons on the bid opening committee were also part of the technical evaluation committee contrary to procurement regulations;
 - the contract for the cargo apron extension was not provided to the UNMIK Office of the Legal Adviser for clearance; and
 - it is alleged that the Vendor was allowed to certify its work as per the requirements of the contract.

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 4 1 – "Competition among and participation in the procurement process shall be maximised."

Article 4.1.1 – “All Suppliers and Contractors and their tenders shall be treated fairly, equally, and non-discriminatorily, without favouritism or prejudice and each Tender shall be judged on its merits.”

Article 4.3.3. – “If a consultant or any principal, officer or employee of such consultant has participated or will participate in any manner in the preparation of the UNMIK Kosovo Interim Administration’s Tendering for a contract, including but not limited to preparations of specifications or any other Tender Documents, no such consultant nor any principal officer or employee of such consultant, no “related person” nor any “illegal payer” may tender for or sponsor or participate in the Tendering for such contract.”

Article 23.3 – “All tender documents shall contain complete information in neutral and objective terms so that there can be full and fair competition among all suppliers. In particular Tender Documents must include the advertisement and ..”

Article 23.3.4 – “...full technical specifications, including the time limits for delivery and completion.”

Staff Rule 110.1: Misconduct. “Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and the Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, leading to the institution of disciplinary measures for misconduct.”

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 DOTI Official 1 (Department of Transport and Infrastructure). 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 armed forces of a United Nations member state, specifically Airport Engineer 1, Airport Engineer 2, and Airport Engineer 3, and later by a consultant from the Consulting Company.

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. Under him were the PEAP Official and ATCS Official (Air Traffic Control Services).
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 part of the investigation relates to a tender for a contract for the extension of the Cargo Terminal Apron at Pristina Airport. The value of the contract was €774,318.63.

Allegation 1

(Specifically, the tender documents for the cargo apron did not comply with the requirements of Article 23.4 of the UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds, as they were based on summary documents and did not include clear instructions on drawings and plans.)

10. A note from the Project Engineer at the Evaluation Company to the PEAP Official, dated 31 January 2001, indicates that the Evaluation Company was commissioned to produce a preliminary design for the Cargo Terminal at Pristina Airport. The design also provided for the construction of the Cargo Apron Extension.
11. A prequalification evaluation was held 5 April 2001 as a result of which five companies were pre-qualified to submit bids for the Cargo Apron Extension. Four companies submitted bids, and following an evaluation, the contract was awarded to the Vendor. A contract was signed for the Cargo Apron Extension on 11 September 2001.
12. A letter from the Vendor to UNMIK and PEAP dated 9 May 2001 indicates that it submitted a bid for the Cargo Apron Extension. The tender documents include what appears to be a section from the preliminary design documents produced by the Evaluation Company. Specifically, it includes a section entitled "Bills of Quantities" from pages 17 and 18 of the Evaluation Company preliminary design documents.

13. An interoffice memorandum providing an “outstanding issues update to Official 2”, from DOTI Official 3 to Staff member 1 at the office of Official 2 dated 18 May 2001, could give rise to the suggestion that offers were provided by companies on 28 May 2001, and the Vendor had been chosen for the works in advance. However, a more likely explanation is the date of the interoffice memorandum has been incorrectly dated, since the document contains reference dates relating to project “events” which post date 18 May 2001. At paragraph 2b, the interoffice memorandum states that the Cargo Apron invitation to tender was based on summary documents.
14. At paragraph 4 of the Cargo Apron Extension evaluation report dated 2 August 2001, the committee notes that the bidding documents did not include clear instructions on drawing and plans. It therefore was recommended that negotiations be held with the lowest bidder, the Vendor, on further details of the scope of works.
15. In combination, the two documents suggest that the tender documents did not comply with Article 23.3 of the UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds.
16. When asked whether he/she was of the view that the tender documents complied with the provisions of Article 23.3 of the UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds, DOTI Official 2 conceded that if an engineer was asked this question, he/she would indicate that the tender specifications were technically deficient and did not comply with Article 23.3.
17. DOTI Official 2 explained that the technical details of the Cargo Apron extension project were taken from the cargo terminal study produced by the Evaluation Company and pasted into the tender document specifications. Thereafter, it was up to the company winning the tender to demonstrate that they could fulfil the specification.
18. According to DOTI Official 2, Airport Engineer 1, who arrived shortly after the tender had been launched, had been angry with the Evaluation Company for allowing DOTI Official 2 to send out excerpts of their study as the tender specifications. Airport Engineer 1 had also expressed concern at the method used for preparing the tender documents, as from an engineering point of view the tenders did not contain sufficient detail. However, DOTI Official 2 stated that if the Evaluation Company had been asked to prepare the tender documents, it would have cost more money. He/she had therefore prepared the tender documents himself/herself and sent them to a Procurement Official at the CPE to review and help him with the procurement exercise.
19. Assistance from the CPE was provided primarily by a CPE Procurement Officer, and to a lesser extent by the Procurement Official, as to the procurement documents and rules. However, DOTI Official 2 expressed the view that neither the Procurement Official nor the CPE Procurement Officer would have had the technical expertise or time to review the technical specifications.

20. DOTI Official 2 emphasised that there was no engineering expert to support his/her work at the time the tender was launched, a fact that made his/her work very difficult.

Allegations 2 & 3

(Specifically, three of the persons on the bid opening committee and evaluation committees were the same parties who should not have carried out both tasks.)

and

(The contract for the Cargo Apron Extension was not channelled through the Office of the Legal Adviser.)

21. The evaluation report dated 2 August 2001 is signed by three parties, who are also listed as having attended the bid opening session. This indicates that the composition of the bid opening committee and the evaluation committee overlapped.
22. When asked about this issue in interview DOTI Official 2 confirmed that he/she was both on the bid opening committee and was a member of the evaluation committee. He/she added that the people who evaluated the offers signed the evaluation report. This is in conflict with UN regulations, which segregate the two roles. An interoffice memorandum dated 24 September 2001 indicates that the contract for the Cargo Apron Extension had not been channelled through the Office of the Legal Adviser.

Allegation 4

(Specifically, that the Vendor produced its own test results to confirm the quality of its own work on the Cargo Apron, resulting in a conflict of interest.)

23. An interoffice memorandum from Staff member 2 to the Procurement Official, signed by DOTI Official 1 dated 18 October 2001, indicates that DOTI Official 1 authorised the soil stabilisation work. The memorandum also adds that the work was inadvertently not included in the original contract.
24. DOTI Official 2 told the ITF that in order to progress the cargo apron tender, he/she had to organise a geographical survey. He/she added that only after the tests were done could the tender go ahead. However, the evaluation report at paragraph 4 suggests that information on the nature of the ground does not appear to have been included in the tender documents. In addition, a letter from the Vendor to UNMIK and PEAP dated 27 June 2001, but apparently not received at UNMIK and PEAP until 17 October 2001, according to a manuscript note signed by Airport Engineer 1 at the bottom of the letter, suggests that it carried out its own soil tests.
25. A letter from the Vendor to PEAP dated 18 September 2003 suggests that the Vendor also produced its own bearing capacity report for the Cargo Apron, thereby "self certifying" its own work. Whilst the tender documents at page 5,

reference 11.4, provide for the Contractor to pay liquidated damages in the event that the "load-bearing" capacity of the apron is less than foreseen in the contract, upon completion of the work, the contract is silent as to whom should carry out the tests. However, it is questionable as to whether the Vendor should have carried it out, since it presents a conflict of interest.

26. When asked about this in interview, the Divisional Manager stated:
"Without seeing any other documents, on the face of it, it does appear that there could be a conflict of interest here. But the report was produced by a professional pavement engineer, at a laboratory. Therefore, one can assume a certain degree of integrity."
27. The ITF notes that the PEAP Official indicated that he/she was unhappy about the Vendor self-certifying its work and he/she commented that the airport engineer should have questioned it.
28. The ITF does not have sufficient technical knowledge to assess the adequacy of the Vendor's work. However, a letter from the Divisional Manager to Staff Member 3 dated 25 August 2002 gives rise to the possibility that it was not up to specification in certain areas.

VI. CONCLUSIONS

29. Evidence indicates that the tender documents for the cargo apron did not comply with the requirements of Article 23.4 of the UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds, as they were based on summary documents and did not include clear instructions on drawings and plans. This appears to have been due to an attempt to cut costs in preparing the tender documents, as well as a lack of appropriately qualified staff.
30. In mitigation, the inadequacy of the tender documents also appears to have been due to ignorance as to the appropriate quantity of detail to be included in the tender documents rather than a deliberate act calculated to manipulate the tender process.
31. DOTI Official 2 is primarily responsible for the shortcomings in the tender documents although, DOTI Official 1 and the CPE must also bear a certain amount of responsibility.
32. The shortcomings in the tender documents are likely to have prejudiced some companies in their decision as to submitting bids for the tenders, since they may not have been clear as to the detailed requirements of the tender and therefore submitted insufficient detail in their bids as a result.
33. Three persons are indicated to have both attended the bid opening session as well as been on the tender evaluation committee, in conflict with UN regulations.
34. Evidence indicates the contract for the Cargo Apron Extension was not channelled through the Office of the Legal Adviser.

35. Evidence indicates that the Vendor produced its own bearing capacity report for the Cargo Apron, thereby “self certifying” its own work and presenting a potential conflict of interest.

VII. RECOMMENDATIONS

36. It is recommended that UNMIK ensure that all contracts are referred for legal advice before signature in order to reduce potential liability issues and avoid a recurrence of the problems of this instant case. (IV04/282/01)
37. It is recommended that UNMIK ensure that staff understand and comply with the requirements of the UNMIK Public Procurement Regulation No 2004/3. (IV04/282/02)
38. It is recommended that UNMIK ensures that all work conducted under contract, in which the final product has to be evaluated, that said the evaluation be carried out by a suitably qualified, independent entity. (IV04/282/03)
39. It is recommended that DPKO take appropriate action with respect to DOTI Official 2 (currently serving with MONUC). (IV04/282/04)