

## INVESTIGATION TASK FORCE

### Investigation into Allegations of Bribery and Favouritism in Procurement of Uniforms by Pristina Airport (ITF Case No. 0462/04)

#### I. Background and Allegations

1. A Kosovo Trust Agency (KTA) Internal Audit Unit (IAU) Internal Memorandum dated 4 October 2004, which described the audit of the procurement of staff uniforms by Pristina Airport, raised concerns as to the reasoning for the cancellation of a competitive tender for summer and winter uniforms (Pristina Airport Reference No. PEAP/CG/UAS/19/05/04) and the subsequent issue of a single source contract for summer uniforms for new staff (Pristina Airport Reference No. SHKTA/CG/16-04).
2. In the IAU memo, reference is made to a letter of complaint dated 28-06-04 from Vendor 1, a company that competed for the tender and that was subsequently awarded the single source contract to supply summer uniforms. The author of the letter, Vendor 1 Manager, alleged the existence of rumours and witnesses in the matter of the bribery of Procurement Officer 1, Pristina Airport, and the Finance Officer, Pristina Airport, by one of Vendor 1 Manager's competitors in the tender process, Vendor 2. Vendor 1 Manager's letter also identified his intention to seek legal action against Procurement Officer 1 for allegedly violating "the procurement rules" by: replacing a member of the Bid Evaluation Committee in the competitive tender; allowing a member of the Finance Department, the Finance Officer, to sit on the committee; and favouring Vendor 2 in the tender process.
3. During the course of the investigation, Procurement Officer 1 told the ITF that, following the cancellation of the competitive tender, Vendor 1 Manager had made utterances to him/her that Procurement Officer 1 had interpreted as a threat.
4. The ITF commenced an inquiry into the allegations regarding the procurement process and now provides a summary of the case and its findings and recommendations.

#### II. Applicable Law

5. The law applicable to each of the allegations is detailed below.

Allegation 1: that Procurement Officer 1 and the Finance Officer accepted bribes from Vendor 2

Provisional Criminal Code of Kosovo – Article 343 "Accepting Bribes"; Article 344 "Giving Bribes"

Finance Administration Instruction No. 2/1999 (Revised 15 December 1999) – Public Procurement Using Kosovo Consolidated Budget Funds – Section 4.3.2 – "Avoidance of Conflicts of Interest and Corruption"

Allegation 2: that Procurement Officer 1 replaced a member of the Bid Evaluation Committee

Finance Administration Instruction No. 2/1999 (Revised 15 December 1999) – Public Procurement Using Kosovo Consolidated Budget Funds – Section 4.1 "Full and Fair Competition"; Section 23.9 "Examination and Evaluation of Tenders"

Allegation 3: that Procurement Officer 1 inappropriately included the Finance Officer in the Bid Evaluation Committee

Finance Administration Instruction No. 2/1999 (Revised 15 December 1999) – Public Procurement Using Kosovo Consolidated Budget Funds – Section 4.1 “Full and Fair Competition”; Section 23.9 “Examination and Evaluation of Tenders”

Allegation 4: that Procurement Officer 1 favoured Vendor 2 in the tender process

Finance Administration Instruction No. 2/1999 (Revised 15 December 1999) – Public Procurement Using Kosovo Consolidated Budget Funds – Section 4.1 “Full and Fair Competition”

Allegation 5: that Vendor 1 Manager threatened Procurement Officer 1

Provisional Criminal Code of Kosovo – Article 161 “Threat”

### **III. Investigation Details**

6. Procurement Officer 1 managed the competitive tender for the supply of uniforms. In addition to Vendor 1, Vendor 2 and Vendor 3 submitted bids following which Procurement Officer 1 convened and chaired a Bid Opening Committee on 10-06-04. Present, in addition to the committee that comprised members of the various airport work groups, were representatives of the three bidding companies including Vendor 1 Manager.
7. Procurement Officer 1 also formed and chaired a Bid Evaluation Committee to assess the offerings of the competitors, which comprised a range of uniforms and accessories for the various categories of airport employees. On 18-06-04, the committee, though not satisfied with all Vendor 2's samples, tentatively decided in favour of that company, the median bidder in terms of price (Vendor 1 was the highest bidder). The committee resolved that Vendor 2 would be approached to determine the feasibility of no-cost design changes to one of the uniforms for women employees. The committee reconvened on 23-06-04 at the request of Pristina Airport Official. During the meeting, Pristina Airport Official announced the cancellation of the tender. Pristina Airport Official later awarded a single-source procurement contract for summer uniforms for newly hired staff, in the amount of €106,059, to Vendor 1, which had supplied uniforms to the airport under two previous contracts.

Allegation 1: that Procurement Officer 1 and the Finance Officer accepted bribes from Vendor 2

8. When asked by the ITF to substantiate his/her allegation that Procurement Officer 1 and the Finance Officer had accepted bribes from Vendor 2, Vendor 1 Manager said that he/she had heard the rumours in Pristina coffee bars but that he/she could not remember from whom he/she had heard these rumours. He/she said that the witnesses to whom he/she had referred in his letter of complaint were actually the same persons from whom he/she heard the rumours. Vendor 1 Manager was unable to suggest which representative of Vendor 2 had paid the bribes.
9. Vendor 2 Employee who attended the meeting of the Bid Opening Committee; Vendor 2 Manager; and Vendor 2 Director all told ITF that they had not paid bribes to Procurement Officer 1 and/or the Finance Officer.
10. Procurement Officer 1 and the Finance Officer both denied accepting bribes or any other consideration from any person in this matter.

Allegation 2: that Procurement Officer 1 replaced a member of the Bid Evaluation Committee

11. Procurement Officer 1 explained to the ITF that the original nominee to the committee, Committee member 1, had not been at work on the day that the committee first convened and, therefore, had been replaced by Committee member 2, who then attended the second session for continuity purposes. Committee member 1 and Committee member 2 confirmed Procurement Officer 1's explanation for the replacement.

Allegation 3: that Procurement Officer 1 inappropriately included the Finance Officer in the Bid Evaluation Committee

12. The Finance Officer, Procurement Officer 1 and Pristina Airport Official told the ITF that the Finance Officer participated on the Bid Evaluation Committee. However, Procurement Officer 1 and Pristina Airport Official each said that the other had nominated the Finance Officer to the committee. KTA legal staff advised the ITF that the wisdom of allowing a representative of the Finance Department to participate in bid evaluations is questionable because, generally, officers whose function involves payment should not evaluate contractors to whom payment will become due. According to KTA legal staff, however, such participation is not precluded by any rule or law. Section 23.9.2 of Finance Administration Instruction No. 2/1999 (Revised 15 December 1999) – Public Procurement Using Kosovo Consolidated Budget Funds precludes only an “approving officer” from the Procuring Entity who will eventually sign a contract from serving as a tender evaluator. The Finance Officer was not an “approving officer” in this procurement process and, therefore, was not prevented from serving as an evaluator.

Allegation 4: that Procurement Officer 1 favoured Vendor 2 in the tender process

13. In addition to Procurement Officer 1 and the Finance Officer, Bid Evaluation Committee members Committee member 3, Committee member 4, Committee member 5, Committee member 6, Committee member 2, and Committee member 7 told the ITF that the conduct of the committee was completely fair and proper. (Committee member 4 told the ITF that he/she attended the first session of the Bid Evaluation Committee but that he/she missed the second session because of the illness of his son.) The general consensus of the committee was that Vendor 2's samples were better overall in terms of quality and design but the committee was not completely satisfied with Vendor 2's goods. However, Pristina Airport Official told the ITF that the committee was divided during the second session, with one group preferring Vendor 2's goods and the other preferring those of Vendor 1. Pristina Airport Official said that Procurement Officer 1 (who, as committee chair, did not have the right to vote) and the Finance Officer argued in favour of Vendor 2. None of the committee members supported Pristina Airport Official's assertions in this regard.
14. The ITF allowed Pristina Airport Official to review a copy of the Bid Evaluation Committee report prepared by Procurement Officer 1, the last page of which listed the attendees at the session of the Bid Opening Committee (Procurement Officer 1 and the Finance Officer were the only members of the Bid Opening Committee who also served on the Bid Evaluation Committee). Upon looking at the attendee list of the Bid Opening Committee, Pristina Airport Official named the committee members who, he/she said, had Vendor 1's and Vendor 2's samples respectively. He/she correctly identified Procurement Officer 1 and the Finance Officer but the other four persons whom he/she named were members of the Bid Opening Committee, not the Bid Evaluation Committee. Pristina Airport Official's mistaken identification of these persons as Bid Evaluation Committee members indicates that his memory of the events of the second committee meeting might be unclear.
15. Pristina Airport Official told the ITF that he/she believed that had he/she not cancelled the competitive tender, the Bid Evaluation Committee would have awarded the contract to Vendor 2. Pristina Airport Official said that he/she believed that Procurement Officer 1 had been “primed” to award the contract to Vendor 2 because Procurement Officer 1 had expressed a preference for and argued in support of Vendor 2's “inferior product and because a source (whose identity Pristina Airport Official was unable to recall) had told him/her that Procurement Officer 1 had been driven to the airport on several occasions by a person in either the Ministry of Finance or the Ministry of Transportation who was associated with Vendor 2. Pristina Airport Official said that he/she cancelled the competitive tender for these reasons. He/she said that he/she did not voice his suspicions during the committee meeting, adding that he/she did not subsequently report his suspicions because “priming” is common and if he/she reported every instance he/she would not have time to do his job. He/she said that proving that Procurement Officer 1 had “pushed” one competitor would have been difficult.
16. Procurement Officer 1 told the ITF that a former Kosovo Minister is his godfather. He/she said that he/she has never received a ride to the airport from the Former Kosovo Minister

or in his car. He/she said that he/she has no idea whether the Former Kosovo Minister is in any way associated with Vendor 2. He/she said that neither the Former Kosovo Minister nor any other person pressured him/her to show favouritism to Vendor 2.

17. Pristina Airport Official told the ITF that he/she had not seen Vendor 1 Manager's letter of complaint and had never heard of Vendor 1 Manager's allegation regarding the bribery of Procurement Officer 1 and the Finance Officer. However, Pristina Airport Official's administrative assistant said that he/she had been present when Vendor 1 Manager voiced his suspicion to Pristina Airport Official that an individual from the airport had accepted bribes. Pristina Airport Official' administrative assistant said that he/she could not recall to whom Vendor 1 Manager referred. In addition, he/she told the ITF that Vendor 1 Manager had given him/her his letter of complaint. Pristina Airport Official's administrative assistant said that he/she does not recall whether he/she handed the letter to Pristina Airport Official or left it for his attention and he/she does not recall Pristina Airport Official mentioning the letter.
18. Pristina Airport Official told the ITF that, following the cancellation of the competitive tender, his only alternative to obtain uniforms for newly hired staff was to award a contract to Vendor 1, who had supplied the airport for the past two years. He/she said that had he/she let a new tender for summer uniforms, the uniforms would not have been ready until the end of August (2004).
19. ITF allowed Pristina Airport Official to read a copy of a memo dated 30-06-04 to him/her from Procurement Officer 1 that described the events of the tender process and summarized the reasons for its cancellation. Pristina Airport Official told the ITF that, although he/she had signed the memo, he/she had not "really read" it previously. The articulated reasons for the cancellation are listed below. Pristina Airport Official and Procurement Officer 1 said that they had contributed to the list of reasons but disagreed over which of the reasons had been provided by whom, however, they both said that Pristina Airport Official had provided the term "unsatisfactory quality".
  - i) unsatisfactory quality
  - ii) unsatisfactory design
  - iii) evaluation committee not satisfied with the uniforms
  - iv) no manufacturing details were given
  - v) documents not completed
20. Procurement Officer 2 told the ITF that he/she transmitted several documents regarding the single-source procurement of summer uniforms to KTA. Included in the document package was a Procurement Memo dated 07-07-04 signed by Pristina Airport Official and, according to Procurement Officer 2, prepared by Pristina Airport Official. (Pristina Airport Official told the ITF that he/she believes that he/she wrote the justification.) The justification segment of the memo stated that uniforms would be obtained by single-source procurement from the current supplier (Vendor 1) for reasons of good quality and durability.
21. The ITF pointed out to Pristina Airport Official that he/she had referred to the same uniforms as being of "unsatisfactory quality" and "good quality" in the respective documents. He/she then admitted "flowering up" his memo and providing embellishment to ensure that KTA would approve the procurement. He/she said that the term "unsatisfactory quality" in the memo dated 30-06-04 was poorly chosen and that the quality of Vendor 1's uniforms actually met the airport's requirements. However, he/she said that the design of the uniforms design was "basic and poor."

Allegation 5: that Vendor 1 Manager threatened Procurement Officer 1

22. Procurement Officer 1 told the ITF that, on a day (he/she could not specify the date) following the second meeting of the Bid Evaluation Committee at which the decision was taken to cancel the competitive tender, Vendor 1 Manager entered Procurement Officer 1's office and, in the presence of Procurement Officer 2 and a Pristina Airport Civil Engineer made utterances that Procurement Officer 1 interpreted as a threat. According to Procurement Officer 1, Vendor 1 Manager said that he/she would meet Procurement Officer 1 outside; that, because he/she had cancelled the tender, Procurement Officer 1

would find out who Vendor 1 Manager was; and that Procurement Officer 1 would see what he/she had done by canceling the tender.

23. Procurement Officer 2 assistant confirmed that he/she had been present during the incident but he/she had paid only partial attention to what transpired. He/She said that Vendor 1 Manager might have mentioned that Procurement Officer 1 would have to deal with KTA Internal Audit and the Investigation Task Force. The Civil Engineer also confirmed his presence and said that he/she could recall Vendor 1 Manager saying something to the effect of "You have to see who I am." The Civil Engineer said that he/she interpreted the words to mean that Procurement Officer 1 should be afraid of Vendor 1 Manager.
24. Vendor 1 Manager confirmed that an incident had occurred between him/her and Procurement Officer 1. Vendor 1 Manager said that he/she told Procurement Officer 1 that he/she was the main reason for the cancellation of the tender and that he/she told Procurement Officer 1 "You'll see what you have done. You'll see that I'll go to the highest levels and if necessary, I'll see you in court." Vendor 1 Manager said that he/she did not ask Procurement Officer 1 to go outside with him/her, that he/she did not threaten Procurement Officer 1 and did not imply that he/she would commit physical aggression.

#### **IV. Findings of Fact**

Allegation 1: that Procurement Officer 1 and the Finance Officer accepted bribes from Vendor 2

25. The ITF did not find any evidence to support the allegation that Procurement Officer 1 and/or the Finance Officer accepted bribes from Vendor 2 in this matter. Moreover, the ITF did not find evidence that any person received a bribe or other compensation or a promise of a bribe or other compensation in relation to either the competitive tender or the single-source procurement. Therefore, the allegation of bribery is considered to be unsubstantiated.

Allegation 2: that Procurement Officer 1 replaced a member of the Bid Evaluation Committee

26. The rationale for replacing the member of the Bid Evaluation Committee is reasonable. Furthermore, Vendor 1 Manager did not intimate that the replacement was made for any questionable purpose. Therefore, the allegation is considered to be correct but the substantive act is not considered to have been based on ulterior motives.

Allegation 3: that Procurement Officer 1 inappropriately placed the Finance Officer on the Bid Evaluation Committee

27. The ITF established that the Finance Officer participated on the committee but did not determine whether he/she was nominated by Procurement Officer 1 or Pristina Airport Official. Regardless, the ITF did not identify any indication that The Finance Officer's behaviour on the committee was in any way unprofessional or improper. In the absence of specific regulations precluding the participation of finance personnel in such processes, this allegation is considered to be unsubstantiated.

Allegation 4: that Procurement Officer 1 favoured Vendor 2 in the tender process

28. The ITF did not find any evidence to support the allegation that Procurement Officer 1 had favoured Vendor 2 during the tender process. Similarly, Pristina Airport Official's opinion that Procurement Officer 1 had been "primed" to select Vendor 2 is unsubstantiated. The credibility of Pristina Airport Official's portrayal of Procurement Officer 1 as a strong proponent of Vendor 2 in a divided committee was contradicted by the committee members themselves and undermined by Pristina Airport Official's misidentification of most of the members. Procurement Officer 1's management of the proceedings appears to have been fair and objective based on the assertions of the members of the Bid Evaluation Committee. Therefore, this allegation is considered to be unsubstantiated.

Allegation 5: that Vendor 1 Manager threatened Procurement Officer 1

29. The ITF was unable to substantiate that Vendor 1 Manager's utterances constituted a threat against Procurement Officer 1.

#### **V. Recommendations**

30. The ITF offers the following recommendations:

Recommendation No. 1: It is recommended that UNMIK Pillar IV inform Procurement Officer 1 and the Finance Officer, as well as the KTA Internal Audit Unit, that the ITF did not find any wrongdoing on the part of Procurement Officer 1 or the Finance Officer. (IV04/462/01)

Recommendation No. 2: It is recommended that UNMIK provide this report to both the Department of Justice and the Financial Investigation Unit for information purposes, so as to assist current investigations related to the alleged payment of "kickbacks" in exchange for employment at Pristina Airport. (IV04/462/02)