



UNMIK

Investigation Task Force

Irregularities in the procurement and contract award for Winter and Summer Uniforms at Pristina Airport (Case 0275/04)

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 seven specific allegations addressed in this report of investigation:
 - the highest bid received for the winter uniforms was accepted;
 - there was insufficient information on the bid evaluation sheets for the winter and summer uniforms tender exercises;
 - capital expenditure approval for the winter uniforms contract was signed on 10 January 2003, after the contract had commenced;
 - the value of the contract for summer uniforms was irregularly set at €3 below the limit requiring a competitive tender;
 - two companies were invited to tender for the summer uniforms contract when the evaluation report for the winter uniforms indicated that Vendor 1 could not offer the quality of uniforms required and Vendor 2 produced an incomplete offer
 - the invitations to quote for summer uniforms sent out to the companies contained differing quantities of items.
 - two further small quantities of uniforms in the sums of €792 and €1,188 were purchased without any supporting documents or justification.

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 6.1.2 – The limit method of Competitive Shopping ... shall normally be used when the estimated contract value does not exceed DM 50,000. (25,000 Euro)

Article 6.1.3 – The method of Competitive Tenderingshall normally be used when the estimated contract value exceeds DM 50,000. (25,000 Euro)

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;.....”

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

2. 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 conducting interviews with all relevant persons; obtaining documents from the Pristina Airport administration and from the Pillar IV administration, which were then analysed for relevance to the inquiry at hand.

IV. BACKGROUND INFORMATION

3. 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.
4. 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 Department of Transport and Infrastructure (DOTI) Official 1 was also involved in the matter. 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 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 one UN member state's Army, specifically Airport Engineer 1, Airport Engineer 2, and Airport Engineer 3, and later by a Consultant from the Consulting Company.

5. 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/her were the PEAP Official and Official 3.
6. 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.
7. It is against this background of change that procurement procedures relating to the following contract have been examined.

V. INVESTIGATION DETAILS

8. This investigation relates to two tenders for contracts for the purchase of winter and summer uniforms for staff members of Pristina Airport. The value of the contract for the purchase of winter uniforms was €157,060 and the contract for the purchase of summer uniforms was €24,997.

Allegations 1 & 2

(It is alleged that the highest bid received for the winter uniforms was accepted, when it was almost twice the cost of the two further bids received);

and

(It is alleged there was insufficient information on the bid evaluation sheets as to why the offer from the third company was incomplete)

9. A bid evaluation report dated 6 December 2002 indicates that 8 firms were issued with documents and 4 bids were submitted. The bids were opened on 27 November 2002. The report indicates at page 3 that Vendor 3's offer in the sum of €157,060 was almost twice as much as the other two bids from Vendor 1 (€80,198) and Vendor 2 (€86,850), which were rejected.
10. The reason specified for rejection of the bid by Vendor 1 on page four of the evaluation was that the evaluation committee asked the company to produce a specimen of each type of uniform and it failed to do so. This is confirmed in a letter to Vendor 1 dated 27 November 2002. A similar letter was delivered to Vendor 3.
11. The evaluation report also concluded that the company Vendor 1 has one manufacturer in Peja, which can't offer the required quality and had too long a date for completion.

12. In the case of Vendor 2, the evaluation report states that the company provided an incomplete offer.
13. When asked in what manner the offer was incomplete in interview, the Procurement Officer, a member of the Evaluation Committee, stated that Vendor 2 submitted an offer, which did not contain all the required articles.
14. The Procurement Officer was asked why his/her explanation was not put in the tender evaluation. He/she replied that it was due to his/her lack of English. In view of the fact that the evaluation committee all signed the evaluation report, they would have been aware of the reason for Vendor 2's rejection.
15. The ITF contacted Vendor 2 and requested it to provide a copy of the tender documents in order to verify whether or not its offer was incomplete. However, the company did not deliver any documents, or provide any information other than the name of the person who delivered the documents and samples for the tender to Pristina Airport. The ITF was therefore unable to verify the Procurement Officer's explanation.
16. The explanation in the evaluation report that Vendor 1 produced uniforms which were of lower quality, together with the explanation given by the Procurement Officer in interview that Vendor 2 submitted an offer which did not contain all the required articles, may account in part for the difference in price between the offer from Vendor 3 and the lower offers from Vendor 2 and Vendor 1. However, the price difference is of concern.
17. A letter of notification and a signed contract dated 6 December 2002 confirm that Vendor 3 was awarded the contract for the supply of uniforms to administrative and maintenance personnel for the winter season.

Allegation 3

(It is alleged that the capital expenditure approval for the winter uniforms contract was signed on 10 January 2003, after the contract and a letter of notification to the company had already been signed on 6 December 2002)

18. A capital expenditure approval for the winter uniforms contract appears to have been signed by the Divisional Manager on 10 January 2003, after a letter of notification to the company and the contract had already been signed on 6 December 2002.
19. In view of the necessity to have expenditure authorised prior to signature of a contract, the PEAP Official and the Divisional Manager were asked in interview why the contract appeared to be signed before the capital expenditure had been approved.
20. The PEAP Official indicated that although the contract was dated 6 December 2004, the actual date of signature for the contract was the protocol stamp on the contract, which was 14 January 2003.
21. The Divisional Manager stated that there was no date indicating when the contract was signed and added that the date on the contract would not necessarily correspond with the date on which the contract has been signed.

He/she added that the evidence was not conclusive that the contract had been signed before capital expenditure approval was obtained.

22. The Divisional Manager added that he/she assumed the protocol stamp date of 14 January 2003 was the date that the contract was returned to the Airport.
23. A better indicator as to the date on which the contract was signed is contained in a routing slip from the Procurement Officer to Official 4 of Pillar IV, and the KTA Official dated 13 January 2003. The routing slip states "your signatures are required before we present the contract to the selected supplier." This suggests that the contract may not have been signed until 13 January 2003, (i.e. after capital expenditure approval had been obtained.)

Allegation 4

(It is alleged that the value of the contract for summer uniforms was irregularly set at €3 below the limit requiring a competitive tender)

24. On 3 April 2003 an invitation to quote for the supply of uniforms for the summer season was sent out to 4 companies, of which 3 submitted quotes / bids by the deadline of 11 April 2003.
25. The offers received were evaluated and Vendor 3 awarded the contract. A contract was signed by Vendor 3 on 12 April 2003 and countersigned by the Divisional Manager on 18 April 2003.
26. The offer received from Vendor 3 for the supply of for summer uniforms (€24,997) was €3 below the maximum limit for competitive shopping. This gives rise to concerns that the offer was set at a level to avoid the necessity for a competitive tender.
27. Whilst there is no evidence that this was deliberately done, a second offer was received from the company Vendor 2 in the sum of €39,541.00. In view of the fact that the evaluation report indicates that contract to be approximately €25,000 it is questionable as to whether a competitive tender should have been held rather than competitive shopping.

Allegation 5

(It is alleged that the companies Vendor 1 and Vendor 2 were invited to tender for the summer uniforms contract when the evaluation report for the winter uniforms indicated that Vendor 1 could not offer the quality of uniforms required and Vendor 2 produced an incomplete offer, thereby affording an advantage to the supplier of the winter uniforms, Vendor 3)

28. The evaluation report and tender documents indicate that two companies Vendor 2 and Vendor 1 were requested to provide competitive bids, in spite of the fact that some five months earlier, Vendor 2's previous offer for the winter uniforms had been rejected by the evaluation committee as incomplete, as it had not included all the items requested; whilst Vendor 1's previous offer for the winter uniforms had been rejected on the basis that it had one manufacturer in Peja which could not offer the required quality.
29. The opinion of the winter uniforms evaluation committee concerning Vendor 1 was repeated in the findings of the summer uniforms evaluation committee, which

was indicated by the Procurement Officer to have rejected Vendor 1's offer on the grounds that its offer for the uniforms was not responsive from the cut and quality point of view.

30. The grounds for the two rejections gave rise to concerns that the inclusion of the two companies in the tender for summer uniforms may have afforded an advantage to Vendor 3, the eventual winner. Having analysed the available evidence and carried out research into the two companies, the selection of Vendor 2 appears to have been justified in view of its size and reputation in the region, although doubts about the Vendor 1's suitability to participate in the summer competitive shopping exercise remain.
31. The Procurement Officer, a member of the evaluation committee, stated in the course of his/her interview that the companies were invited by one of the PEAP secretaries Secretary 1 or Secretary 2.
32. The PEAP Official also indicated that the worker who took delivery of the summer uniforms was Secretary 2.
33. Due to Secretary 2's possible connection with another more serious criminal case, involving alleged payments of money in return for jobs at Pristina Airport, (ITF Case 0377/04) a decision was taken by the ITF not to interview Secretary 2 concerning the choice of companies invited to submit bids in the competitive shopping procedure, in order to avoid any possible prejudice to the more serious case.
34. A decision was also taken not to interview Vendor 3 representative, concerning this case due to the fact that he/she was one of the principal suspects in the same criminal case.
35. Whilst there are some doubts as to the inclusion of Vendor 1, the selection of Vendor 2 appears to have been justified in view of its size and reputation in the region. In view of this, the ITF does not find that the competitive shopping procedure was organised in such a manner as to provide an unfair advantage to the existing supplier Vendor 3.

Allegation 6

(It is alleged that the invitations to quote for summer uniforms sent out to the companies contained differing quantities of items)

36. The two invitations to quote for summer uniforms submitted by the companies Vendor 3 and Vendor 1 contain different quantities of items from that submitted by the company Vendor 2. Whilst it is accepted that the price of the offer received from Vendor 2 was much higher than the other two, it raised a question as to whether different quantities of items may have been sent to competing companies.
37. When asked about the differences in the quantities of items, the Procurement Officer stated that the quantities were changed and revised documents sent out to all the companies before the deadline to submit the offers had ended. He/she added that the Airport, as the procuring entity had the right to do so. In view of this response, the company Vendor 2 was not interviewed.

Allegation 7

(It is alleged that two further small quantities of uniforms in the sums of €792 and €1,188 were purchased without any supporting documents or justification)

38. Two invoices dated 4 July 2003 and 5 August 2003 indicate that two quantities of 99 and 66 T-Shirts respectively were ordered with a value of €1188 and €792 respectively.
39. When asked about these extra purchases, the PEAP Official stated that he/she assumed the Airport hired some students and temporary staff for three months and that the T-Shirts were for them to wear. The PEAP Official subsequently produced two written requests from the Security Official, for the two orders dated 1 July 2003 and 1 August 2003.
40. When asked why two orders were placed within one month of one another, rather than together, the PEAP Official stated that the airport had run out of T-shirts and therefore purchased them from the same company in order to have the same design of T-shirt.
41. This explanation is not a credible one, since it suggests that the Airport did not have any idea as to the numbers of temporary staff being taken on over a period of only three months. If this was the case, it indicates poor management.
42. An alternative could be that two orders were placed to avoid having to organise a competitive bidding procedure, since the limit for single source procurements at that time was €1250.
43. The Security Official was also interviewed by the ITF in connection with the two orders for t-shirts dated 1 July 2003 and 1 August 2003. He/she initially stated that the t-shirts were purchased for 70 students hired in the summer of 2003. However, he/she later added having re-read the documents that they were also purchased for approximately 30 workers as well.
44. Whilst the requests do indicate the t-shirts to have been purchased for technical services workers and students, both appear to relate to "physical workers". In view of the fact that the Security Official stated earlier in his/her interview that each student would be allocated 3 shirts and one pair of trousers. The number of t-shirts ordered -99 and 66- does not correspond with the number of employees.
45. In addition, the two requests specify that the shirts should be the same as the previous shirts of the existing workers. This requirement suggests that Vendor 3, who had just won a tender for the provision of summer uniforms to Pristina Airport in April 2003, had already been chosen as the supplier.
46. The Security Official stated that he/she had been asked to write a request for uniforms by the Divisional Manager following a conversation between them on the need for uniforms for the student workers. When asked why he/she had addressed the two requests to the PEAP Official rather than the Divisional Manager, he/she replied that this was because the PEAP Official was his/her superior. However, neither of the requests mentions that the Security Official has spoken to the Divisional Manager.

47. The Security Official also indicated in his/her interview that he/she asked the Divisional Manager whether a company could be found to supply the t-shirts as it would be longer and more expensive if a tender procedure took place. When questioned further about this response, he/she later added
“It was not foreseen to have a tender procedure in connection with the shirts for students and the part time workers.”
48. However, he/she could not recall who authorised the purchase of the t-shirts without a tender procedure. In summary, evidence from the two memoranda requesting t-shirts and from the Security Official suggest that two orders were placed within the space of one month with the company Vendor 3 in order to avoid having to organise a competitive bidding procedure, since the limit for single source procurements at that time was €1250. The documents also suggest that the party who authorised the purchase was the PEAP Official.

VI. CONCLUSIONS

49. Whilst noting the comments in the capital expenditure approval that Vendor 3 was the only company that can provide the quality of uniforms needed within the time limit, it is of concern that Vendor 3's offer for winter uniforms in the sum of €157,060 was almost twice as much as the other two bids from Vendor 1 (€80,198) and Vendor 2 (€86,850). However, this may in part be due to the fact that the Vendor 2 submitted an offer that did not contain all the required articles, whilst Vendor 1 produced uniforms of lower quality.
50. The only original bid documents seen by the ITF relating to the tender for the supply of uniforms to administrative and maintenance personnel for the winter season is the bid submitted by Vendor 3. Therefore, the ITF is unable to verify the findings of the evaluation committee resulting in the rejection of the bids submitted by the two other companies.
51. Evidence as to whether or not capital expenditure was or was not obtained prior to signature of the contract is inconclusive, since the date on the contract, (6 December 2002) is contradicted by the routing slip dated 13 January 2003, which suggests that the letter of notification and contract may not have been signed until after 10 January 2003. The benefit of the doubt must therefore be given to the Divisional Manager in this respect.
52. The offer received from Vendor 3 for the supply of for summer uniforms (€24,997) was €3 below the maximum limit for competitive shopping of €25,000. This raises concerns as to whether a competitive tender should have been held rather than competitive shopping procedure.
53. Whilst there are some doubts as to the quality of uniforms produced by Vendor 1, the selection of Vendor 2 appears to have been justified in view of its size and reputation in the region. The ITF does not therefore find that the competitive shopping procedure was organised in such a manner as to provide an unfair advantage to the existing supplier Vendor 3.
54. The evidence that companies submitting bids were irregularly requested to provide different quantities of items is not proven in the light of the response given in interview by the Procurement Officer.

55. In spite of the explanation given by the PEAP Official, evidence from the Security Official indicates that the two small orders for T-shirts were placed at a value of €1188 and €792, in order to avoid having to organise a competitive shopping procedure, since the limit for single source procurements at that time was €1250. It is likely that this was a conscious decision and constitutes a breach of Article 24 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds.

VII. RECOMMENDATIONS

56. It is recommended that UNMIK Pillar IV take appropriate action against PEAP Official based on the findings of this report. (IV04/275/01)

57. It is recommended that UNMIK Pillar IV undertake a review of the procedures for signing and dating contracts to ensure clarity as to the date on which a contract is executed. (IV04/275/02)