



United Nations

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**OFFICE OF INTERNAL OVERSIGHT SERVICES
PROCUREMENT TASK FORCE**

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ST/SGB/273, paragraph 18, of 7 September 1994*

**REPORT
ON THE SUBJECT COMPANY, IHC SERVICES INC., AND
CERTAIN UNITED NATIONS STAFF MEMBERS**

Report no. PTF-R010/06

Case nos. PTF/007/06; PTF/022/06; PTF/047/06

This Investigation Report of the Procurement Task Force of the United Nations Office of Internal Oversight Services is provided upon your request pursuant to paragraph 1(c) of General Assembly resolution A/RES/59/272. The Report has been redacted in part pursuant to paragraph 2 of this resolution to protect confidential and sensitive information. OIOS' transmission of this Report does not constitute its publication. OIOS does not bear any responsibility for any further dissemination of the Report.

7 December 2006

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I. INTRODUCTION

1. The Procurement Task Force (“the Task Force”) was created on 12 January 2006 to address all procurement matters referred to the Office of Internal Oversight Services (“the OIOS”). The creation of the Task Force was the result of perceived problems in procurement identified by the Independent Inquiry Committee into the Oil-for-Food Programme, and the arrest and conviction of Procurement Officer Alexander Yakovlev.

2. Under its Terms of Reference, the Task Force operates as part of the OIOS, and reports directly to the Under-Secretary-General for the OIOS. The remit of the Task Force is to investigate all procurement cases, including all matters involving procurement bidding exercises, procurement staff and vendors doing business with the United Nations (“the United Nations” or “the Organisation”). The Task Force investigations have focused upon a number of procurement cases, including cases involving companies doing business with the Organisation. Some of these matters are particularly complex and span significant periods of time.

3. This Report focuses on procurement cases concerning the solicitation, award, and execution of food rations contracts involving the Subject Company, including a contract for provision of food rations to the United Nations Mission in Liberia (“UNMIL”) as well as a contract for provision of food rations to the United Nations Mission in Ethiopia and Eritrea (“UNMEE”).¹ Throughout this Report, these contracts are referred to as “the Liberia contract” and “the Eritrea contract,” respectively. The total amount approved for the Liberia contract was nearly US\$62 million for a five-year period, and the amount approved for the Eritrea contract was over US\$24.4 million for a three-year period.²

4. The Task Force focused its investigation on whether the awards of the Liberia and Eritrea contracts were tainted by corrupt practices, and whether the Liberia contract was implemented and administered in the best interests of the Organisation. The Task Force took note of the remarks made in the OIOS Procurement Audit Review regarding food rations contracts.³

¹ Contract no. PD/C0286/03 between the United Nations and the Subject Company for Provision of Food Rations to the United Nations Mission in Liberia (10 December 2003) (signed by Kiyohiro Mitsui and Subject Company Representative 6); Contract no. PD/C0310/03 between the United Nations and the Subject Company for Provision of Food Rations to the United Nations Mission in Ethiopia and Eritrea (signed by Christian Saunders on 27 January 2004 and by Subject Company Representative 6 on 16 January 2004).

² Approval of Liberia contract HCC/03/78 recommendation (13 November 2003) (signed by Eduardo Blinder, Officer-in-Charge of the Office of Central Support Services); Alexander Yakovlev letter to the Subject Company (15 December 2003).

³ OIOS Internal Audit Division, “Comprehensive Management Review of the Department of Peacekeeping Operations – Procurement,” AP2005/600/20 (19 January 2006) (hereinafter “OIOS Procurement Audit Review”).

II. ALLEGATIONS

5. This Report addresses the procurement processes and award to the Subject Company of contracts of significant value concerning the provision of food rations to the United Nations Missions in Liberia and Eritrea, and whether such processes were tainted by fraud, corruption, collusion, and mismanagement. Additionally, the Report discusses the Subject Company's participation in the bidding process for a food rations contract for the United Nations Mission in the Democratic Republic of the Congo ("the Congo contract");⁴ the conduct of IHC Services Inc. ("IHC") and Ezio Testa, IHC's President; and on the conduct of several current and former United Nations staff members, including Mr. Yakovlev, Staff Member 4, Staff Member 1, Staff Member 2, and others in connection with these bidding exercises.

6. The Task Force's investigation focused on a number of specific issues:

(i) whether in October 2003, the Subject Company engaged in corrupt practices by amending its bid proposals for the Liberia and Eritrea contracts after closure of submission deadlines, and following receipt of confidential pricing information from a Procurement Service staff member(s);⁵

(ii) whether confidential United Nations documents and information relating to procurement matters were provided to the Subject Company and IHC by one or more staff members of the United Nations Procurement Service ("Procurement Service");⁶

(iii) whether two UNMIL staff members, Staff Member 5 and Staff Member 6, engaged in inappropriate conduct in relation to two United Nations suppliers;

(iv) whether Giandomenico Picco, formerly an Assistant Secretary-General and Under-Secretary-General, as well as the Chairman of the Board of Directors of IHC, suffered from a conflict of interest in serving in these two capacities simultaneously; and

(v) whether one or more staff members of the United Nations Procurement Service ("the Procurement Service") improperly favoured the Subject Company in the award and execution of the Liberia contract.

III. APPLICABLE UNITED NATIONS REGULATIONS, RULES, AND CONTRACT PROVISIONS

7. The following provisions of the **Staff Regulations of the United Nations** ("the Staff Regulations") are relevant:⁷

⁴ Congo contract Request for Proposal 558.

⁵ ID/OIOS Case nos. 723/05, 720/05, and 722/05; Task Force Case no. PTF/007/06.

⁶ *Id.*; ID/OIOS Case nos. 307/05, 696/05, 697/05, and 766/05.

⁷ ST/SGB/2006/4 (1 January 2006) (containing revised edition of the Staff Regulations). Throughout this Report, references to earlier editions of the Staff Regulations will be made where applicable.

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(i) **Regulation 1.2(b):** “[s]taff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.”⁸

(ii) **Regulation 1.2(e):** “[b]y accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants.”⁹

(iii) **Regulation 1.2(g):** “[s]taff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour.”¹⁰

(iv) **Regulation 1.2(l):** “[n]o staff member shall accept any honour, decoration, favour, gift or remuneration from any non-governmental source without first obtaining the approval of the Secretary-General.”¹¹

8. The following provision of the **Staff Rules of the United Nations** is relevant:

(i) **Rule 112.3:** “[a]ny staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member’s negligence or of his or her having violated any regulation, rule or administrative instruction.”¹²

9. The following provisions of the **United Nations Procurement Manual** are relevant:¹³

(i) **Section 4.1.5(4)(a):** “UN staff shall not allow any Vendor(s) access to information on a particular acquisition before such information is available to the business community at large.”¹⁴

(ii) **Section 4.2(1):** “[i]t is of overriding importance that the staff member acting in an official procurement capacity should not be placed in a position where their actions may constitute or could be reasonably perceived as reflecting favourable

⁸ ST/SGB/2006/4, reg. 1.2(b) (1 January 2006). This is a long-standing provision of the Staff Regulations. See, e.g., ST/SGB/1999/5, reg. 1.2(b) (3 June 1999).

⁹ ST/SGB/2006/4, reg. 1.2(e) (1 January 2006). This is a long-standing provision of the Staff Regulations. See, e.g., ST/SGB/1999/5, reg. 1.2(e) (3 June 1999).

¹⁰ ST/SGB/2006/4, reg. 1.2(g) (1 January 2006). This is a long-standing provision of the Staff Regulations. See, e.g., ST/SGB/1999/5, reg. 1.2(g) (3 June 1999).

¹¹ ST/SGB/2006/4, reg. 1.2(l) (1 January 2006). This is a long-standing provision of the Staff Regulations. See, e.g., ST/SGB/1999/5, reg. 1.2(l) (3 June 1999).

¹² ST/SGB/2002/1 (1 January 2002).

¹³ United Nations Procurement Manual, Rev. 3 (August 2006) (hereinafter “2006 Procurement Manual”); United Nations Procurement Manual Rev. 2 (January 2004) (hereinafter “2004 Procurement Manual”).

¹⁴ 2006 Procurement Manual, sec. 4.1.5(4)(a). The 2004 Procurement Manual contained a similar provision. 2004 Procurement Manual, sec. 4.1.5(4)(a).

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treatment to an individual or entity by accepting offers or gifts and hospitality or other similar considerations.”¹⁵

(iii) **Section 4.2(2):** “[i]t is inconsistent that a Procurement Officer . . . accepts any gifts from any outside source regardless of the value and regardless of whether the outside source is or is not soliciting business with the United Nations. All staff members involved in procurement shall decline offers of gifts.”¹⁶

(iv) **Section 4.3(2)(a):** “‘bribery’ means the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring goods or services, or executing contracts.”¹⁷

(v) **Section 4.3(2)(c):** “‘[f]raud’ means the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, or executing contracts, to the detriment of the UN or other participants.”¹⁸

(vi) **Section 4.3(3)(b):** “[t]he UN . . . [w]ill declare a firm ineligible, either indefinitely or for a stated period of time, to become a UN registered Vendor if it at any time determines that the firm has engaged in corrupt practices in competing for or in executing a UN Contract.”¹⁹

(vii) **Section 4.3(3)(c):** “[t]he UN . . . [w]ill cancel or terminate a contract if it determines that a Vendor has engaged in corrupt practices in competing for or in executing a UN Contract.”²⁰

(viii) **Section 7.12.2(1)(a):** “[t]he criteria for suspension or removal from the Vendor Database . . . [includes] [f]ailure to perform in accordance with the terms and conditions of one or more contract[s] . . . and [a]busive, unethical or unprofessional conduct, including corrupt practices and submission of false information.”²¹

10. The following provisions of the **Liberia** and **Eritrea contracts** are relevant:

¹⁵ 2006 Procurement Manual, sec. 4.2(1). The 2004 Procurement Manual contained a similar provision. 2004 Procurement Manual, sec. 4.2.1(1).

¹⁶ 2006 Procurement Manual, sec. 4.2(2). The 2004 Procurement Manual contained a similar provision, stating that “[i]n principle, UN staff members shall not accept any honours, decorations, favour, gift or remuneration from any source without first obtaining the approval of the Secretary-General.” 2004 Procurement Manual, sec. 4.2.1(2).

¹⁷ 2006 Procurement Manual, sec. 4.3(2)(a). The 2004 Procurement Manual contained a similar provision. 2004 Procurement Manual, sec. 4.2.5(2)(i).

¹⁸ 2006 Procurement Manual, sec. 4.3(2)(c). The 2004 Procurement Manual contained a similar provision. 2004 Procurement Manual, sec. 4.2.5(2)(iii).

¹⁹ 2006 Procurement Manual, sec. 4.3(3)(b). The 2004 Procurement Manual contained a similar provision. 2004 Procurement Manual, sec. 4.2.5(3)(ii).

²⁰ 2006 Procurement Manual, sec. 4.3(3)(c). The 2004 Procurement Manual contained a similar provision. 2004 Procurement Manual, sec. 4.2.5(3)(iii).

²¹ 2006 Procurement Manual, sec. 7.12.2(1)(a). The 2004 Procurement Manual contained a similar provision. 2004 Procurement Manual, sec. 7.12.2(1)(a)(iv).

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(i) **Article 18.1:** “[t]he Contractor shall perform its obligations under this Contract with due diligence and efficiency and in conformity with sound professional, administrative, and financial practices.”²²

(ii) **Article 18.2:** “[t]he Contractor shall act at all times so as to protect, and not be in conflict with, the interests of the UN, and shall use its best efforts to keep all costs and expenses at a reasonable level.”²³

(iii) **Article 27:** “[t]he Contractor warrants that no official of the United Nations has received or will be offered by the contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.”²⁴

(iv) **Article 34.2:** “[t]he Contractor may not communicate at any time to any other person, Government or authority external to the UN, any information known to it by reason or its association with the UN which has not been made public except with the authorization of the UN; nor shall the Contractor at any time use such information to private advantage.”²⁵

(v) **Article 41.2:** “[a]ny dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof . . . shall be referred by either Party to arbitration.”²⁶

IV. RELEVANT CONCEPTS OF CRIMINAL LAW

11. Some of the well-established concepts of common law are applicable to this Report, including:

(i) **Fraud:** Commonly, fraud is defined as an unlawful scheme to obtain money or property by means of false or fraudulent pretences, representations, or promises. A scheme to defraud is any plan, device, or course of action to obtain money or property by means of false or fraudulent pretences, representations or promises reasonably calculated to deceive persons of average prudence;

(ii) **Conspiracy:** Conspiracy is an agreement to do an unlawful act. It is a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act. In this case, it is the agreement to engage in a scheme to improperly obtain sums of money under contracts with the United Nations not properly due and owing to them; and

²² Liberia contract, art. 18.1 (entitled “General Obligations of the Contractor”).

²³ *Id.*, art. 18.2 (entitled “General Obligations of the Contractor”).

²⁴ *Id.*, art. 27 (entitled “Officials not to Benefit”). A similar provision is contained in the Eritrea contract. Eritrea contract, art. 25 (entitled “Officials not to Benefit”).

²⁵ Liberia contract, art. 34.2 (entitled “Confidential Nature of Documents”). A similar provision is contained in the UNMEE contract. Eritrea contract, art. 34.2 (entitled “Confidential Nature of Documents”).

²⁶ Liberia contract, art. 41.2 (entitled “Settlement of Disputes”). A similar provision is contained in the Eritrea contract. Eritrea contract, art. 39.2 (entitled “Settlement of Disputes”).

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(iii) **Aiding and Abetting an Offence:** Under the concept of aiding and abetting, the offence is committed by another. In order to aid and abet a crime, it is necessary that an individual associate himself in some way with the crime, and that he participate in the crime by doing some act to help make the crime succeed. A person who aids and abets another to commit a criminal offence is equally as culpable as if the person committed the offence himself.

12. If any evidence of bribery or fraud or other criminal offense is revealed during the course of this investigation, a referral to the appropriate prosecutorial agency will be recommended.

V. METHODOLOGY

13. The investigation of the Task Force has included interviews with numerous witnesses, the review and analysis of a significant number of documents, and extensive examination of electronic media and evidence. The Task Force made significant efforts to locate and obtain all relevant files.

14. The Task Force investigators interviewed a significant number of United Nations staff members in the Procurement Service, the Department of Peacekeeping Operations (“the DPKO”), and UNMIL. Interviews were also conducted with former United Nations staff members in various locations throughout the world. Interviews also were conducted with officers, agents, and employees of the Subject Company, the Subject Parent Company (“the Subject Parent Company”), IHC, and various other vendors doing business with the Organisation. In addition, the Task Force interviewed three confidential informants—referred to as “CI-1,” “CI-2,” and “CI-3,” respectively—who provided relevant and probative evidence, but expressed reasonable concerns about being identified in this Report.

15. The Task Force investigators collected and reviewed extensive documentation, including procurement files; contracts; bids and requisitions of the contracts involved; vendor registration files; minutes of the Headquarters Committee on Contracts (“HCC”); background material concerning UNMIL; telephone records, where available; personnel files; electronic evidence; and financial records. During the course of the investigation, the Task Force employed forensic recovery methods that allowed for the identification of valuable evidence. As part of the investigation, the Task Force investigators visited UNMIL. Additionally, a significant volume of records was obtained from the Subject Parent Company.

16. Certain files, such as the procurement records, were found to be in disarray and documents were determined to be missing. The Task Force investigators have attempted to reconstruct the events at issue to the extent possible from available records, witness interviews, and other sources.

17. The Task Force’s investigation of the Subject Company-related issues, including those related to the Liberia contract, has faced a number of challenges, including the need to reconstruct relevant files, the lack of compulsory process outside of the United Nations

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system and ability to issue subpoenas, limited cooperation from relevant parties, and the fact that several key witnesses with knowledge of the events discussed herein—including Mr. Yakovlev and a number of former Subject Company employees—could not be interviewed.

18. Mr. Yakovlev, the case Procurement Officer assigned to the contracts discussed in this Report, resigned from the Organisation on 21 June 2005.²⁷ Subsequent to his resignation, he was arrested and pleaded guilty to conspiracy, wire fraud, and money-laundering charges in the United States District Court, Southern District of New York, stemming from investigations into the Oil-for-Food Programme. The investigations by the Independent Inquiry Committee into the Oil-for-Food Programme and the United States Attorney's Office for the Southern District of New York revealed that since 2000, almost US\$1.3 million had been wired into an account controlled by Mr. Yakovlev, in the name of "Moxycy Ltd." at the Antigua Overseas Bank, Antigua, West Indies. Over US\$950,000 of these payments came from various companies that collectively won more than US\$79 million in United Nations contracts.²⁸

19. As part of his guilty plea, Mr. Yakovlev entered into a cooperation agreement with the United States Attorney's Office, Southern District of New York. Under this agreement, he is required to offer all assistance to the United States authorities in their ongoing investigations. As a result of his status as a prospective United States government witness, prosecutors are unwilling to allow the Task Force access to Mr. Yakovlev until such time as he has testified in related matters. The Task Force has accepted the offer of the Assistant U.S. Attorney to pose written questions to Mr. Yakovlev through his office. However, no response has been received as of the date of this Report. As far as the Task Force is aware, Mr. Yakovlev has not come forth with any information or allegation involving the Subject Company and IHC.

20. Following the opening of this investigation, the Task Force was contacted by the Subject Parent Company and its legal advisers, Freshfields Bruckhaus Deringer ("Freshfields"), who offered their cooperation with the Task Force's investigation.²⁹ Throughout the investigation Freshfields has provided valuable assistance, documents, and information to the Task Force.³⁰ The Subject Parent Company has further assisted the Task Force's effort in contacting a number of current and former Subject Company employees. The Subject Parent Company has acknowledged errors in the manner in which their business was conducted with the Organisation. The Subject Parent Company has stressed that whatever the shortcomings identified in the management and control of the Subject Company by the Subject Parent Company, it has been thorough in conducting

²⁷ Office of the Spokesman for the Secretary-General, "Statement attributable to the Spokesman for the Secretary-General on investigation into misconduct by a UN Procurement Officer" (22 June 2005) (publicly available at <http://www.un.org/apps/sg/sgstats.asp?nid=1530>).

²⁸ Independent Inquiry Committee into the Oil-for-Food Programme, "Third Interim Report" (8 August 2005).

²⁹ Michael Bailey letters to Warren Sach (24 and 28 October 2005).

³⁰ Some of the representations made by the Subject Parent Company to the Task Force were made through Freshfields, which is noted in the footnotes, where applicable.

its own internal investigation, dismissing or not renewing contracts of those it holds accountable. The Subject Parent Company has asserted that it has implemented a regime of control to minimize the risk, if not ensure, this could not happen again.³¹ The Task Force has not been made aware of any circumstance to challenge this assertion.

VI. BACKGROUND

A. FOOD RATIONS CONTRACTS

21. A reliable supplier of high quality food that satisfies the requirements of the United Nations is a prerequisite for effective operations of the United Nations missions. The United Nations contingents, including troops, often work under harsh and difficult circumstances and the quality and reliability of food supplies are important. In cases involving large-scale missions, such as UNMIL, food rations suppliers are contracted to supply food to thousands of troops in various locations. As part of the bidding process, prospective contractors are required to provide unit prices for a list of more than 420 food items. The total amount of the unit prices is known as the ceiling man rate (“CMR”). The CMR plays a significant role in the Organisation’s determination of the lowest bid proposal. Throughout the world, there are only a limited number of food rations contractors capable of providing services for large scale operations. Competition amongst them is very high and the winner is sometimes determined on a very slight price margin.

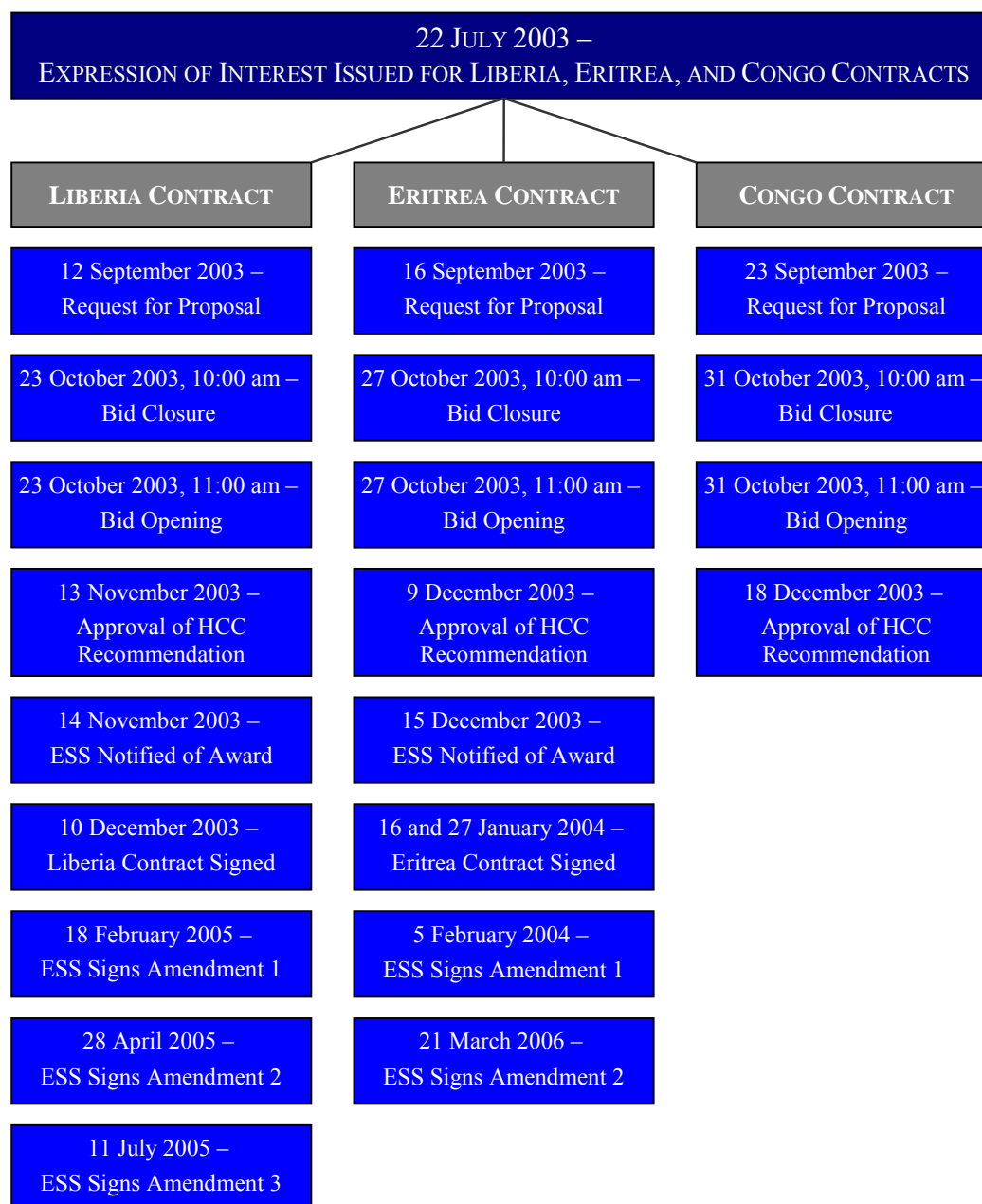
22. In 2003, the United Nations commenced solicitation process to identify the most competitive food ration suppliers for UNMIL, UNMEE, and the United Nations Mission in the Democratic Republic of the Congo (“MONUC”). Below is a chronology of the main events relating to the Liberia, Eritrea, and Congo contracts:

³¹ Freshfields letter to the Task Force (28 April 2006).

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Chart A: Chronology of Events for the Liberia, Eritrea, and Congo Contracts



B. PROCUREMENT SERVICE

23. The Procurement Service at the Organisation’s Headquarters was principally responsible for the procurement exercises for the Liberia, Eritrea, and Congo food rations contracts. From October 2001 to late 2005, the Procurement Service was headed by Staff

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Member 4.³² Mr. Yakovlev, a Field Supply Officer, was assigned to the Liberia, Eritrea, and Congo contracts as the case Procurement Officer.³³ Mr. Yakovlev reported to his supervisor, Staff Member 1, who in turn reported to Staff Member 4.³⁴ According to Staff Member 1, he and Mr. Yakovlev had a strained relationship and were not on speaking terms for several years before both of them were assigned to the Field Procurement Section in December 2002.³⁵

24. As the case Procurement Officer for the Liberia, Eritrea, and Congo contracts, Mr. Yakovlev was responsible for communicating with the Subject Company. His main contact at the Subject Company was Markus Andreas Seiwert, known as Andy Seiwert, the Subject Company's designated liaison officer for the United Nations.³⁶ Even though Mr. Yakovlev was responsible for the day-to-day communications with the Subject Company, Staff Member 4 and Staff Member 1, as senior Procurement Service staff members, attended meetings with the Subject Company to negotiate and resolve difficult contractual issues.³⁷

C. DEPARTMENT OF PEACEKEEPING OPERATIONS

25. Within the DPKO, the relevant staff members involved in the transactions and events set forth herein were Staff Member 8, Chief Specialist Support Service; Staff Member 7, Supply Officer-in-Charge ("OIC") of the Services Unit; and Staff Member 10, OIC of the Rations Unit working under supervision of Staff Member 7. At the end of September 2004, Staff Member 9 took over as Chief Supply Section replacing Staff Member 8 as OIC of the Supply Section.³⁸

D. UNMIL

26. Staff Member 13 was the Chief Administrative Officer ("CAO") of UNMIL from the inception of the Mission until February 2005, and maintained overall responsibility for the management of the Liberia contract.³⁹ Staff Member 5 reported to Staff Member 13 and acted as CAO in her absence.⁴⁰ Staff Member 6 was the Chief Rations Officer

³² Staff Member 4 interview (19 June 2006). Prior to August 2004, Procurement Service was known as Procurement Division. Joan McDonald memorandum to Andrew Toh (27 August 2004) (renaming the Procurement Division into the Procurement Service). However, for purposes of this Report, Procurement Division and Procurement Service are referred to as "the Procurement Service."

³³ Staff Member 4 interview (19 June 2006); Staff Member 1 interview (27 and 28 June 2006).

³⁴ *Id.*; Staff Member 4 interview (19 June 2006).

³⁵ Staff Member 1 interview (27 and 28 June 2006) (stating that he suspected Mr. Yakovlev was not "clean," and that Staff Member 4 moved Mr. Yakovlev to the Field Procurement Section where it was believed he could "do the least damage").

³⁶ *Id.*

³⁷ *Id.*; Staff Member 4 interview (19 June 2006).

³⁸ Staff Member 9 interview (22 August 2006).

³⁹ Staff Member 13 interview (19 September 2006); Liberia contract, art. 6.1. Following her retirement, Staff Member 13 was replaced by Staff Member 16. Staff Member 16 interview (13 March 2006).

⁴⁰ Staff Member 13 (19 September 2006).

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supervising the Food Cell and reported to Staff Member 5. Staff Member 6 was later replaced by Staff Member 17, the Chief Supply Officer.⁴¹

E. THE SUBJECT PARENT COMPANY AND THE SUBJECT COMPANY

27. The Subject Parent Company is the world's largest foodservice company with more than 400,000 employees in over 90 countries.⁴² The Subject Parent Company's annual revenue in 2005 exceeded £12.7 billion.⁴³ The Subject Parent Company is also a major franchisee of many well-known international brands, including Au Bon Pain.⁴⁴

28. The Subject Company is incorporated under the laws of Cyprus and is a fully owned subsidiary of the Subject Parent Company.⁴⁵ Prior to September 2001, the Subject Company was registered with the United Nations under the names of various subsidiary companies, including the Subject Company Subsidiary 1, the Subject Company Subsidiary 2, and the Subject Company Subsidiary 3.⁴⁶ On 25 September 2001, all the Subject Company-related vendor registrations were consolidated under the name of the Subject Company.⁴⁷

29. Since early 1990s, the Subject Parent Company and the Subject Company have been awarded contracts for food rations in various United Nations missions, including Liberia, Eritrea, Burundi, Cyprus, East Timor, Golan Heights, Iraq and Lebanon. According to the Subject Parent Company, as of September 2006, the Subject Company has received over US\$234 million in payments from the United Nations for nine food ration contracts.⁴⁸

30. A number of the Subject Company staff members were involved with the Subject Company's United Nations contracts, including:⁴⁹

⁴¹ Staff Member 6 interview (18 March 2006).

⁴² The Subject Parent Company, "Annual Report 2005," pp. 2-3.

⁴³ *Id.*, p. 1.

⁴⁴ *Id.*, pp. 10, 12.

⁴⁵ The Subject Company Supplier Registration Form, p. 1 (10 September 2001); Freshfields letter to the Task Force (28 April 2006); The Subject Company "Request for Proposal – Provision of Catering Services to UNMIL RFP:MIL/RFP/05/517/IM" (undated) (hereinafter "the Subject Company Proposal for UNMIL Catering Contract").

⁴⁶ Lesley Gorman email to the United Nations (7 September 2001) (identifying Ms. Gorman as the Subject Company's Marketing Assistant and stating that "[w]e are currently registered with the UN under various subsidiary company names. We would like to consolidate these into one name/address for future contact"); The Subject Company Supplier Registration Form (10 September 2001).

⁴⁷ Christopher Fathers letter to the Subject Company (25 September 2001) (informing the Subject Company of its successful registration as a United Nations supplier).

⁴⁸ Freshfields letter to the Task Force (23 October 2006) (specifying that the payments were made in regards to the food rations contracts for United Nations missions and offices in Burundi, Cyprus, East Timor, Eritrea, Kosovo, Lebanon, Liberia, Sudan, and Syria); Subject Company Representative 8 and Freshfields representative interview (10 October 2006).

⁴⁹ The Subject Company Proposal for UNMIL Catering Contract; The Subject Parent Company, "Annual Report 2003," pp. 23, 32-33. Mr. Harris reported to the Subject Parent Company Board on matters within

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- (i) Peter Harris, Chief Executive Officer of the Subject Company;
- (ii) Allan Vaughan, Executive Director Defence and Relationship Manager;
- (iii) Len Swain, Executive Director Procurement and Logistics;
- (iv) Stephen Kemp, Managing Director UN Worldwide;
- (v) Douglas Kerr, Special Projects and Costing Support Team Manager; and
- (vi) Mr. Seiwert, Development Director and Sales Coordinator.

31. The Subject Company had several Project Managers for the Liberia contract, including Subject Company Representative 7.⁵⁰ All communications with the United Nations went through Mr. Seiwert after the Procurement Service communicated to the Subject Company that it wanted only one point of contact with the company to ensure effectiveness of the process.⁵¹ The Subject Company correspondence and emails therefore were sent to Mr. Seiwert, who would then forward them to Mr. Yakovlev, the Subject Company's focal point in the Procurement Service.⁵²

32. In March 2006, ES-KO International Inc. ("ES-KO") and Supreme Foodservices AG ("Supreme") commenced civil litigation against the Subject Parent Company, the Subject Company, IHC, and Mr. Yakovlev in relation to the events surrounding the procurement exercises which are the subject of this Report. On 16 October 2006, the Subject Parent Company and the plaintiffs reached a settlement whereby the Subject Parent Company agreed, according to them, to pay "below £40 million" in legal, professional, and related costs.⁵³ The Subject Parent Company admitted no legal liability as part of the settlement.⁵⁴ The civil case remains pending against IHC and Mr. Yakovlev. The United Nations was not a party to the settlement, and did not receive any sums under the settlement agreement. As set forth herein, the Task Force recommends this issue to be explored.

F. EZIO TESTA AND IHC

33. IHC is a New York-based corporation with offices in New York and Milan.⁵⁵ Prior to June 2005, IHC was owned by Torno S.A.H., a Luxembourg-based company.⁵⁶

his areas of responsibility, including United Nations food rations contracts. Subject Company Representative 1 interview (27 June 2006).

⁵⁰ Subject Company Representative 3 statement (23 January 2006) (stating that he took control of operational issues in Liberia and Eritrea from May 2004); The Subject Company Proposal for UNMIL Catering Contract, pp. 2-3 (containing "Organization Chart – The Subject Parent Company").

⁵¹ Subject Company Representative 5 statement (30 January 2006).

⁵² *Id.*

⁵³ The Subject Parent Company, "Announcement in relation to the Subject Company/ES-KO and Supreme (UN) Litigation" (16 October 2006).

⁵⁴ ES-KO v. The Subject Parent Company, the Subject Company, IHC *et. al.* (28 March 2006) (filed with the United States District Court for the Southern District of New York); Supreme v. The Subject Parent Company, The Subject Company, IHC *et. al.* (6 March 2006) (filed with the United States District Court for the Southern District of New York).

⁵⁵ Angelita Quinteros interview (29 September 2006); CI-3 interview (4 October 2006).

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It is not clear who currently owns IHC, and company officials have refused to disclose the identity of the current owners.⁵⁷ In 2004, Subject Company Representative 4 initiated consideration within the Subject Parent Company as to whether the Subject Parent Company should acquire IHC. However, according to the Subject Parent Company, it decided not to pursue the deal because of a decision made at the time not to make any new acquisitions.⁵⁸

34. IHC's contracts with the United Nations were handled primarily by Mr. Testa, IHC's President, and Angelita Quinteros, Chief Operating Officer.⁵⁹ IHC has an office at 192 Lexington Avenue in Manhattan. IHC was registered as a United Nations vendor in December 1996 and executed its first contract with the United Nations in June 1998.⁶⁰ The total value of IHC contracts with the United Nations is estimated in excess of US\$15 million.⁶¹ The Task Force's investigation has identified that even though IHC was an official United Nations vendor, it mainly operated as an intermediary or agent, assisting other companies in preparation and submission of proposals and interacted with the United Nations regarding some of the payment-related issues in connection with the execution of various contracts.⁶² In that regard, IHC has acted as an agent and consultant on behalf of several United Nations vendors, including the Subject Company and Armor Products International Ltd. (hereinafter "Armor").⁶³

35. The Subject Company employed IHC's services to assist in its work on the contracts with the Organisation. Between January 2000 and January 2005, IHC and the Subject Company entered into at least thirteen consultancy agreements in relation to United Nations contracts.⁶⁴ In regards to the food rations contracts, IHC agreed to provide the Subject Company with "consulting, logistical and technical assistance."⁶⁵

⁵⁶ Ezio Testa and Angelita Quinteros interview (13 October 2006); Claudia Rosett and George Russell, "U.N. Procurement Scandal: Ties to Saddam and Al Qaeda," *Fox News*, 21 October 2005.

⁵⁷ *Id.*; Angelita Quinteros interview (29 September 2006); CI-3 interview (3 October 2006); Ezio Testa and Angelita Quinteros interview (13 October 2006); Subject Company Representative 8 and Freshfields representative interview (10 October 2006).

⁵⁸ Subject Company Representative 4 interview (28 November 2005); Freshfields letters to the Task Force (28 April and 27 October 2006); Ezio Testa and Angelita Quinteros interview (13 October 2006).

⁵⁹ *Id.*; Angelita Quinteros interview (29 September 2006); Marco Monsurro letter to Walter Cabrera (3 September 2004) (identifying two IHC employees—Ms. Quinteros and Alex Quinteros—as Coelmo's representatives).

⁶⁰ ProcurePlus Database, Reports on IHC (9 October and 14 November 2006).

⁶¹ ProcurePlus Database, Report on IHC (14 November 2006) (showing that IHC had contracts with the United Nations as late as 2003). Ezio Testa and Angelita Quinteros interview (13 October 2006) (confirming that IHC had its own UN contracts and received up to US\$11 million in payments from the United Nations).

⁶² *Id.*; Angelita Quinteros interview (29 September 2006).

⁶³ Staff Member 1 interview (29 September 2006); David Jones letter to the United Nations (28 September 2004) (identifying Mr. Jones as Armor's Secretary and stating that "IHC Services Inc. is the Armor Products International official Agent for the United Nations").

⁶⁴ Michael Bailey letter to Warren Sach (28 October 2005); Freshfields letter to the Task Force (23 October 2006).

⁶⁵ See, e.g., The Subject Company-IHC Agreement relating to food rations contract for UNMIL (signed by Mr. Seiwert on 8 October 2003 and by Mr. Testa on 7 October 2003).

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Some of these consultancy agreements—including those attached to the Liberia and Eritrea contracts—were also accompanied by confidentiality agreements, further describing the types of services and information provided by IHC:⁶⁶

1. **Confidential Information.** (a) The parties hereto recognize and agree that due to the complex and competitive nature of the Project and in recognition that the services to be rendered to [REDACTED] are special, unique and extraordinary and involve access to and use of IHC's proprietary know-how, the confidentiality of information concerning "IHC" is of critical importance. Such information shall include, but shall not be limited to, information of a technical nature, including, but not limited to, client specifications and information of a business nature, including but not limited to, information concerning operations, costs, profits, negotiations, plans, business and financial methods, systems, plans policies and directions (collectively, the "Information").

Figure: The Subject Company-IHC Consultancy Agreement relating to tented camps contract for UNMIS (29 February 2004)

36. The consultancy agreements further provided that the Subject Company was not to disclose to any third party the services provided by IHC.⁶⁷

(b) [REDACTED] will not during, or at any time after the term of the Agreement with "IHC", does any of the following, directly or indirectly, without the prior written consent of "IHC" in each instance:

(i) Disclose, or permit to be disclosed, directly or indirectly, to any person, firm or other entity, any of the information for any reason whatsoever, or

(ii) Disclose, or permit to be disclosed, directly or indirectly, to any person, firm or other entity, the services provided by "IHC".

Figure: The Subject Company-IHC Consultancy Agreement relating to tented camps contract for UNMIS (29 February 2004)

37. In turn, the Subject Company would pay IHC either a pre-arranged flat amount tied to "per man per day," or a percentage of "the net agreed profit per man per day."⁶⁸ The Task Force has identified that the Subject Company paid IHC a total of over US\$2.8 million for its services in relation to nine missions, including US\$552,457 for Liberia.⁶⁹

⁶⁶ The Subject Company-IHC Consultancy Agreement relating to tented camps contract for UNMIS (signed by Mr. Seiwert and Mr. Testa on 29 February 2004) (UNMIS is the United Nations Mission in Sudan); The Subject Company-IHC Consultancy Agreement relating to food rations contract for UNMIL (signed by Mr. Seiwert on 8 October 2003 and by Mr. Testa on 7 October 2003); The Subject Company-IHC Consultancy Agreement relating to food rations contract for UNMEE (signed by Mr. Seiwert and Mr. Testa on 7 October 2003).

⁶⁷ *Id.*; The Subject Company-IHC Consultancy Agreement relating to tented camps contract for UNMIS (signed by Mr. Seiwert and Mr. Testa on 29 February 2004); The Subject Company-IHC Consultancy Agreement relating to food rations contract for UNMIL (signed by Mr. Seiwert on 8 October 2003 and by Mr. Testa on 7 October 2003).

⁶⁸ See, e.g., The Subject Company-IHC Agreement relating to food rations contract for UNMIL (signed by Mr. Seiwert on 8 October 2003 and by Mr. Testa on 7 October 2003).

⁶⁹ The Subject Parent Company, "The Subject Company payments to IHC" (16 May 2006). The fact of the Subject Company payments to IHC was confirmed to the Task Force from a number of sources. Subject

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The close relationship between Mr. Testa of IHC and Mr. Seiwert of the Subject Company is shown in the email below:⁷⁰

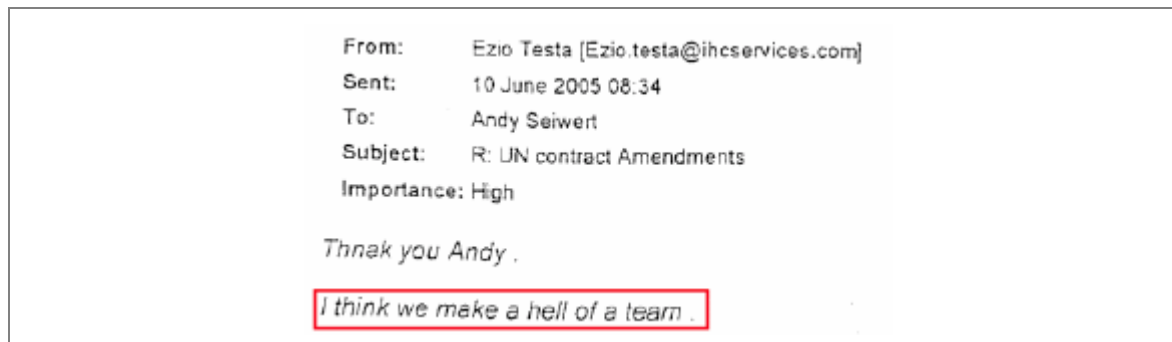


Figure: Ezio Testa email to Andy Seiwert (10 June 2005)

38. On 22 June 2005, following the summer 2005 *Fox News* reports discussing IHC, the United Nations suspended IHC's vendor registration. According to information obtained by the Task Force from a confidential informant, shortly after the suspension of IHC, all United Nations-related documents were shipped to IHC's offices in Milan, and a decision was made that the Milan office would deal with issues related to the United Nations contracts.⁷¹ As of the date of this Report, IHC remains on suspension.⁷²

VII. POST-SUBMISSION ADJUSTMENT OF THE SUBJECT COMPANY'S PROPOSALS

A. BID SUBMISSION AND OPENING PROCEDURES IN OCTOBER 2003

39. At the time of the events discussed herein, the 1998 edition of the United Nations Procurement Manual was in effect.⁷³ According to Staff Member 3, the Bid Opening Official at the bid opening ceremony for the Liberia contract held on 23 October 2003, all bids received by the Procurement Service were time stamped upon receipt, and placed in a secured room locked with an electronic mechanism until the scheduled opening time.⁷⁴ Only authorized staff had access to the secured room.⁷⁵ The purpose of this exercise was

Company Representative 3 statement (23 January 2006); Subject Company Representative 7 interview (4 July 2006); Subject Company Representative 2 interview (4 July 2006).

⁷⁰ Ezio Testa email to Andy Seiwert (10 June 2005).

⁷¹ CI-3 interview (4 October 2006).

⁷² Jayantilal Karia memorandum to Directors and Chiefs of Administration at Offices Away from Headquarters, International Tribunals and Peacekeeping Missions (25 October 2005).

⁷³ United Nations Procurement Manual, sec. 7 (31 March 1998) (hereinafter "1998 Procurement Manual").

⁷⁴ Staff Member 3 interview (5 June 2006); 1998 Procurement Manual, sec. 7.02.02.

⁷⁵ *Id.*; Staff Member 3 interview (5 June 2006). Staff Member 4 had access to both locks. *Id.* Staff Member 2, Chief SSS, and Diana Mills-Aryee, Team Leader General Administration, were authorized to open the lower lock. *Id.* Two duly authorized Bid Opening Officials for the Liberia contract, Staff Member 3 and Staff Member 18, had authorization to open the upper lock. To open the door, two magnetic

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to protect the integrity of the process, and ensure a fair selection based upon objective criteria devoid of any improper influence. As discussed below, these honorable goals were severely breached.

40. A few minutes before the scheduled bid opening time, the proposals were collected by the Bid Opening Officials from the secured room and brought to the bid opening room in preparation for the proposal opening ceremony.⁷⁶ All bids were recorded publicly at the place and time specified in the invitation to bid.⁷⁷ The ceremony involved signing and checking the proposals against the names on the invitee list.⁷⁸ Notably, financial proposals were not opened during the public opening ceremony.⁷⁹

41. As soon as the bid opening was concluded, the sealed financial proposals, together with the technical proposals, were hand-delivered to the case Procurement Officer, who would then forward the technical proposals to the DPKO for evaluation and keep the financial proposals in a secure location until the results of the technical evaluation were known.⁸⁰ According to Staff Member 3, there was no opportunity from the time when proposals were received to the time bids were delivered to the Procurement Officer for someone to open the financial proposals without it being noticed.⁸¹ In the case of Liberia, Eritrea, and Congo contract bids, all proposals were delivered to Mr. Yakovlev, who then forwarded the technical proposals to the DPKO for evaluation.⁸² However, Mr. Yakovlev retained the financial proposals in his possession. The Task Force's investigation has not revealed that any other official received copies of the financial proposals, or took possession of the originals.

42. Under established procedure at the time, the sealed financial proposals remained in the custody of the case Procurement Officer—i.e., Mr. Yakovlev—until the technical evaluation was received from the DPKO.⁸³ Following receipt of the technical evaluation, the Procurement Officer would open and evaluate the financial proposals.⁸⁴ The financial proposals were to be opened by the Procurement Officer in his office with no witnesses present.⁸⁵ As was acknowledged by Staff Member 4, this practice could have afforded the Procurement Officer an opportunity to open and replace pages of the financials

cards needed to be simultaneously slid through the upper and lower locks. *Id.* Thus, the Bid Opening Officials were to be accompanied by either Staff Member 2 or Ms. Mills-Aryee. *Id.*

⁷⁶ *Id.*; Staff Member 18 interview (15 November 2006); 1998 Procurement Manual, sec. 7.09.02.

⁷⁷ *Id.*, sec. 7.03.01.

⁷⁸ *Id.*; Staff Member 3 interview (5 June 2006).

⁷⁹ *Id.*; Staff Member 18 interview (15 November 2006).

⁸⁰ *Id.*; 1998 Procurement Manual, sec. 7.04; Staff Member 4 interview (19 June 2006); Staff Member 3 interview (5 June 2006).

⁸¹ *Id.*

⁸² *Id.*; Alexander Yakovlev email to Ellen Aamodt (23 October 2003) (sending technical proposals for the Liberia contract to DPKO for technical evaluation).

⁸³ Staff Member 4 interview (19 June 2006).

⁸⁴ *Id.*

⁸⁵ *Id.* (stating that before the end of 2004, there was no formal procedure in place for opening of financial proposals).

without anybody having knowledge thereof.⁸⁶ As explained below, this is exactly what occurred in respect to the Liberia and Eritrea contracts.

B. THE SUBJECT COMPANY'S ADJUSTMENT OF FINANCIAL PROPOSALS

43. In anticipation of the opening of the proposals for the Liberia, Eritrea, and Congo contracts, the Subject Company sent a team of three staff members and one consultant to New York, including Mr. Seiwert, Mr. Kerr, and two other members that were interviewed by the Task Force and are referred to as "CI-1" and "CI-2." The objective of the Subject Company's team was to prepare the financial proposals, and, as the investigation has revealed, to adjust these documents to the extent necessary upon obtaining the competitors' sensitive pricing information. Although bidding procedures allowed for alternative ways of bid delivery, the Subject Company chose to hand-deliver its financial and technical proposals. The investigation has revealed that the principal purpose of the Subject Company team's trip to New York was to adjust the proposals, and replace the officially submitted proposals, once the competitors' pricing information was obtained.

44. During the course of the investigation, the Task Force interviewed "CI-1" and "CI-2," two members of the Subject Company team who participated in the process. As set forth more fully below, the confidential informants described in detail three episodes in which they participated in the effort by the Subject Company to adjust its financial proposals after the deadline for bid submission.⁸⁷ The Liberia contract bid adjustment exercise was carried out on 23 October 2003, and the Eritrea contract bid adjustment exercise on 27 October 2003.⁸⁸ On 31 October 2003, the Subject Company also performed adjustment calculations for the Congo contract.

45. The investigation has revealed that CI-1 and CI-2 arrived in New York on or about 21 October 2003 as part of the Subject Company team.⁸⁹ The Subject Company's technical proposals for the three contracts (Liberia, Eritrea, and Congo) were completed in advance at the Subject Company offices in Cyprus, and were brought to New York by CI-1.⁹⁰

46. The investigation has confirmed that Mr. Kerr, an the Subject Company employee, and CI-2 stayed at The Roosevelt Hotel, on the corner of 45th Street and Madison Avenue, located closely to the offices of IHC and the Procurement Service in midtown Manhattan. The Subject Company team utilized Mr. Kerr's hotel suite at The Roosevelt Hotel as its center of operations, rather than the Subject Parent Company's

⁸⁶ *Id.* (further stating that the proposal opening procedure was later changed and that financial proposals are now kept in a secured room by someone other than the procurement officer involved in the procurement exercise).

⁸⁷ CI-1 statement (18 January 2006); CI-2 interview (24 October 2006).

⁸⁸ *Id.*; CI-1 statement (18 January 2006).

⁸⁹ *Id.*; CI-2 interview (24 October 2006).

⁹⁰ CI-1 statement (18 January 2006).

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Manhattan offices or the IHC business premises located just a short distance away. Mr. Seiwert stayed in the Millennium UN Plaza Hotel, located on the same block as the Procurement Service offices.⁹¹ On 22 October 2003, a day before the submission deadline for the Liberia contract, the Subject Company team purchased a printer, pre-punched paper, and printer ink from a Staples store and established a temporary office in Mr. Kerr's hotel suite.⁹² It was decided in advance that the Subject Company bid team would await Mr. Seiwert's phone call with inside pricing information on the bid opening day, and adjust the Subject Company's financial proposal accordingly.⁹³

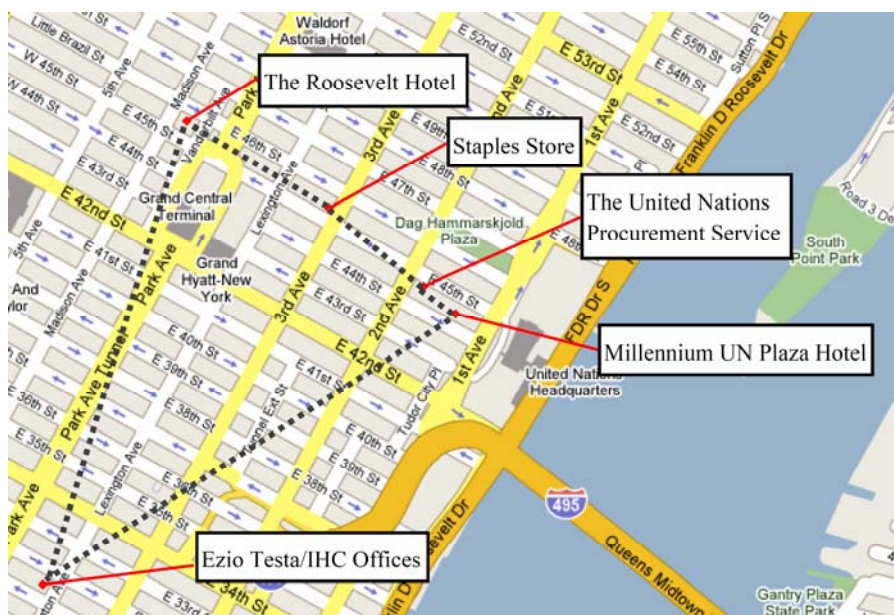


Figure: Locations of The Roosevelt Hotel, Millennium UN Plaza Hotel, Procurement Service offices, and IHC offices

47. On 23 October 2003, before the bid opening procedure scheduled for 10:00 am, Mr. Seiwert departed with two sealed sets of financial and technical proposals for submission to the United Nations Headquarters.⁹⁴ It is clear that the Subject Company's proposals were officially submitted to the Organisation by Mr. Seiwert at 9:40 am. The opening ceremony took place at 11:00 am.⁹⁵ At the opening ceremony, the actual technical and financial proposals remained sealed.⁹⁶ Following the ceremony, the

⁹¹ *Id.*; CI-2 interview (24 October 2006); The Roosevelt Hotel Invoice (31 October 2003) (showing Mr. Kerr as staying in the hotel from 21 October 2003 to 1 November 2003).

⁹² CI-1 statement (18 January 2006).

⁹³ *Id.*; CI-2 interview (24 October 2006).

⁹⁴ CI-1 statement (18 January 2006).

⁹⁵ Procurement Service receipt for the Subject Company financial and technical proposals (23 October 2003) (showing that the proposals were received at 9:40 am); Liberia contract RFPS 550 (12 September 2003); Liberia Proposal Opening Ceremony List (23 October 2003); Staff Member 18 interview (15 November 2006).

⁹⁶ *Id.*

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technical and financial proposals were delivered to Mr. Yakovlev.⁹⁷ An email sent by Mr. Yakovlev to Ms. Aamodt confirms that Mr. Yakovlev was in possession of the proposals no later than 11:41 am.⁹⁸

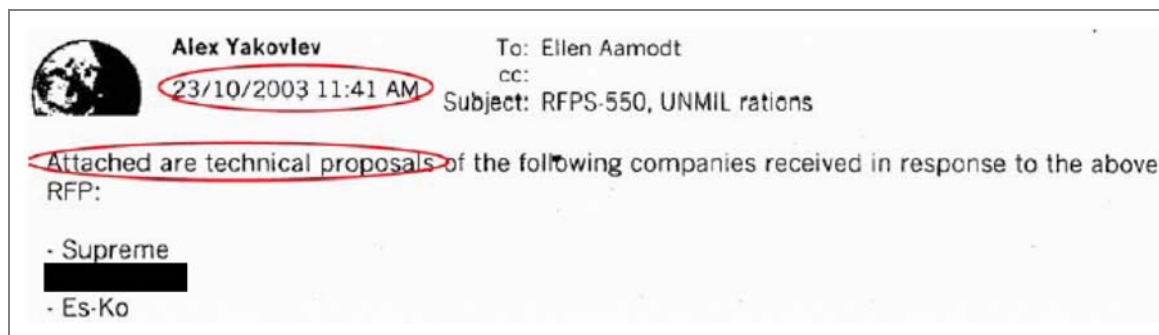


Figure: Alexander Yakovlev email to Ellen Aamodt (23 October 2006)

48. The investigation has revealed that Mr. Seiwert was in contact with the other members of the Subject Company team in the following few hours. Telephone records show at least five telephone calls between Mr. Seiwert and The Roosevelt Hotel soon after the closure of the proposal opening ceremony. It is significant to note that by that time, Mr. Yakovlev was already in possession of the technical and financial proposals.⁹⁹

⁹⁷ *Id.*

⁹⁸ Alexander Yakovlev email to Ellen Aamodt (23 October 2003) (sending technical proposals for the Liberia contract to DPKO for technical evaluation).

⁹⁹ Telephone chronology (23 October 2003).

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Table A: Andy Seiwert's Telephone Calls on 23 October 2003

Calling Time	Call Duration	Call Destination
11:00 am - Official Bid Opening		
11:04:58	1:52	Ezio Testa/IHC Office (New York City)
11:07:09	9:14	N/A
11:18:09	0:31	N/A
11:19:02	10:28	N/A
11:41 am - Alexander Yakovlev is in possession of technical and financial proposals		
11:48:49	1:41	The Roosevelt Hotel (New York City)
11:57:43	0:39	The Roosevelt Hotel (New York City)
11:58:28	4:00	The Roosevelt Hotel (New York City)
12:03:23	0:45	The Roosevelt Hotel (New York City)
12:54:07	0:30	Douglass Kerr mobile
13:03:00	0:59	Peter Harris mobile
13:30:17	0:38	The Roosevelt Hotel (New York City)
13:51:39	0:22	Andy Seiwert voicemail
13:51:42	0:18	Andy Seiwert voicemail
13:58:00	0:01	Peter Harris mobile
13:58:19	0:06	Andy Seiwert voicemail
14:12:53	0:17	Andy Seiwert voicemail
14:13:54	0:22	Andy Seiwert voicemail
14:24:47	0:06	Andy Seiwert voicemail
14:24:51	0:01	Peter Harris mobile
14:42:53	0:28	Andy Seiwert voicemail
14:53:34	1:21	Peter Harris mobile

49. CI-1 confirmed that Mr. Kerr received a telephone call from Mr. Seiwert sometime after 11:00 am, providing him with the figures for the Basis of Provisioning A and B (hereinafter "BOP A" and "BOP B") against which the Subject Company's prices needed to be decreased in accordance with the Subject Company's plan.¹⁰⁰ Based on Mr. Seiwert's information, Mr. Kerr and CI-2, in telephone consultations with Mr. Swain at the Subject Company offices, proceeded to reduce the Subject Company's commodity prices, and modify the transport and logistics figures in order to secure the award of the contract.¹⁰¹

50. Mr. Seiwert returned to the hotel room shortly after the official submission of the Subject Company's proposals and confirmed that prices should be decreased.¹⁰² Mr. Seiwert had very precise notion and figures as to how the prices needed to be changed.¹⁰³ Following Mr. Seiwert's instructions, the Subject Company team began adjusting the figures, and produced a revised financial proposal within an hour.¹⁰⁴ All modifications to

¹⁰⁰ CI-1 statement (18 January 2006). The two sets of figures—BOP A and BOP B—are used by the United Nations to accommodate for "non-western" and "western" tastes and dietary patterns, respectively. United Nations, "Introduction – United Nations Ration Scale" (1 August 1994).

¹⁰¹ CI-1 statement (18 January 2006).

¹⁰² *Id.*

¹⁰³ CI-2 interview (24 October 2006).

¹⁰⁴ *Id.*; CI-1 statement (18 January 2006).

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the Subject Company’s proposals for Liberia, Eritrea, and Congo contracts were made in Mr. Kerr’s suite on the laptop of CI-2.¹⁰⁵

51. Once the figures were changed, CI-1 printed three copies of the modified proposals, two for the United Nations and an extra copy for Mr. Seiwert.¹⁰⁶ The paper used for the modified proposals for Liberia and Eritrea contracts was exactly the same as the paper used for the Subject Company’s official financial proposals and the modified proposal consisted of loose sheets.¹⁰⁷ Once the modified proposals were printed, Mr. Seiwert departed with the three copies wrapped in a newspaper to catch a taxi.¹⁰⁸ Based on the facts set forth herein, the Task Force concludes that Mr. Seiwert thereafter delivered the adjusted proposals to Mr. Yakovlev.

52. The Subject Company followed exactly the same *modus operandi* with respect to the Eritrea contract bid on 27 October 2003.¹⁰⁹ Telephone records show numerous calls by Mr. Seiwert following the proposal opening ceremony at 11:00 am.¹¹⁰

Table B: Andy Seiwert’s Telephone Calls on 27 October 2003

Calling Time	Call Duration	Call Destination
11:00 am - Official Bid Opening		
11:31:09	2:10	Doug Kerr mobile
11:41:27	3:17	Doug Kerr mobile
11:48:22	1:02	Doug Kerr mobile
11:53:04	4:16	Andy Seiwert voicemail
11:58:44	5:36	Doug Kerr mobile
12:30:18	0:42	Doug Kerr mobile
14:18:29	4:22	The Roosevelt Hotel (New York City)
14:19:13	0:15	Andy Seiwert voicemail
14:24:05	0:10	Andy Seiwert voicemail
14:24:40	3:35	Peter Harris mobile
14:26:21	0:11	Andy Seiwert voicemail
14:30:30	0:29	Ezio Testa/IHC Office (New York City)
14:32:18	0:34	Ezio Testa mobile

53. On 27 October 2003, the Subject Company team bought additional office supplies in the same Staples store where they had previously purchased the printer:

¹⁰⁵ *Id.*; CI-2 interview (24 October 2006).

¹⁰⁶ *Id.*; CI-1 statement (18 January 2006).

¹⁰⁷ *Id.*; CI-2 interview (24 October 2006).

¹⁰⁸ *Id.*; CI-1 statement (18 January 2006).

¹⁰⁹ *Id.*

¹¹⁰ Telephone chronology (27 October 2003).

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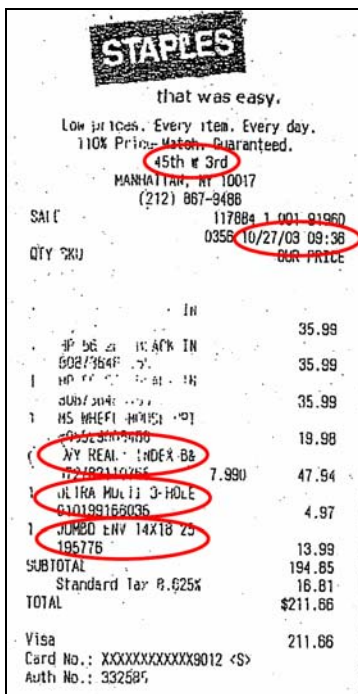


Figure: Staples Receipt (27 October 2003)

54. According to CI-1, the Subject Company also contemplated replacing the bid documents for the Congo contract on 31 October 2003, but it was decided that it would be unrealistic to sufficiently drop the submitted prices to achieve the contract because of higher risks associated with operating in Congo.¹¹¹ However, similar to the events on 23 and 27 October 2003, there were numerous phone calls made by Mr. Seiwert to Mr. Testa as well as the remaining team members in The Roosevelt Hotel after the bid opening on 31 October 2003:¹¹²

¹¹¹ CI-1 statement (18 January 2006); CI-2 interview (24 October 2006).

¹¹² Telephone chronology (31 October 2003).

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Table C: Andy Seiwert's Telephone Calls on 31 October 2003

Calling Time	Call Duration	Call Destination
11:00 am - Official Bid Opening		
12:04:08	5:01	The Roosevelt Hotel (New York City)
12:15:40	1:30	The Roosevelt Hotel (New York City)
12:35:08	5:53	The Roosevelt Hotel (New York City)
12:41:11	0:45	The Roosevelt Hotel (New York City)
13:23:42	10:22	N/A
13:36:39	0:47	Ezio Testa/IHC Office (New York City)
13:37:45	0:44	Ezio Testa mobile
13:43:20	0:23	Ezio Testa mobile
13:45:19	0:23	Ezio Testa mobile
13:47:41	0:23	Ezio Testa mobile
13:52:28	0:52	Ezio Testa mobile
13:53:34	0:41	Ezio Testa/IHC Office (New York City)
13:54:25	1:43	Ezio Testa mobile
13:58:01	2:05	Ezio Testa mobile

55. The numerous phone calls in the Table above show that Mr. Testa was somehow involved in the process. However, when asked about the phone calls on that day, Mr. Testa stated that the telephone calls were not in regard to the Congo contract proposal. However, Mr. Testa could not provide an explanation for having nine telephone conversations with Mr. Seiwert within 30 minutes on that very important day.¹¹³

56. Both CI-1 and CI-2 informed the Task Force that they regarded the events in October 2003 described above as “strange” and irregular. The Task Force views these events as corrupt, and constituting criminal acts. However, both CI-1 and CI-2 asserted that neither of them openly discussed the purpose of the exercises with Mr. Kerr or Mr. Seiwert. Mr. Kerr specifically instructed CI-2 to mind his own business and not concern himself with anything else.¹¹⁴ According to both of these confidential informants, Mr. Kerr and Mr. Seiwert also preferred not to speak on the phone in the presence of CI-1 and CI-2.¹¹⁵ Nevertheless, CI-1 stated that it was clear to him that financial bid documents were changed after the official bid submission for purposes of achieving the most competitive prices.¹¹⁶

57. According to the information obtained by the Task Force, the Subject Company's proposals were also altered in at least three other instances, including the procurement exercise for the Sudan contract in December 2004.¹¹⁷ According to CI-1, the Subject Company's bid centre sometimes prepared several copies of financial proposals on loose sheets, each containing varying percentages that differed from the original price.¹¹⁸ This

¹¹³ Ezio Testa and Angelita Quinteros interview (13 October 2006).

¹¹⁴ CI-2 interview (24 October 2006).

¹¹⁵ *Id.*

¹¹⁶ CI-1 statement (18 January 2006).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

way, several sets of prepared proposals were already at hand and once the information on the competitors' prices was obtained, the best fitting proposal would be utilized.¹¹⁹

58. According to CI-1, the Subject Company did not keep copies of the original unmodified financial proposals. CI-1 explained that Mr. Kerr was "paranoid" that financial proposals might fall in the hands of competitors and insisted that all draft email financial proposals be deleted, even from "deleted items."¹²⁰

59. Based on the statements of CI-1 and CI-2, and the evidence gathered during the investigation, it is clear that the purpose of post-submission bid adjustment exercises in cases of Liberia and Eritrea contracts was to replace the Subject Company's officially submitted financial proposals after the submission deadline. This placed the company in a more advantageous position, allowing it to achieve the contracts. The procurement processes were clearly tainted by fraud and collusion on the part of the Subject Company and its officers, including Mr. Kerr and Mr. Seiwert. Mr. Yakovlev, as set forth below, favoured the Subject Company throughout the procurement and contract execution process and provided the company with sensitive and confidential United Nations documents and information. Further, Mr. Yakovlev was the case officer assigned to the matter, and the only Procurement Service official who had exclusive possession of the financial submissions of the companies. Based upon the totality of the circumstances, and all reasonable inferences to be drawn therefrom (including facts set forth in the following Sections of this Report), the Task Force finds that Mr. Yakovlev assisted the Subject Company in replacing its financial proposals after the official submission, allowing it to secure the award of the Liberia and Eritrea contracts.

VIII. ACQUISITION AND DISCLOSURE OF CONFIDENTIAL UNITED NATIONS AND COMPETITOR'S DOCUMENTS AND INFORMATION

60. On 7 October 2005 and 10 February 2006, *Fox News* reported that several confidential United Nations documents were leaked to the Subject Company.¹²¹ The documents discussed in the first *Fox News* report included a draft presentation to the Headquarters Committee on Contracts ("HCC"), as well as the Organisation's financial and technical evaluations for the Liberia contract.¹²² The documents were already in the Subject Company's possession a few days before it was actually presented to the HCC by

¹¹⁹ *Id.*

¹²⁰ *Id.* Mr. Testa confirmed that the Subject Company had a "paperless motto" with regard to keeping its proposals. Ezio Testa and Angelita Quinteros interview (13 October 2006).

¹²¹ George Russell and Claudia Rosett, "U.N. Procurement Scandal: Secret Information Was Leaked to a Bidder," *Fox News*, 7 October 2005; George Russell and Claudia Rosett, "U.N. Procurement Scandal: How Far Did the Inside Information Travel?" *Fox News*, 10 February 2006.

¹²² George Russell and Claudia Rosett, "U.N. Procurement Scandal: Secret Information Was Leaked to a Bidder," *Fox News*, 7 October 2005.

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the Procurement Service.¹²³ The second *Fox News* report included a string of emails originating from Mr. Yakovlev and sent to Mr. Seiwert. Mr. Yakovlev's email contained internal United Nations records describing the Subject Company's performance failures with regard to the food rations contract for the United Nations Operation in Burundi ("ONUB").¹²⁴

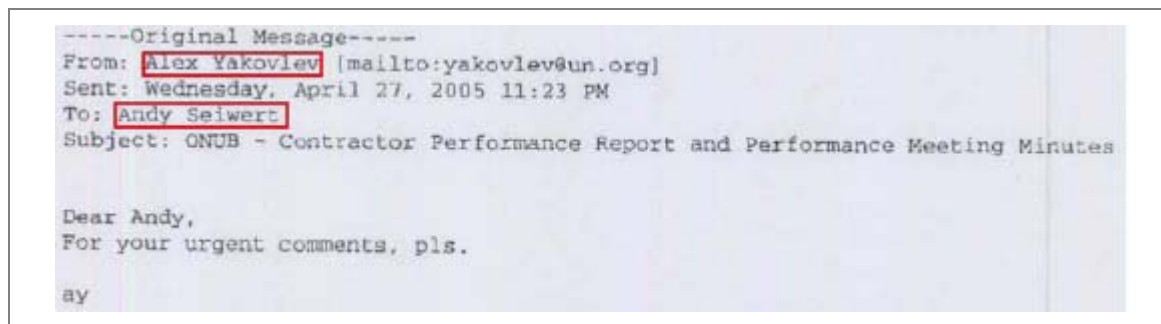


Figure: Alexander Yakovlev email to Andy Seiwert (27 April 2005)

61. Mr. Yakovlev's email was subsequently forwarded by Mr. Seiwert to Mr. Testa.¹²⁵

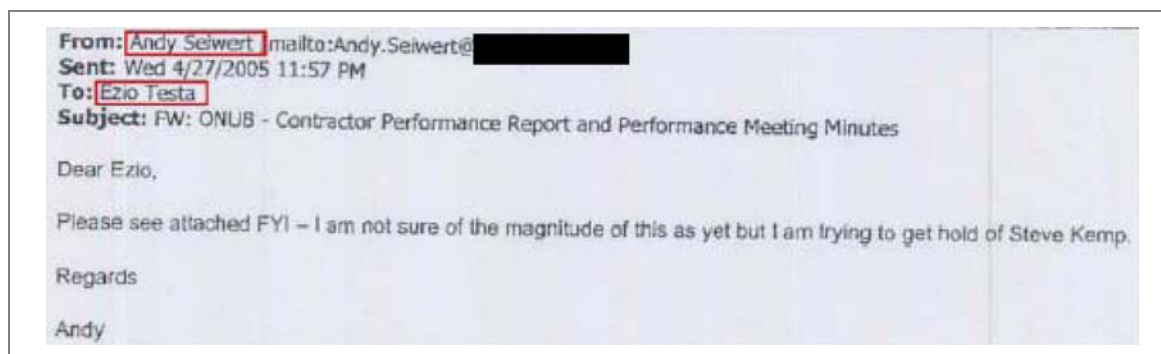


Figure: Andy Seiwert email to Ezio Testa (27 April 2005)

62. Some of the documents attached to Mr. Yakovlev's email were marked "strictly confidential, not for release outside of the United Nations."¹²⁶

¹²³ HCC Presentation (6 November 2003).

¹²⁴ George Russell and Claudia Rosett, "U.N. Procurement Scandal: How Far Did the Inside Information Travel?" *Fox News*, 10 February 2006.

¹²⁵ Alexander Yakovlev email to Andy Seiwert (27 April 2005).

¹²⁶ United Nations Operation in Burundi, "The Subject Company Contractor Performance Report" (22 February 2005). The Subject Parent Company confirmed to the Task Force that a number of documents reported on by *Fox News* were in fact located among the Subject Company files. Subject Company Representative 8 and Freshfields representative interview (10 October 2006); Freshfields letter to the Task Force (23 October 2006).

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UNITED NATIONS | NATIONS UNIES

Progress Evaluation
 Final Evaluation

CONTRACTOR PERFORMANCE REPORT
STRICTLY CONFIDENTIAL, NOT FOR RELEASE OUTSIDE OF THE UNITED NATIONS

For use in evaluating performance of prime contractors who signed the United Nations contracts and have a legal contractual relationship with the United Nations. (For specialists such as architects, consultants, etc., use SSR PD.1 (:0-00))

REPORT DATE: (d/my) 22/02/2005

CONTRACTOR'S NAME: [REDACTED]

U.N. NO./CONTRACT NO.: _____ CONTRACT PERIOD: 01/08/2004 to 30/06/2005

CONTRACT TITLE AND BRIEF DESCRIPTION: Provision of food and warehousing

Figure: United Nations Operation in Burundi, “The Subject Company Contractor Performance Report” (22 February 2005) (attached to Mr. Yakovlev’s email dated 27 April 2005)

63. Documents obtained from the Subject Parent Company representatives confirm the Subject Company’s access to confidential internal United Nations information and documents that were not available to other vendors. For instance, an email sent by Mr. Testa to the Subject Company on 16 July 2003—almost a week before an Expression of Interest was posted on the Internet—shows that the Subject Company was aware of the time frames for the procurement exercise for the Liberia contract.¹²⁷

I have confirmation on new EOI (expression of Interests) to be released next week for Congo / Ethiopia-Eritrea / Ivory Coast / Liberia and maybe Sudan . This means Allan will have to be very cautious in his talking .

I REALLY COUNT ON YOUR INTERVENTION AS THIS IS REALLY GETTING OUT OF CONTROL .

...

Ezio Testa
President & CEO
IHC Services, Inc.

Figure: Ezio Testa email to Adrian Dyer (17 July 2003)

64. Another email sent by Mr. Seiwert reflects that almost two weeks before the official issuance of the Request for Proposal (“RFPS”) for the Liberia contract, the Subject Company had already obtained copies of correspondence from the DPKO to the

¹²⁷ Ezio Testa email to Adrian Dyer (17 July 2003); Request for Expression of Interest (22 July 2003). Mr. Dyer was one of the Subject Company managers.

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Procurement Service containing information about troop numbers and troop locations in Liberia.¹²⁸

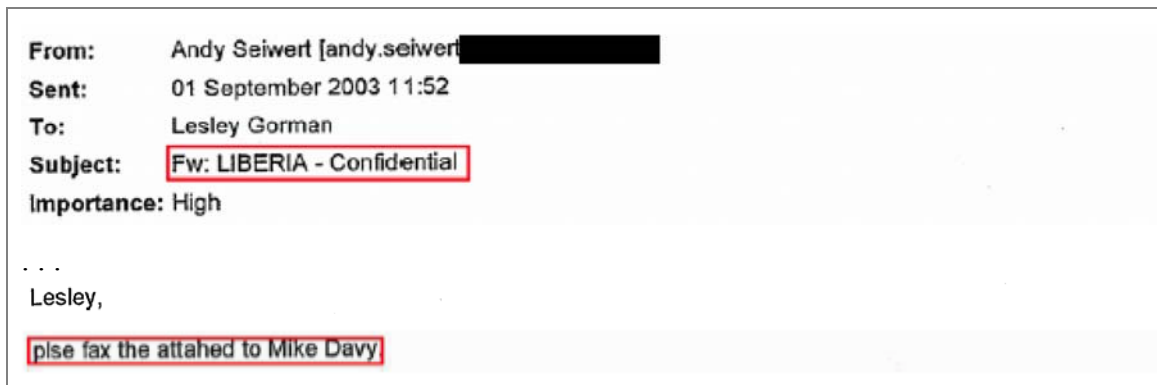


Figure: Andy Seiwert 9 email to Lesley Gorman (1 September 2003) (attaching internal United Nations documents regarding planning for UNMIL)

65. Documents in the possession of the Subject Company show that the company's access to confidential internal United Nations information was not restricted to UNMIL-related materials. The records obtained by the Subject Company included confidential internal United Nations documents regarding ONUB and UNTAET food rations contracts, UNMIS tented camps contract, and other contracts.¹²⁹ For instance, among these records were internal United Nations emails regarding problems with ES-KO's food rations contract in MONUC:¹³⁰

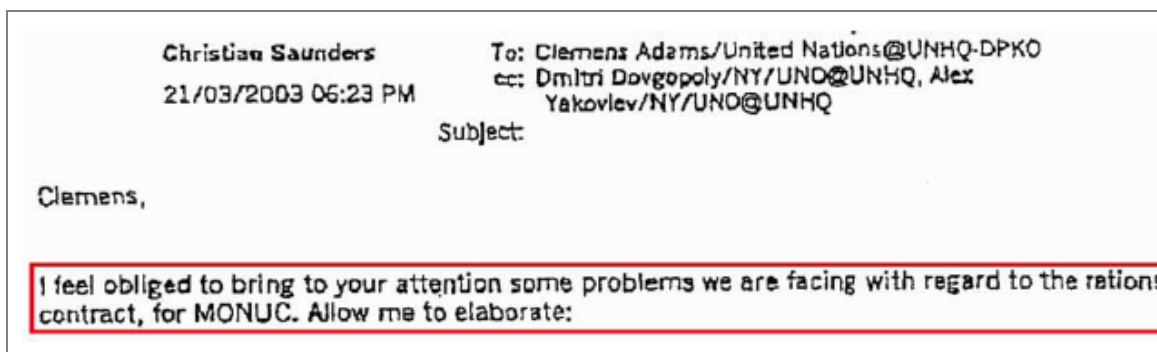


Figure: Christian Saunders email to Clemens Adams (21 March 2005) (located among the Subject Company records)

66. These materials were obtained primarily by Mr. Seiwert.¹³¹ However, because of Mr. Seiwert's disappearance, the Task Force has been unable to obtain Mr. Seiwert's explanation as to how he came to possess these confidential United Nations materials.

¹²⁸ Andy Seiwert email to Lesley Gorman (1 September 2003).

¹²⁹ Freshfields letter to the Task Force (23 October 2006) (pointing out that in the course of its internal investigation it "found other contractor performance reports, for UNMEE, UNMIL and [ONUB]").

¹³⁰ Christian Saunders email to Clemens Adams (21 March 2003).

¹³¹ Freshfields letter to the Task Force (27 October 2006).

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The Task Force, as well as the Subject Company and representatives from ES-KO and Supreme, have expended significant effort to locate him, to no avail.

67. However, Subject Company Representative 4 informed the Task Force investigators that when he previously asked Mr. Seiwert about confidential United Nations documents, Mr. Seiwert replied: “[Subject Company Representative 4] I probably got [them]. I don’t remember.”¹³² According to Subject Company Representative 1, Group Chief Executive of the Subject Parent Company, when he asked Mr. Seiwert to comment on this matter as part of the Subject Parent Company’s internal investigation, Mr. Seiwert categorically denied any wrongdoing and promised to provide an explanation. However, Mr. Seiwert has never provided any further explanation.¹³³

68. Several Subject Company staff members confirmed having obtained confidential documents, including not only internal United Nations records, but commercially-sensitive documents provided to the United Nations by other vendors as well. Subject Company Representative 7, the Subject Company’s Project Manager for the Liberia contract, asserted that he received an induction package on his arrival at UNMIL in December 2003.¹³⁴ Amongst the documents in the package was the HCC presentation for the Liberia contract, including the financial and technical evaluation abstracts and extracts of the ES-KO pricing schedule for its interim contract for UNMIL.¹³⁵ This information was of significant advantage and value to the Subject Company as it assisted the company in gaining access to better prices and more cost-effective mobilization planning.¹³⁶

69. Subject Company Representative 2, the Subject Company’s Development and Regional Director, stated that Mr. Seiwert gave him a copy of the HCC presentation and ES-KO pricing schedule.¹³⁷ In response to his question about the source of the documents, Mr. Seiwert informed Subject Company Representative 2 that “this is what comes out of New York.”¹³⁸ Subject Company Representative 2 stated that in 2000 he had noticed a similar financial abstract for the Eritrea proposal in the Subject Company bid centre in Cyprus.¹³⁹

70. Subject Company Representative 4 stated that the Subject Company knew, in advance, the proposed prices of its competitors.¹⁴⁰ According to Subject Company Representative 4, the Subject Company obtained pricing data and “information that was

¹³² Subject Company Representative 4 interview (28 November 2005).

¹³³ Subject Company Representative 1 interview (27 June 2006).

¹³⁴ Subject Company Representative 7 interview (4 July 2006).

¹³⁵ *Id.*

¹³⁶ Subject Company Representative 4 interview (28 November 2005); Subject Company Representative 5 interview (30 January 2006); Staff Member 1 interview (27 and 28 June 2006); The Subject Company Organisation Chart (undated).

¹³⁷ Subject Company Representative 2 interview (4 July 2006).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Subject Company Representative 4 interview (28 November 2005).

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not public” from the staff of the Procurement Service.¹⁴¹ Subject Company Representative 4, however, offered that the Subject Company never “paid anybody” for information or to get a contract; instead, the Subject Company won as the lowest bidder.¹⁴² Subject Company Representative 4 told the Task Force investigators: “Yes, we knew who our competitors were; we knew their pricing; did we ask for information – no; did we receive it – yes; did we pay for it – no.”¹⁴³ Receiving such information, even if it was not purchased, clearly taints the procurement exercise, and obviously constitutes corrupt conduct.

71. Subject Company Representative 4 considered the information from the Procurement Service helpful in mobilization planning and commercially advantageous to the Subject Company.¹⁴⁴ Among the sources of information within the Procurement Service, Subject Company Representative 4 identified Mr. Yakovlev; Mr. Dovgopoly, who would give information about the demographic mix and intended duration of a mission which made a huge difference to pricing; Sanjaya Bahel, who explained the procurement procedures; and Mr. Divers, who informed Mr. Swain “off the record” that the Subject Company was the winning bidder.¹⁴⁵

72. In summary, by soliciting, receiving, and providing to a third party a significant number of confidential internal United Nations documents, the Subject Company and the officials of the company involved engaged in corrupt and illegal practices, and participated in a scheme which tainted the procurement exercises and compromised the integrity of the process.¹⁴⁶

A. PROCUREMENT SERVICE’S FAILURE TO ACT ON A POTENTIAL LEAK OF CONFIDENTIAL INFORMATION

73. The Task Force’s investigation has further identified a separate incident involving the dissemination of confidential United Nations information outside of the Organisation. Prior to the official announcement by the Organisation and confirmation by the appropriate officials, the identity of the vendor selected to receive a contract award from the Organisation is confidential. However, on 18 November 2003, Ray Smith of ES-KO informed the Procurement Service that “[w]e are disturbed to learn from our shipping sources that the Subject Company management are saying they have been awarded the [Liberia] contract”.¹⁴⁷

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See, e.g., Liberia contract, art. 34.2 and Eritrea contract, art. 34.2.

¹⁴⁷ Ray Smith email to Alexander Yakovlev (18 November 2003).

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"Smith Ray"
 <rsmith@es-ko.com To: "Alex Yakovlev"
 <yakovlev@un.org>

...

Dear Alex,
 This morning we tried to reach you several times by phone without success. We are disturbed to learn from our shipping sources that [REDACTED] are saying they have been awarded the above contract. As we believe that we are assisting the UN with big efforts and costs in the Liberian Interim operations, we would like to be informed if this "talk" has any substance.

...

Also from the same source there is talk that UNMEE is still to be decided between [REDACTED] and ourselves.
 Kind regards,
 Ray Smith

Figure: Ray Smith email to Alexander Yakovlev (18 November 2003)

74. Later on that same day, Mr. Dovgopoly sent a reply email to Mr. Smith, characterizing ES-KO's communication as "not quite appropriate".¹⁴⁸

From: Dmitri Dovgopoly [mailto:dovgopoly@un.org]
 Sent: 18 November 2003 20:08
 To: Smith Ray
 Cc: Zanotti Ennio G.; Christian Saunders; Alex Yakovlev
 Subject: Re: UN Food Contract for Liberia

...

Dear Ray,
 thank you for your e-mail. Whilst PD understands your concerns and is grateful for Es-Ko's co-operation, particularly in Liberia, I find your message not quite appropriate at this stage. You will appreciate that Es-Ko cannot be exempt from competition either in UNMIL or any other mission. You will be informed of the results as appropriate.
 Best regards,
 Dmitri Dovgopoly,
 Chief, Field Procurement Section, PD

Figure: Dmitri Dovgopoly to Ray Smith (18 November 2003)

75. Following Mr. Dovgopoly's email, ES-KO expressed further frustration with regard to information on bid awards obtained from "a competitor." An email from an ES-KO employee to the Procurement Service suggested that contracts had been steered to particular vendors. The message read: "Liberia is ours; Congo is for ES-KO and Eritrea still pending".¹⁴⁹

¹⁴⁸ Dmitri Dovgopoly email to Ray Smith (18 November 2003).

¹⁴⁹ Ray Smith email to Dmitri Dovgopoly (20 November 2003).

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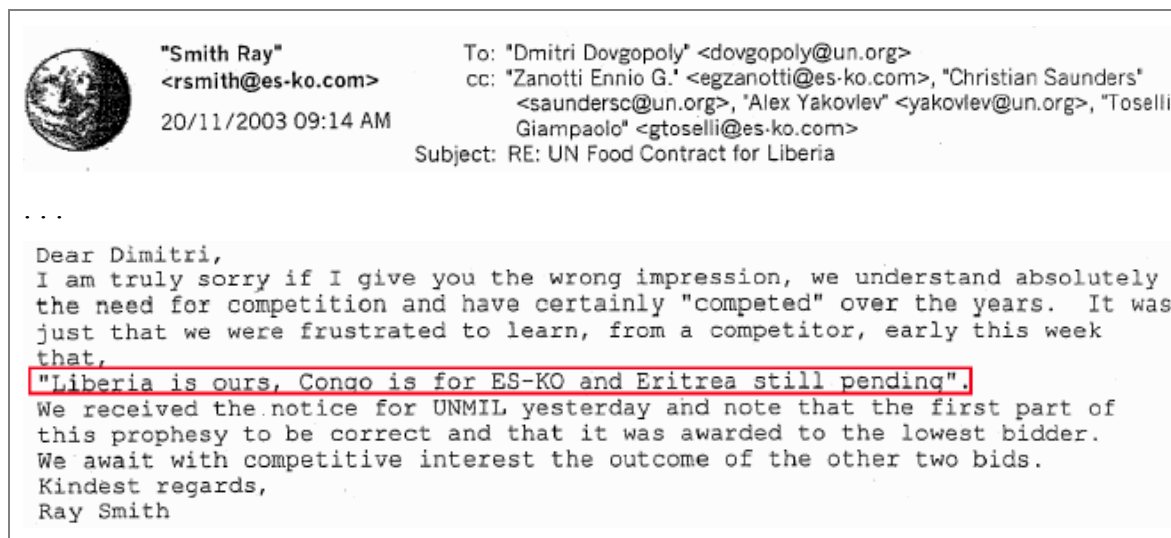


Figure: Ray Smith email to Dmitri Dovgopoly (20 November 2003)

76. The HCC had just deliberated on the Congo and Eritrea contracts on 18 November 2003.¹⁵⁰ When interviewed about this incident, Staff Member 4 stated that as soon as the Subject Company was notified of the award, the Procurement Service should have simultaneously sent letters of regret to the unsuccessful bidders.¹⁵¹ He added that it was inappropriate and unprofessional that ES-KO—the contractor on site—had to learn from its own competitor, the Subject Company, that the Liberia contract was awarded to it.¹⁵²

77. ES-KO confirmed that except for Mr. Dovgopoly's email dated 18 November 2003, no further steps were taken by Mr. Saunders and Mr. Dovgopoly to address ES-KO's concerns.¹⁵³

78. Staff Member 4 stated that he did not pay too much attention to ES-KO's complaint, attributing it to "sour grapes."¹⁵⁴ However, Staff Member 4 acknowledged that if the Subject Company knew about contract awards before approval of HCC's recommendation, there would have been reason for concern.¹⁵⁵ Staff Member 4 stated that he did not contact ES-KO and could not recall definite steps he took in relation to the incident.¹⁵⁶ Staff Member 1 also could not recall discussing ES-KO's complaint with Staff Member 4 or Mr. Yakovlev, but acknowledged that the matter should have been reported for investigation.¹⁵⁷

¹⁵⁰ HCC Meeting Minutes no. HCC/03/81 (18 November 2003).

¹⁵¹ Staff Member 4 interview (19 June 2006).

¹⁵² *Id.*

¹⁵³ The Task Force note-to-file (29 March 2006).

¹⁵⁴ Staff Member 4 interview (19 June 2006).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Staff Member 1 interview (27 and 28 June 2006) (stating that he was annoyed with ES-KO, who was well informed).

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79. Based on the available evidence, and particularly in light of the fact that both Staff Member 4 and Staff Member 1 held, at the time, reservations about Mr. Yakovlev's integrity and ethics, both should have conducted a further inquiry into the allegation that these entities received information of a confidential nature, or referred the matter for investigation.

IX. THE SUBJECT COMPANY CONNECTIONS WITH THE UNITED NATIONS STAFF MEMBERS

80. The Subject Company's strategy to achieve valuable United Nations contracts included building direct relationships with the United Nations staff.¹⁵⁸ As early as 2001, Mr. Harris discussed this stratagem when he emphasized that the company had to be "flexible" in its approach, and establish "special relationships" "of a more commercial . . . nature" with the "right people."¹⁵⁹

Finally, I would wish to say that Yann may be in a position to lobby on our behalf and certainly has contacts within the UN as an ex-employee. However, to win contracts with the UN through the New York procurement office, special relationships at the UNHQ with the right people, have to be established of a more commercial than personal nature. Without said relationships, one will not succeed, this I have explained to you previously. It is therefore essential that I follow the submission of our bid with a personal presentation at UNHQ and that we remain flexible in our approach to the winning price.

Regards

Peter

Figure: Peter Harris memorandum to Jean-Louis Roche (7 June 2001)

81. Such efforts were pursued and achieved, as was confirmed by Mr. Seiwert in correspondence with Mr. Swain following the award of the Sudan food rations contract. In his email, Mr. Seiwert stated that "[m]any people have stuck their necks out for us, [including] Alex Yakovlev, Christian Saunders, Dmitri Dovgopoly, Andrew Tow [*sic.*], Ian Divers and Clemens Adams." Mr. Seiwert stated further: "You may have noted that we have not heard much from Staff Member 7 lately . . . took a bit longer than I thought, but we are trying our best".¹⁶⁰

¹⁵⁸ Subject Company Representative 4 interview (28 November 2005).

¹⁵⁹ Peter Harris memorandum to Jean-Louis Roche, p. 2 (7 June 2001). Mr. Roche was the Subject Company's Project Director. The Subject Company Organisation Chart (undated).

¹⁶⁰ Andy Seiwert email to Len Swain (1 January 2005); Staff Member 1 interview (27 and 28 June 2006) (stating that the email referred to the Sudan food rations contract).

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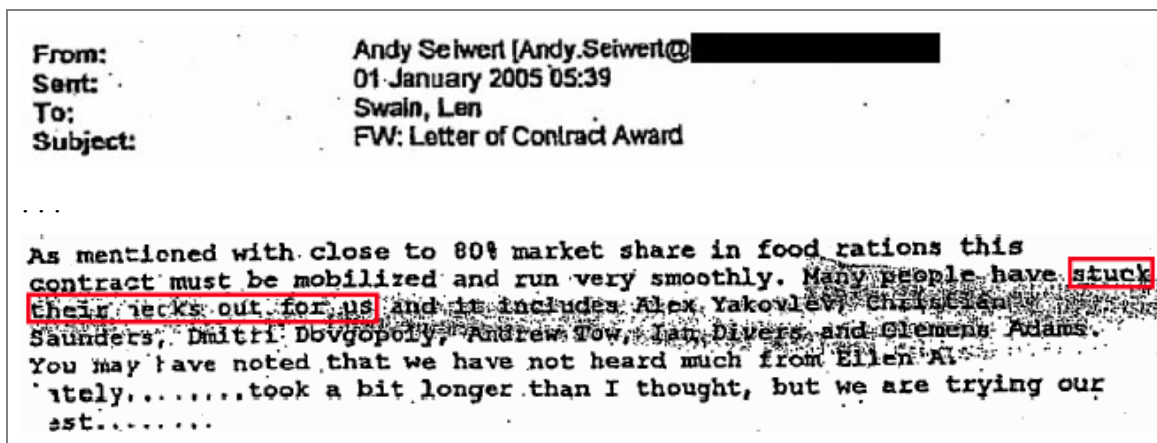


Figure: Andy Seiwert email to Len Swain (1 January 2005)

82. The Task Force investigators questioned the United Nations staff members mentioned in Mr. Seiwert's email. Each denied providing confidential information to the Subject Company, and could not offer an explanation for Mr. Seiwert's statement that the Procurement Service officials had "stuck their necks out for us." Staff Member 8 said that he had never "stuck out his neck" for anyone.¹⁶¹ Staff Member 7 replied that she would have preferred if the email read that "she has disappeared from face of the earth."¹⁶² Staff Member 9 stated that he had never been approached by the Subject Company.¹⁶³ However, Staff Member 4 stated that in order to get the Subject Company to perform better, he told the Subject Company that the Procurement Service staff had stuck out their necks for the Subject Company by not excluding the company from future contracts because of its prior poor performance.¹⁶⁴ Staff Member 1 stated that Mr. Seiwert's email most likely referred to the Sudan tented camps contract awarded to the Subject Company. Staff Member 1 claimed that because of a difficult situation with the tented camps contract, he "went beyond the call of duty" to ensure deployment of troops.¹⁶⁵ All denied employing improper efforts on the Subject Company's behalf. In isolation this email is potentially ambiguous. However, in the totality of the circumstances, and against the backdrop of the evidence identified herein, including the Subject Company's clear attempt to gain improper influence with the Procurement Service, it is more noteworthy.

83. Similarly, in his internal Subject Company communications, Mr. Seiwert frequently referred to "friends" in the United Nations, and specifically in the Procurement Service. Mr. Seiwert used this term in both singular and plural forms, at times using capital letters for purported emphasis: "It was agreed with . . . our *Friends* at UNHQ,"¹⁶⁶

¹⁶¹ Staff Member 8 interview (17 May 2006).

¹⁶² Staff Member 7 interview (10 April 2006).

¹⁶³ Staff Member 9 interview (11 April 2006).

¹⁶⁴ Staff Member 4 interview (19 June 2006).

¹⁶⁵ Staff Member 1 interview (27 and 28 June 2006).

¹⁶⁶ Andy Seiwert hand-written note to Peter Harris (14 September 2000) (emphasis added).

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“our *Friends* feel that we should . . . contest these decisions,”¹⁶⁷ “I was completely unaware . . . as was our *friend*,”¹⁶⁸ “I met with our *Friend*,”¹⁶⁹ and “[i]t was agreed with Ezio [Testa] and our *Friends* at UNHQ”¹⁷⁰:

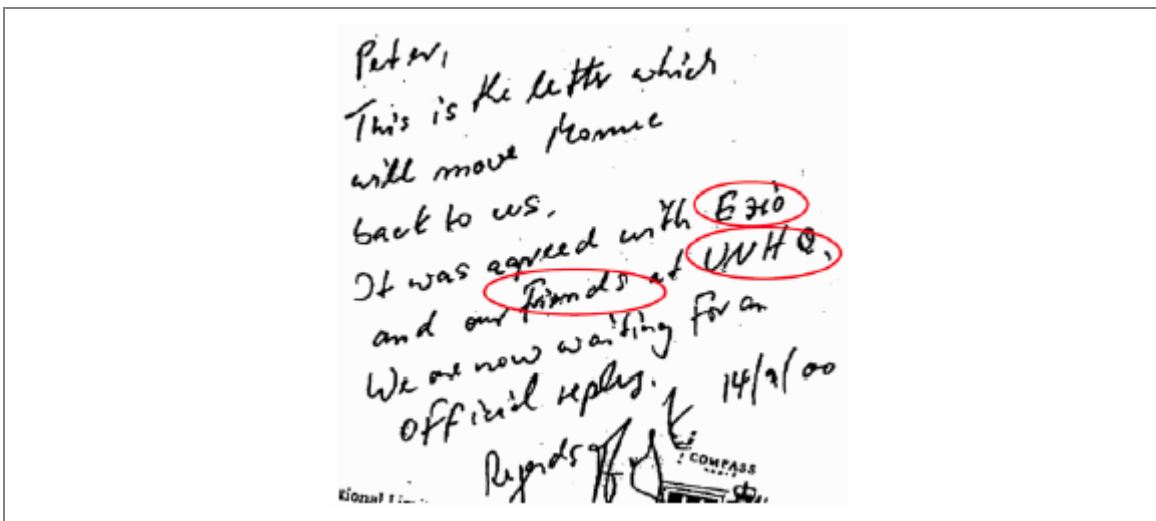


Figure: Andy Seiwert hand-written note to Peter Harris (14 September 2000)

84. In one such email addressed to Subject Company Representative 3, Mr. Seiwert wrote: “Alex is acutely aware of urgency . . . so are our *friends*.”¹⁷¹

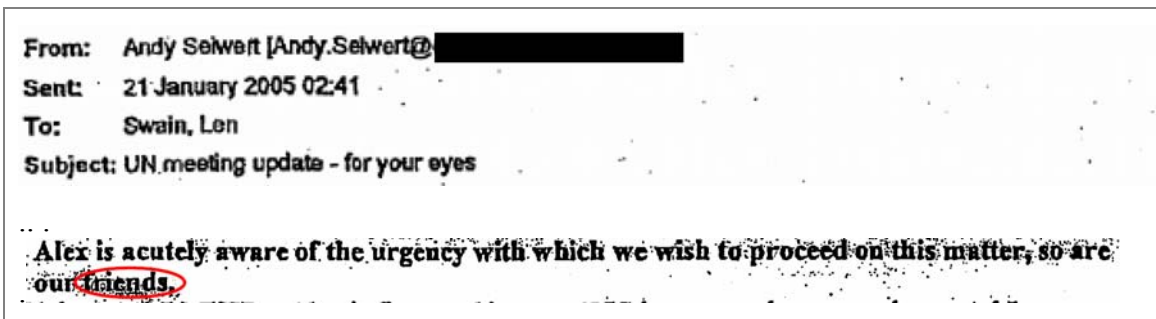


Figure: Andy Seiwert email to Subject Company Representative 3 (21 January 2005)

85. Subject Company Representative 3, when asked by the Task Force for an explanation, responded that he never asked Mr. Seiwert who “our friends” were.¹⁷²

¹⁶⁷ Andy Seiwert email to Peter Harris (2 July 2001) (emphasis added).

¹⁶⁸ Andy Seiwert email to Peter Harris (30 September 2002) (emphasis added).

¹⁶⁹ Andy Seiwert email to Subject Company Representative 3 (21 January 2005) (emphasis added).

¹⁷⁰ Andy Seiwert hand-written note to Peter Harris (14 September 2000) (emphasis added). This hand-written note was made on a copy of Alistair Smylie’s facsimile to Sanjaya Bahel. Alistair Smylie facsimile to Sanjaya Bahel (13 September 2000).

¹⁷¹ Andy Seiwert email to Subject Company Representative 3 (21 January 2005) (emphasis added).

¹⁷² Subject Company Representative 3 statement (23 January 2005).

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86. Subject Company Representative 6 recalled Staff Member 1 asking him whether the Subject Company had undue influence over any United Nations staff members.¹⁷³ Subject Company Representative 6 replied to Staff Member 1 and Staff Member 4 that he had found nothing to suggest that the Subject Company had employed any undue influence over anyone at the United Nations.¹⁷⁴ According to Subject Company Representative 6, when he relayed this information to Mr. Seiwert, the latter was “appalled and totally shocked by the question.”¹⁷⁵

A. STAFF MEMBER 5

87. Staff Member 5, UNMIL’s CISS, informed the Task Force that Subject Company Representative 5 of the Subject Company offered him a consultancy position while Staff Member 5 was still employed with UNMIL.¹⁷⁶ Staff Member 5 stated that Subject Company Representative 5 specifically mentioned Mr. Seiwert’s name when he made the offer.¹⁷⁷ It was clear to Staff Member 5 that Subject Company Representative 5 wanted to engage his services while Staff Member 5 remained employed by the United Nations.¹⁷⁸ Staff Member 5 declined, and reported the incident to Staff Member 13, UNMIL’s CAO.¹⁷⁹ Staff Member 13 confirmed that Staff Member 5 informed her about this incident.¹⁸⁰ The Task Force did not identify any evidence demonstrating that Staff Member 5 acted improperly in favour of the Subject Company.¹⁸¹

B. STAFF MEMBER 6

88. According to Subject Company Representative 5, Staff Member 5 told him at some point that “[i]f [the Subject Company] was serious about the business here in Liberia, you would be paying Staff Member 6 what ES-KO [was] paying her.”¹⁸² Subject

¹⁷³ Subject Company Representative 6 statement (10 January 2006); Staff Member 4 interview (19 June 2006); Staff Member 1 interview (27 and 28 June 2006).

¹⁷⁴ *Id.*; Staff Member 4 interview (19 June 2006); Subject Company Representative 6 statement (10 January 2006).

¹⁷⁵ *Id.*

¹⁷⁶ Staff Member 5 interview (31 March 2006).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Staff Member 13 interview (19 September 2006).

¹⁸¹ Staff Member 19 interview (21 September 2006) (Staff Member 19 worked as a resident auditor in UNMIL); Staff Member 20 interview (9 September 2006) (Staff Member 20 worked as an associate auditor in UNMIL); Farid Hykal interview (27 September 2006) (Mr. Hykal is a warehouse owner in Liberia) (stating that Staff Member 5 never approached him with any offer to change warehouse costs); Staff Member 21 interview (20 September 2006) (Staff Member 21 worked as an auditor in UNMIL). Forensic analysis of electronic material showed no evidence to support Subject Company Representative 5’s allegation against Staff Member 5. When interviewed by the Task Force, Subject Company Representative 5 did not provide any information regarding this incident. Subject Company Representative 5 statement (30 January 2006).

¹⁸² *Id.* (describing Staff Member 5 as “very rude about how the Subject Company was operating in Liberia”).

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Company Representative 5 understood this to mean that ES-KO was paying Staff Member 6 for her support.¹⁸³ Subject Company Representative 5 further described Staff Member 6 as “very obstructive” towards the Subject Company and “a strong supporter of ES-KO.”¹⁸⁴ Contrary to Subject Company Representative 5’s assertions, however, Subject Company Representative 7, a former Subject Company Project Manager for UNMIL, described Staff Member 6 as demanding and difficult, but professional.¹⁸⁵ Subject Company Representative 7 further stated that Staff Member 6 relied heavily on contract terms and requirements and insisted on exact compliance with the terms of the Liberia contract.¹⁸⁶ Subject Company Representative 5 conceded that he had no actual proof that Staff Member 6 had any improper involvement with ES-KO.¹⁸⁷

89. The Task Force was unable to identify any evidence showing any improper conduct on the part of Staff Member 6 in relation to the Liberia contract.

X. IHC’S CONNECTIONS WITH ALEXANDER YAKOVLEV AND OTHER UNITED NATIONS STAFF MEMBERS

90. The Task Force investigators interviewed Mr. Testa as well as Ms. Quinteros of IHC. During the course of the interview, Mr. Testa admitted that a number of United Nations staff members provided him with confidential information and documents as a “courtesy,” but Mr. Testa refused to identify the procurement staff within the Organisation to whom he was referring.¹⁸⁸ Mr. Testa admitted that he thereafter provided at least some of these documents to the Subject Company.¹⁸⁹

91. In that regard, Mr. Testa’s remarks have been independently corroborated by the Task Force. For example, the Task Force obtained a copy of an email sent from Mr. Testa to Mr. Seiwert forwarding an RFPS for an UNMIS fuel contract in advance of its public distribution.¹⁹⁰

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Subject Company Representative 7 interview (4 July 2006).

¹⁸⁶ *Id.* (stating that Staff Member 6 taught him how to provide products that one was contracted for).

¹⁸⁷ Subject Company Representative 5 statement (30 January 2006).

¹⁸⁸ Ezio Testa and Angelita Quinteros interview (13 October 2006).

¹⁸⁹ *Id.*

¹⁹⁰ Ezio Testa email to Andy Seiwert (10 May 2005).

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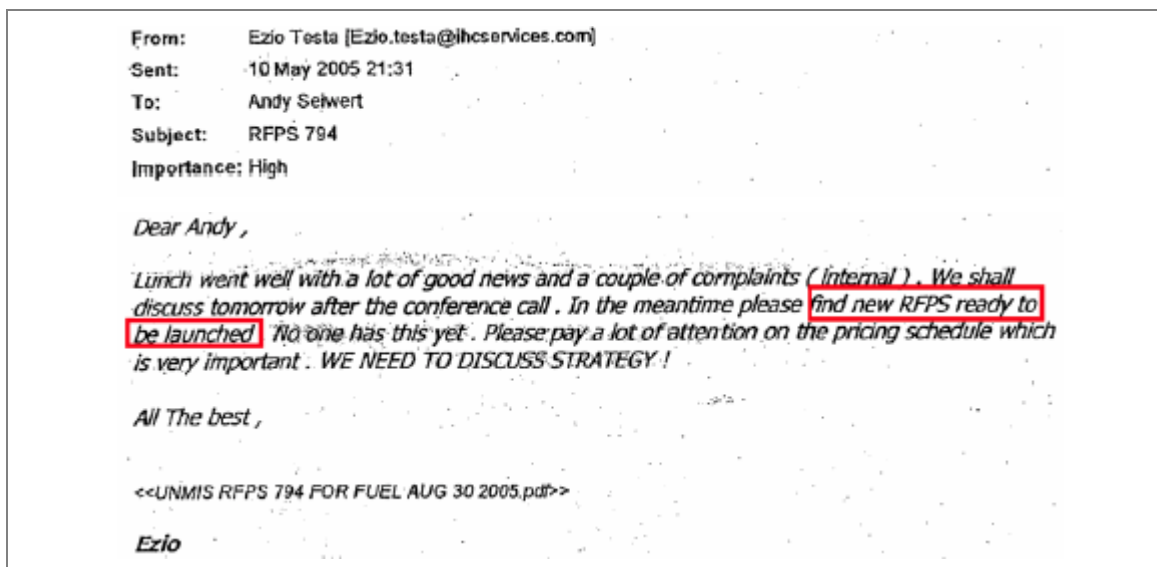


Figure: Ezio Testa email to Andy Seiwert (10 May 2005)

92. When presented with this email, Mr. Testa claimed he no longer recalled with whom he had lunch referred to in the email, or the contents of the lunch discussion.¹⁹¹ As for how he received a yet-to-be released RFPS for the UNMIS fuel contract, Mr. Testa contended that he “found” a copy of the document on a photocopy machine when he was visiting the United Nations offices in New York.¹⁹² Mr. Testa explained to the Task Force investigators: “It’s human – you have a meeting with somebody and if you’re in his office you go by, glance, and take a copy.”¹⁹³

93. Mr. Testa admitted that possessing the RFPS 794 before its official release violated the United Nations rules. He further admitted that it was possible that there were other times when he glanced at or made copies of confidential United Nations documents.¹⁹⁴ Such conduct goes well beyond a simple violation of rules and constitutes corrupt behaviour.

A. ALEXANDER YAKOVLEV

94. According to Mr. Testa, he met Mr. Yakovlev in 1998.¹⁹⁵ Subsequently, Mr. Testa had a number of discussions with Mr. Yakovlev on possible joint business enterprises unrelated to the United Nations contracts.¹⁹⁶ Mr. Testa recalled that Mr. Yakovlev was particularly interested in a product called “Oilgator,” which was designed to produce germs that would erode grease and oil. Mr. Yakovlev thought that this

¹⁹¹ Ezio Testa and Angelita Quinteros interview (13 October 2006).

¹⁹² *Id.*; Ezio Testa email to Andy Seiwert (10 May 2005) (forwarding a copy of RFPS 794 and stating “please find new RFPS ready to be launched”).

¹⁹³ Ezio Testa and Angelita Quinteros interview (13 October 2006).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

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product had great potential and wanted to create a company to market it in Russia.¹⁹⁷ Mr. Yakovlev, acting in his personal capacity began negotiating with Mr. Testa on how to implement this business project.¹⁹⁸ These business discussions and joint efforts were commenced and ongoing during the time in which IHC and Mr. Testa were doing business with the Organisation, both directly and on behalf of other entities, including the Subject Company. According to Mr. Testa, he never discussed the Subject Company's contracts with Mr. Yakovlev and never informed Mr. Yakovlev that IHC acted as a consultant to the Subject Company.¹⁹⁹ The Task Force finds such a representation implausible in light of the facts set forth herein, and reasonable inferences to be drawn from such facts.

95. Mr. Testa conceded that following discussions about the Oilgator project, IHC provided Mr. Yakovlev with a mobile phone which he used for three or four years. According to Mr. Testa, the mobile phone bills were paid for by IHC and amounted to up to US\$200 per month. IHC did not specify the terms of use when Mr. Testa provided the mobile phone to Mr. Yakovlev, and Mr. Testa did not know whether Mr. Yakovlev used it for personal or work-related matters. Mr. Testa refused to provide the Task Force with access to its records or with copies of Mr. Yakovlev's mobile phone bills.²⁰⁰

96. According to Mr. Testa, IHC did not make any payments or provide anything of value to Mr. Yakovlev other than the mobile phone.²⁰¹ IHC declined the Task Force's request for IHC's bank records.²⁰²

97. Between May 2000 and December 2003, IHC provided temporary employment to Mr. Yakovlev's son, Dmitry Yakovlev.²⁰³ Both Mr. Testa and Ms. Quinteros denied that they received any United Nations documents through Dmitry Yakovlev.²⁰⁴ Ms. Quinteros further stated that Dmitry Yakovlev was not involved in preparation of proposals for the United Nations contracts.²⁰⁵

98. By engaging in a business venture with an active United Nations vendor and agent and accepting and using a mobile phone paid for by IHC while serving as a Procurement Officer with the Procurement Service, Mr. Yakovlev had a clear conflict of interest. Further, Mr. Yakovlev violated the Staff Regulation 1.2(l) and Section 4.2.1(1) of the 2004 Procurement Manual prohibiting staff members from accepting gifts from any non-governmental source without obtaining the proper approval.²⁰⁶ Obviously more

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Ezio Testa email to the Task Force (16 October 2006).

²⁰¹ Ezio Testa and Angelita Quinteros interview (13 October 2006).

²⁰² The Task Force email to Ezio Testa (16 October 2006); Ezio Testa email to the Task Force (16 October 2006).

²⁰³ Angelita Quinteros interview (29 September 2006); Ezio Testa and Angelita Quinteros interview (13 October 2006); Claudia Rosett and George Russell, "U.N. Family Ties: Is There a Replay of the Kofi and Kojima Annan Scandal?" *Fox News*, 20 June 2005.

²⁰⁴ Ezio Testa and Angelita Quinteros interview (13 October 2006).

²⁰⁵ Angelita Quinteros interview (29 September 2006).

²⁰⁶ ST/SGB/2006/4, reg. 1.2(l) (1 January 2006); 2004 Procurement Manual, sec. 4.2.1(2).

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troubling, the evidence also demonstrates that Mr. Yakovlev and Mr. Testa engaged in corrupt practices involving important United Nations business and procurement exercises.

99. IHC, as a vendor doing business with the United Nations, acted in violation of the United Nations general contract policy and specific rules by providing Mr. Yakovlev with direct benefits. Even more significantly, IHC and Mr. Testa engaged in corrupt practices by bestowing personal benefits upon a procurement officer and providing employment to his son at the time when the company was doing business with the Organisation, and representing vendors participating in bidding exercises in which Mr. Yakovlev was the assigned Procurement Officer. The Task Force, however, has not yet identified evidence proving that payments were made by either IHC or the Subject Company to Mr. Yakovlev or other United Nations staff members. However, without compulsory process and the ability to issue subpoenas, the Task Force is limited in this inquiry. The Task Force continues to investigate this matter.

B. GIANDOMENICO PICCO

100. Mr. Picco was employed by the United Nations from 1973 to 2005, with a break between 1992 and 1999. Mr. Picco also served as Chairman of the Board of IHC between late 1997 and at least February 2000. Throughout his career with the United Nations, Mr. Picco was involved in a number of significant political issues, including Iran-Iraq negotiations and Afghanistan-related negotiations.²⁰⁷ By the time of his initial separation from the United Nations in 1992, he had risen to the position of Assistant Secretary-General.

101. In August 1999, Mr. Picco was appointed as an Under-Secretary-General to serve as “Personal Representative of the Secretary-General for the United Nations Year of Dialogue among Civilizations.”²⁰⁸ Mr. Picco worked on a “when actually employed” basis and his appointment was renewed every six months until Mr. Picco separated from the Organisation on 30 June 2005.²⁰⁹

102. For at least seven months after he became an Under-Secretary-General—i.e., from August 1999 to at least February 2000—Mr. Picco also served as the Chairman of the IHC’s Board of Directors, for which he received the sum of US\$10,000 a month from the company.²¹⁰ Mr. Picco explained that aside from chairing the Board meetings, he was

²⁰⁷ United Nations, “United Nations Year of Dialogue Among Civilizations – Giandomenico Picco,” <http://www.un.org/Dialogue/Picco.html>; Mary Camper-Titsingh, “Roosevelt Island’s Gianni Picco Recounts His Hostage Rescues in a New Book,” *The Main Street WIRE*, 4 July 1999, <http://nyc10044.com/wire/1922/picco.html>.

²⁰⁸ Giandomenico Picco Letter of Appointment (23 September 1999) (identifying 6 August 1999 as the Effective Date of Appointment).

²⁰⁹ *Id.*; Giandomenico Picco personnel file.

²¹⁰ Giandomenico Picco interview (23 October 2006) (stating that he began working for IHC in late 1997); Ezio Testa and Angelita Quinteros interview (13 October 2006); Minutes of the Annual Meeting of Shareholders of IHC (30 January 1998, 16 February 1999, and 17 February 2000) (identifying Mr. Picco as

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responsible for the general overview of company's work and fulfilled an "operational" role, which he defined as introducing IHC to other companies.²¹¹

103. At the time of Mr. Picco's appointment as an Under-Secretary-General, IHC was already registered as a United Nations vendor and had existing contracts with the Organisation. Mr. Picco was fully aware that IHC was acting as a United Nations contractor as well as an agent for several United Nations vendors.²¹² Mr. Picco recalled being briefed by Mr. Testa about IHC's United Nations-related work during the Board meetings.²¹³ However, Mr. Picco denied assisting IHC in obtaining United Nations contracts or exchanging any confidential United Nations materials with Mr. Testa.²¹⁴ Mr. Picco further stated to the Task Force investigators that he was unaware of IHC's relationship with the Subject Company.²¹⁵

104. The Task Force has not found any evidence that Mr. Picco exchanged confidential United Nations documents or information with Mr. Testa. However, Mr. Picco's involvement with IHC as the Chairman of the Board of Directors while he was serving as Under-Secretary-General may have resulted in a conflict of interest.²¹⁶

XI. LIBERIA CONTRACT

A. STATEMENT OF WORK

105. On 5 September 2003, the DPKO transmitted a Statement of Work for the Liberia contract bid selection process, requesting the Procurement Service to proceed with a solicitation of offers.²¹⁷ The Statement of Work set forth specific requirements and conditions for the supply of food rations to UNMIL troops.²¹⁸ Prospective contractors were required to submit financial and technical proposals for feeding up to 14,500 troops based on a sliding scale provided in the Statement of Work:²¹⁹

the Chairman of the IHC's Board of Directors), Giandomenico Picco interview (23 October 2006) (admitting that he did not formally separate from IHC Services until mid-2000).

²¹¹ *Id.*

²¹² ProcurePlus Database, Reports on IHC (14 November 2006) (showing the total value of IHC contracts to be over US\$15 million); Ezio Testa and Angelita Quinteros interview (13 October 2006).

²¹³ Giandomenico Picco interview (23 October 2006).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ See, e.g., ST/SGB/1999/5, regs. 1.2(o) and 1.2(m) (3 June 1999); ST/SGB/1999/12, rules 301.4(a) and 301.4(b) (28 June 1999).

²¹⁷ Vevine Stamp memorandum to Christian Saunders (5 September 2003).

²¹⁸ *Id.* (attaching Liberia contract Statement of Work).

²¹⁹ Liberia contract Statement of Work, "Estimated Troop Strengths and Deployment Schedules."

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Dates	Delivery Location	Strength (approximate)*
1 November 2003	Monrovia (for all troops)	4,470
By 14 January 2004	Monrovia (for all sectors). Possibility of delivery to selected Sector HQs where conditions allow	5,560 to 9,077
By 29 February 2004	Monrovia (for all sectors). Possibility of delivery to selected Sector HQs where conditions allow	9,650 to 13,200
1 March 2004 and after	Monrovia and possible delivery to all Sector HQs where conditions allow	14,500

Figure: Liberia Contract Statement of Work, “Estimated Troop Strengths and Deployment Schedules”

106. Prospective contractors were further required to tender a maximum unit price per troop for supplying food rations, the CMR, which consisted of the sum of all unit prices for a pre-determined list of food items.²²⁰ The CMR served as a pricing mechanism and a tool to compare the different financial proposals of prospective contractors during the financial evaluation of submitted proposals. The CMR, therefore, was important because it allowed the Procurement Service to determine the lowest cost proposal.²²¹

107. In addition, contractors were required to store and deliver food rations for the number of troops specified in the figure above.²²² To supply the food rations to the deployed troops throughout Liberia, contractors were also required to provide, manage, and operate a central warehouse.²²³ In addition, contractors were required to submit delivery costs for transportation of the rations from a central warehouse to delivery locations based on 50 kilometer distance increments.²²⁴

B. REQUEST FOR PROPOSAL

108. The RFPS for the Liberia contract was issued to the five short-listed contractors previously evaluated and deemed to be potentially capable of supplying food rations to the United Nations.²²⁵ Contractors were required to submit financial and technical

²²⁰ *Id.*, “Part II – Specifications for the Supply of Dry and Frozen Food.”

²²¹ UNMIL Abstracts of Bids, Annex B.

²²² Liberia contract Statement of Work.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Liberia Proposal Opening Ceremony List (23 October 2003); Vevine Stamp memorandum to Christian Saunders (27 August 2003).

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proposals that included detailed information allowing the Organisation to consider whether the company had the necessary capability, expertise, and financial strength to provide the required services.²²⁶ Of the five contractors invited, only the Subject Company, ES-KO, and Supreme submitted proposals.²²⁷

C. EVALUATION OF PROPOSALS

109. Mr. Yakovlev as the case Procurement Officer was responsible for evaluating whether or not the bidders were fully capable of satisfying the contract requirements and providing reliable performance.²²⁸ Mr. Yakovlev needed to consult the DPKO on the subject of conformity of the proposals with the specifications set forth in the Statement of Work.²²⁹

110. A three-member DPKO's Technical Evaluation Committee evaluated the proposals based on a set of evaluation criteria, including corporate capability, quality control, supply chain management, and logistics arrangements.²³⁰ On 5 November 2003, Mr. Adams of the DPKO forwarded the technical evaluation findings to Mr. Saunders.²³¹ The DPKO concluded that although all bidders were technically acceptable, certain aspects of their proposals could have affected a viable commercial evaluation and had to be taken into consideration by the Procurement Service.²³²

111. Mr. Yakovlev performed the financial evaluation and prepared a bid abstract.²³³ The Subject Company's financial proposal was determined to offer the lowest pricing, estimated at US\$1 million below the proposal of its closest competitor, ES-KO.²³⁴ Mr. Yakovlev prepared the Procurement Service's presentation to the HCC, which included the Technical Evaluation received from the DPKO and the financial bid abstract.²³⁵

D. HCC PRESENTATION

112. The Task Force noted that the summary of the Technical Evaluation presented to the HCC was not the official Technical Evaluation document issued by the DPKO and approved by Staff Member 8 on 5 November 2003.²³⁶ The Technical Evaluation document provided to the HCC was not initialed by Staff Member 8 and excluded the DPKO's criticism that one of the contractors was not capable of providing services to as

²²⁶ Liberia contract RFPS 550.

²²⁷ Liberia Proposal Opening Ceremony List (23 October 2003).

²²⁸ 1998 Procurement Manual, sec. 8.03.01.

²²⁹ *Id.*

²³⁰ Clemens Adams memorandum to Christian Saunders (5 November 2003).

²³¹ *Id.*

²³² *Id.*

²³³ Headquarters Committee on Contracts presentation (6 November 2003).

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Staff Member 8 interviews (12 April and 9 May 2006); Headquarters Committee on Contracts presentation created by Alexander Yakovlev (6 November 2003); Staff Member 8 memorandum to Staff Member 4 (5 November 2003).

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many as 15,000 troops—a criticism that would have equally applied to the Subject Company.²³⁷

c) **Supreme**

Although Supreme scored within the acceptable range, LSD has some concerns about its ability to provide rations services to as many as 15,000 troops in UNMIL.

Figure: Excerpt of the official DPKO technical evaluation (removed from the official presentation given to the HCC)

113. When the Task Force investigators showed the different versions of the Technical Evaluation to Staff Member 8 and Staff Member 10, both stated that they were not aware that an altered Technical Evaluation document was presented to the HCC.²³⁸ Both Staff Member 10 and Staff Member 8 stated that the Procurement Service was supposed to provide the DPKO with a copy of its proposed HCC presentation prior to its submission.²³⁹ This, however, was not done.²⁴⁰ Staff Member 10, referring to the *Fox News* report of October 2005, ironically remarked to the Task Force investigators that the Subject Company must have seen the HCC presentation before the DPKO.²⁴¹

114. Staff Member 4, who electronically approved Mr. Yakovlev’s draft presentation to the HCC, was not aware of the difference between the official technical evaluation and the one presented to the HCC.²⁴² Similarly, Staff Member 1 could not recall whether he reviewed the draft presentation.²⁴³

115. An in-person presentation to the HCC was not required because the case had been “pre-cleared,” despite the fact that it was considered a substantial monetary award and was indeed one of the largest food rations contracts in quite some time.²⁴⁴ The HCC accepted Mr. Yakovlev’s written explanation to the only two queries raised by the HCC. These queries concerned related to the limited number of bid participants and identical costs for drinking water proposed by ES-KO and the Subject Company.²⁴⁵ Mr. Yakovlev wrote that the identical price for drinking water was “simply a matter of coincidence.”²⁴⁶

116. The Task Force could not interview Mr. Yakovlev regarding the altered version of the presentation submitted to the HCC. However, based on all of the facts and circumstances set forth herein, including his close relationship with the Subject Company

²³⁷ *Id.* (containing original technical evaluation); Headquarters Committee on Contracts presentation created by Alexander Yakovlev (6 November 2003) (containing altered technical evaluation).

²³⁸ Staff Member 8 interviews (12 April and 9 May 2006); Staff Member 10 interviews (24 February and 1 March 2006).

²³⁹ *Id.*; Staff Member 8 interviews (12 April and 9 May 2006).

²⁴⁰ *Id.*; Staff Member 10 interviews (24 February and 1 March 2006).

²⁴¹ *Id.*; Staff Member 4 interview (19 June 2006) (stating that it was unusual that DPKO was not informed about the pre-clearance of the HCC presentation).

²⁴² *Id.*

²⁴³ Staff Member 1 interview (27 and 28 June 2006).

²⁴⁴ Staff Member 10 interviews (24 February and 1 March 2006).

²⁴⁵ UNMIL Abstract of Bids (undated); Alexander Yakovlev email to Joao Marcedo (11 November 2003).

²⁴⁶ *Id.*; UNMIL Abstract of Bids (undated).

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and IHC officials, as well as the fact that Mr. Yakovlev prepared the HCC presentation for the Liberia contract, and indeed clarified questions asked by the HCC, the Task Force finds that it is reasonable to conclude that Mr. Yakovlev altered the HCC presentation. The significance of the fact that the DPKO's Technical Evaluation was altered became clear when the Subject Company, in justifying its later request for an increase in the warehouse costs, relied on the fact that its proposal was based on 6,000 troops and not on 15,000 troops. This was the exact concern expressed in the DPKO's original Technical Evaluation.

E. CONTRACT AWARD

117. The recommendation of the HCC for award of the Liberia contract to the Subject Company in the not-to-exceed amount of approximately US\$62 million was approved on 13 November 2003.²⁴⁷ The following day, Mr. Yakovlev notified the Subject Company of the award, but failed to notify the Mission.²⁴⁸

118. The Task Force has noted that the name of the contracting party to the Liberia contract is the Subject Company Subsidiary 4, rather than the Subject Company.²⁴⁹ The Task Force confirmed that the Subject Company Subsidiary 4 is not a registered United Nations vendor.²⁵⁰ Staff Member 10 of the DPKO told the Task Force that it was the responsibility of the Procurement Service as the contracting authority of the United Nations to verify whether vendors were properly registered.²⁵¹ The DPKO was not accorded an opportunity to review the Liberia contract before it was signed.²⁵² Had such a procedure been followed in this case, the issue might have been identified.

119. According to Staff Member 4, the Liberia contract "would not necessarily have been reviewed" by the Office of Legal Affairs ("the OLA") if no substantial or exceptional changes were made to the contract in comparison to a previously approved template for food rations contracts reviewed by the OLA.²⁵³ In such a situation, Staff Member 1 and Staff Member 4 had the discretion to decide whether the contract should be submitted to the OLA.²⁵⁴

²⁴⁷ Approval of Liberia contract HCC/03/78 recommendation (13 November 2003).

²⁴⁸ Alexander Yakovlev facsimile to Allan Vaughan (14 November 2003); Staff Member 8 interviews (12 April and 9 May 2006); Staff Member 13 interview (19 September 2006); Staff Member 5 interview (31 March 2006); Staff Member 4 interview (19 June 2006) (stating that it was unprofessional that the Subject Company was informed about the contract award before UNMIL was informed.)

²⁴⁹ Liberia contract. The Procurement Service and DPKO staff members interviewed by the Task Force had not noticed the discrepancy. Staff Member 2 interview (27 June 2006); Staff Member 1 interview (27 and 28 June 2006).

²⁵⁰ Procurement Service email to the Task Force (3 May 2006).

²⁵¹ Staff Member 10 interview (24 February 2006).

²⁵² *Id.*; Staff Member 8 interviews (12 April and 9 May 2006); Staff Member 7 interview (10 April 2006).

²⁵³ Staff Member 4 interview (19 June 2006).

²⁵⁴ 1998 Procurement Manual, sec. 14.04.

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120. Staff Member 1 stated that he did not review the Liberia contract.²⁵⁵ He added that as the supervisor of Mr. Yakovlev, he was responsible for initialing the last page of the contract.²⁵⁶ Staff Member 1 argued that the lack of his initials was indicative to him that he was deliberately sidelined by Mr. Yakovlev on this issue, which, according to Staff Member 1, was typical of Mr. Yakovlev.²⁵⁷ Staff Member 1 conceded that awarding a contract to a different contractor than the one submitting the proposal could cause problems in the event of legal action.²⁵⁸

121. Staff Member 2, who signed the contract on behalf of the United Nations in the absence of Staff Member 4, stated that the mistake should have been corrected. Staff Member 2 was also of the view that if the performing party was not a party to the contract, such a circumstance could have a potential impact on the legal obligations of the contracting parties. According to Staff Member 2, if the contracting party did not have a Certificate of Incorporation, the United Nations “could be in trouble.”²⁵⁹ The Subject Parent Company confirmed that the Subject Company Subsidiary 4 does not exist as a separate legal entity.²⁶⁰

F. ADMINISTRATION OF THE LIBERIA CONTRACT**1. The Subject Company’s Strategy of Contract Amendments**

122. One of the fundamental principals of procurement within the Organisation is to award contracts to the lowest technically-compliant bidder. With a keen awareness of the possibility of seeking amendments to the contract once it had been signed, the Subject Company purposefully took advantage of this option and falsely manipulated its prices in a downward fashion to achieve the lowest financial bid, all the while planning to recover the losses at a later point through subsequent amendments to the contract.

123. One of the emails obtained by the Task Force describes the Subject Company’s strategy to utilize amendments to make up for the losses which occurred as a result of artificially lowered bid prices. This email refers to an RFPS for a food rations contract for UNMIS. In this instance, the Subject Company provided a CMR rate based on the central warehouse located in Port Sudan rather than in Kosti, unlike other bidders.²⁶¹ Mr. Yakovlev requested clarification from the Subject Company whether the change in the location of the central warehouses from Port Sudan to Kosti would affect the Subject

²⁵⁵ Staff Member 1 interview (27 and 28 June 2006). Staff Member 1 was in the office on 10 December 2003, the date of execution of the Liberia contract. Staff Member 1 Attendance Record (1 January 2003 to 31 December 2003).

²⁵⁶ Staff Member 1 interview (27 and 28 June 2006).

²⁵⁷ *Id.* (stating that Mr. Yakovlev had the “trend” of going behind Staff Member 1’s back directly to Staff Member 4 to address certain matters without Staff Member 1’s involvement); Staff Member 1 interview (22 November 2006); Staff Member 4 interview (19 June 2006) (confirming that Mr. Yakovlev approached him directly without Staff Member 1’s involvement).

²⁵⁸ Staff Member 1 interview (27 and 28 June 2006).

²⁵⁹ Staff Member 2 interview (27 June 2006).

²⁶⁰ The Task Force note-to-file (26 October 2006).

²⁶¹ Alexander Yakovlev email to Andy Seiwert (10 August 2004).

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Company's original CMR rate.²⁶² In response to Mr. Yakovlev request, the Subject Company confirmed that such a change would *not* affect their original CMR rate.²⁶³

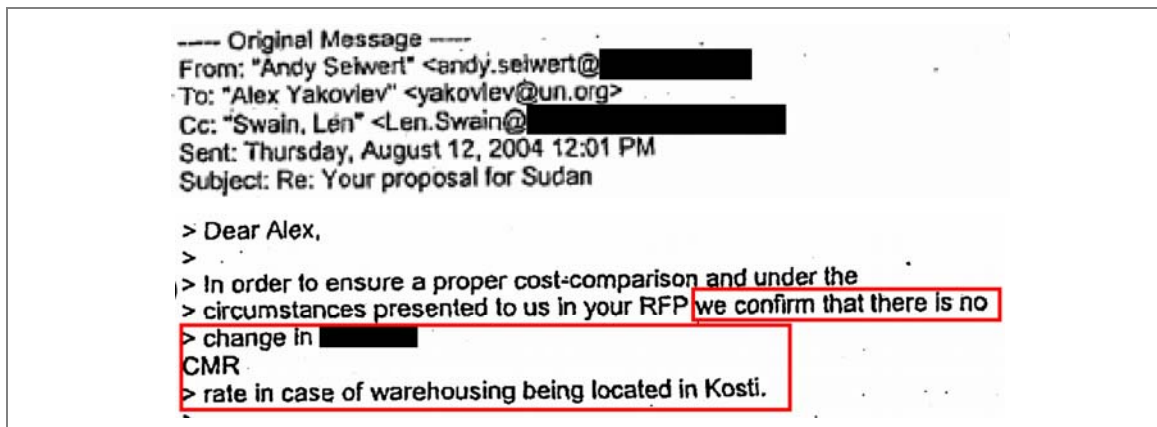


Figure: Andy Seiwert email to Alexander Yakovlev (12 August 2004)

124. Shortly thereafter, the following email was internally circulated within the Subject Company Management:²⁶⁴

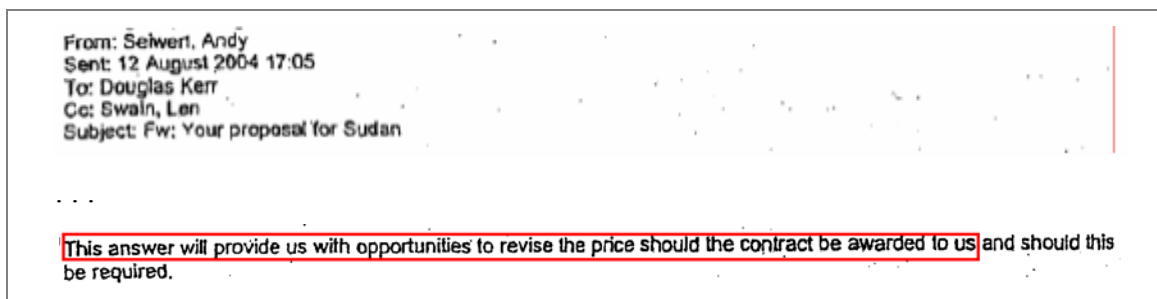


Figure: Andy Seiwert email to Douglas Kerr (12 August 2004)

125. Thus, it is evident that in this circumstance the Subject Company planned on using the warehouse location and pricing to amend the contract and claim additional costs. The emails above are particularly significant in light of the fact that the Subject Company was corruptly in possession of ES-KO's proposal setting forth its CMR rate for Kosti.²⁶⁵ By not providing the pricing for Kosti, the Subject Company avoided having to quote a price lower than that of ES-KO. It also preserved an opportunity for the Subject Company to later request an amendment to the contract, increasing its CMR with justification of "different circumstances [than] represented . . . in your RFPS."²⁶⁶

126. Considering that the Subject Company fraudulently lowered its financial proposal to beat its competitors (see Section VII of this Report), the Subject Company faced a

²⁶² Alexander Yakovlev email to Andy Seiwert (10 August 2004).

²⁶³ Andy Seiwert email to Alexander Yakovlev (12 August 2004).

²⁶⁴ Andy Seiwert email to Douglas Kerr (12 August 2004).

²⁶⁵ ES-KO Price Proposal for Supply of Food Rations to the UN Mission in Sudan – RFPS 592 (undated)

²⁶⁶ Andy Seiwert email to Alexander Yakovlev (12 August 2004).

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difficult task of meeting their target of a US\$1 million profit for the financial year 2004/2005.²⁶⁷ According to Subject Company Representative 7, the Subject Company had to operate at a loss if it were to meet the standards of the Liberia contract.²⁶⁸ Subject Company Representative 7 claimed that he even asked Subject Company Representative 3 how it was possible for the Subject Company to make a profit, but did not get an answer.²⁶⁹ Subject Company Representative 5, who was responsible for profitability of the Subject Company's operations, stated that if "something [was] hurting the business" or "[i]f the Subject Company was losing money . . . it was my responsibility to find a solution so I would ask openly Andy Seiwert and Alex Yakovlev . . . if there was any way we could resolve the situation."²⁷⁰

127. According to Staff Member 10, the Subject Company exploited the Liberia contract.²⁷¹ On 16 June 2005, Mr. Knight, referring to the Subject Company's several requests for amendments to the Liberia contract, expressed UNMIL's concerns in this regard in an email to the DPKO. Mr. Knight stated that "the Subject Company is trying to get more and more payments from [the United Nations], and it seems we are allowing them to determine what they want to make out of this contract . . . all the changes they want to make to the contract, has huge financial implications . . . [i]ts time we put our foot down."²⁷²

128. The Subject Company also sought to revisit the pricing issues on non-core elements such as logistics and transport, which were supposed to have clear-cut costs, but the Subject Company sought to revisit these pricing issues through amendments.²⁷³ As a result of these efforts, the DPKO perceived the food rations contracts to be intentionally drafted in an ambiguous way, leaving room for interpretation and clarification through subsequent amendments.²⁷⁴ This perception was shared by the OIOS Procurement Audit Review.²⁷⁵

129. According to both Staff Member 1 and Staff Member 4, each had suspicions about the negotiations between the Subject Company and Mr. Yakovlev at the time.²⁷⁶ Staff Member 4 perceived Mr. Yakovlev to be "pro-Subject Company," and "taking a cumulative positive stance towards the Subject Company."²⁷⁷ Staff Member 1 stated that during meetings between the Subject Company and the Procurement Service, he could

²⁶⁷ Subject Company Representative 3 statement (23 January 2006).

²⁶⁸ Subject Company Representative 7 interview (4 July 2006).

²⁶⁹ *Id.*

²⁷⁰ Subject Company Representative 5 statement (3 January 2006).

²⁷¹ Staff Member 10 interviews (24 February and 1 March 2006).

²⁷² Christopher Knight email to Staff Member 10 (16 June 2005).

²⁷³ Staff Member 10 interviews (24 February and 1 March 2006) (stating that "the Subject Company tried to exploit every perceived weakness of the contract," especially in the Eritrea and Liberia food rations contracts).

²⁷⁴ *Id.*

²⁷⁵ OIOS Procurement Audit Review.

²⁷⁶ Staff Member 1 interview (27 and 28 June 2006); Staff Member 4 interview (19 June 2006).

²⁷⁷ *Id.*

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not help wondering for whom Mr. Yakovlev was working.²⁷⁸ He viewed the negotiations as a mere formality and believed that an outcome had already been agreed upon. Staff Member 1 stated that he had a feeling that the negotiations were “pre-cooked.”²⁷⁹

130. In light of the fraudulent scheme involving the Subject Company, IHC, and Mr. Yakovlev, as well as the Subject Company’s access to confidential information, the Task Force examined the circumstances leading to the adoption of Amendments to the Liberia contract.

2. Amendment 1 – Troop strength / Warehousing

131. Amendment 1 of the Liberia contract provided for a troop strength increase from 6,000 to 14,500, with a corresponding increase in the warehouse costs from US\$73,661 to US\$129,820 per month, effective 1 May 2004.²⁸⁰

132. According to Staff Member 10, the United Nations would need to amend the contract if the troop number exceeded 14,500.²⁸¹ Staff Member 10 added that the Statement of Work, which formed part of the Liberia contract, provided for a troop increase from about 6,000 to 14,500 within two months, and it could therefore be expected that the contract was awarded to the Subject Company on those terms.²⁸² In fact, the troop strength rose dramatically to 14,000 over the following few months.²⁸³

²⁷⁸ Staff Member 1 interview (27 and 28 June 2006).

²⁷⁹ *Id.*

²⁸⁰ Amendment 1 to Liberia contract (signed by Mr. Saunders on 19 April 2005 and by Mr. Seiwert on 18 February 2005).

²⁸¹ Staff Member 10 interviews (24 February and 1 March 2006).

²⁸² *Id.*; Annex A to UNMIL Rations SOW of the Liberia contract.

²⁸³ Staff Member 11 interview (4 April 2006); Staff Member 5 interview (31 March 2006); SGS Nederland B.V., “Final Report – Provision of Independent Inspection and Evaluation Services of the Contractors involved with the United Nations Food Rations Contracts in Liberia,” p. 15 (August 2004) (hereinafter “SGS Report”).

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Contingent Streight

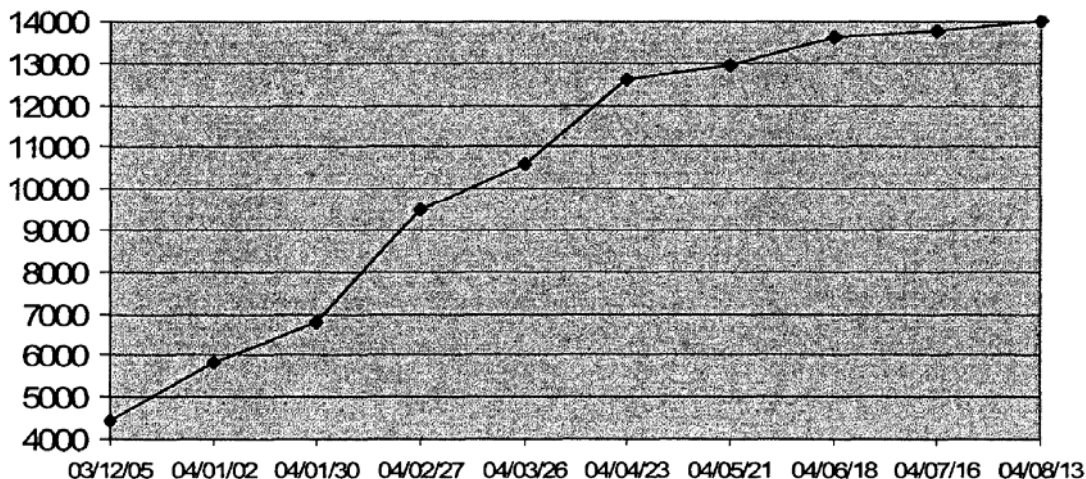


Figure: Increases in UNMIL contingent strength (5 December 2003 to 13 August 2004)

133. The Subject Company relied on the fact that its proposal was based on 6,000 and not 14,500 troops to justify its request to increase the warehouse costs. The Subject Company’s competitors, however, proposed fixed warehouse costs for 14,500 troops in their initial proposals. The failure of the Procurement Service to secure similar fixed costs when dealing with the Subject Company facilitated this company’s strategy to use later amendments to gain advantage over its competitors.

134. Even before the Liberia contract was signed, Mr. Yakovlev, Mr. Dovgopoly, and Mr. Saunders were well aware that the troop number would exceed 6,000 by the beginning of 2004.²⁸⁴ In that regard, on 8 December 2003, Ms. Stamp forwarded an email to Mr. Yakovlev, Mr. Dovgopoly and Mr. Saunders, stating that in early 2004 it was clearly expected that the number of troops would reach 10,000.²⁸⁵

²⁸⁴ Vevine Stamp email to Alexander Yakovlev, Dmitry Dovgopoly, and Christian Saunders (8 December 2003).

²⁸⁵ *Id.*

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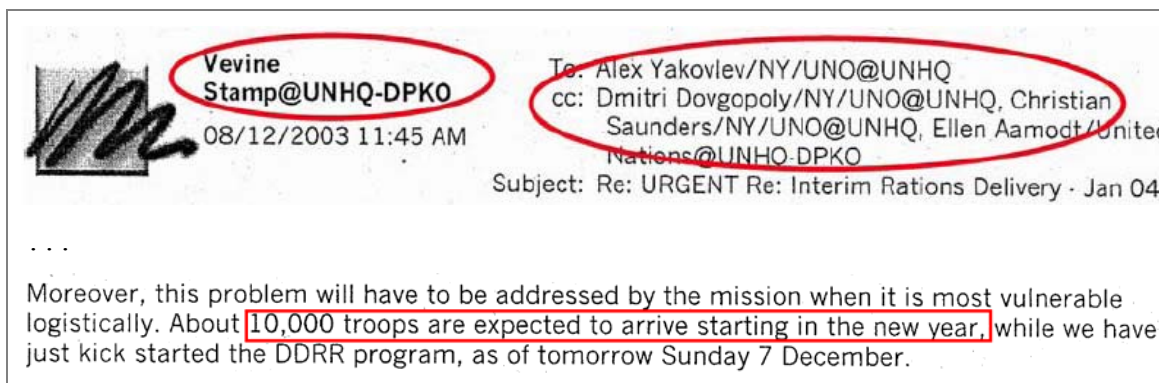


Figure: Vevine Stamp email to Alexander Yakovlev, Dmitry Dovgopoly, and Christian Saunders (12 December 2003)

135. However, notwithstanding this obvious and well anticipated fact, the Subject Company based its proposal on a mere 6000 troops, a baseline which was questioned by the DPKO from the start.²⁸⁶ It was clear from the outset that the Subject Company’s proposal provided pricing for just 6,000 troops, whereas ES-KO’s proposal provided three pricing options, including projected costs for a 15,000 troop contingent:²⁸⁷

CENTRAL WAREHOUSING OPERATION		Price per month		
	Strength to	6,000	10,000	15,000
Total Cost		75,951	94,980	115,660

Figure: ES-KO financial proposal for Liberia contract bid (23 October 2003)

136. The Procurement Service staff, including Staff Member 1 and Staff Member 4, failed to obtain fixed warehouse costs for 15,000 troops from the Subject Company. This occurred even though Staff Member 4 received a memorandum from Mr. Adams of the DPKO pointing out that certain proposals lacked information with regard to fees and specified services, which may impact on a viable commercial evaluation.²⁸⁸ The Procurement Service’s failure to take this into account effectively allowed the Subject Company to avoid proper evaluation of its warehouse costs against those of its competitors.

137. In October 2004, the Subject Company invoiced UNMIL for retroactive warehouse costs associated with the increased number of troops. UNMIL referred the

²⁸⁶ Staff Member 7 interview (10 April 2006); Staff Member 11 interview (4 April 2006).

²⁸⁷ The Subject Company Price Proposal to Liberia contract, “Cost Summary – Special Instructions” (23 October 2003); ES-KO financial proposal for Liberia contract bid (23 October 2003).

²⁸⁸ Clemens Adams memorandum to Staff Member 4 (5 November 2003) (containing Technical Evaluation for RFPS 550).

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invoices to the Procurement Service. Staff Member 4 and Staff Member 1 could not recall what happened after receiving the invoices.²⁸⁹ Staff Member 1 conceded that fixed costs for increased warehousing for troop strength of 15,000 should have been clarified by the Procurement Service with the Subject Company during the financial evaluation, and incorporated in the contract.²⁹⁰ He added that the Subject Company offered an unrealistic price and then sought adjustment after the contract award.²⁹¹ This practice was known as “low-balling.”²⁹² Staff Member 1 could not recall briefing Staff Member 4 on the issue, but denied agreeing to an increase in warehouse costs.²⁹³ Staff Member 1 conceded that UNMIL’s refusal to pay the additional costs required more due diligence on the part of the Procurement Service.²⁹⁴

138. After the contract was signed, the Subject Company relied on the allegedly unexpected increase in troop strength to justify its request for additional warehouse costs, stating that its bid was based on 6,000 troops and its warehouse costs therefore were no longer valid.²⁹⁵ Officials within the DPKO and UNMIL refuted the Subject Company’s assertion, arguing that it was made clear in the RFPS that troop strength would quickly increase to 14,500.²⁹⁶ The email below demonstrates that officials within UNMIL were dissatisfied with the Subject Company’s request for an increase, and believed that the Organisation would be rewarding the Subject Company for its “poor planning.” In their view, the Subject Company would then be allowed an unfair advantage over competing contracts, an unethical and improper result.²⁹⁷

²⁸⁹ Michael Dent letter to Stephan Setian (8 October 2004); Mike Davy letter to Alexander Yakovlev (11 August 2004); Staff Member 15 interview (15 March 2006) (stating that he has been working as an officer in UNMIL’s Food Cell since November 2003); Stephan Setian facsimile to Staff Member 4 (28 October 2004).

²⁹⁰ Staff Member 1 interview (27 and 28 June 2006).

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*; Stephan Setian facsimile to Staff Member 4 (28 October 2004) (depicting a hand written note from Staff Member 4 to Mr. Yakovlev and Staff Member 1 that reads: “Who in NY agreed to this? Pls. brief me”). Staff Member 4’s actions in this regard were addressed in the Task Force’s Report on Staff Member 4. Procurement Task Force, “Report on Staff Member 4” (██████████).

²⁹⁴ Staff Member 1 interview (27 and 28 June 2006).

²⁹⁵ Michael Dent letter to Christopher Knight (4 March 2005).

²⁹⁶ Staff Member 11 interview (4 April 2006); Staff Member 10 interviews (24 February and 1 March 2006); Staff Member 7 interview (10 April 2006) (stating that the Subject Company should have planned for warehousing to accommodate 15,000 troops in two months).

²⁹⁷ Christopher Knight email to Vevine Stamp (12 February 2005).

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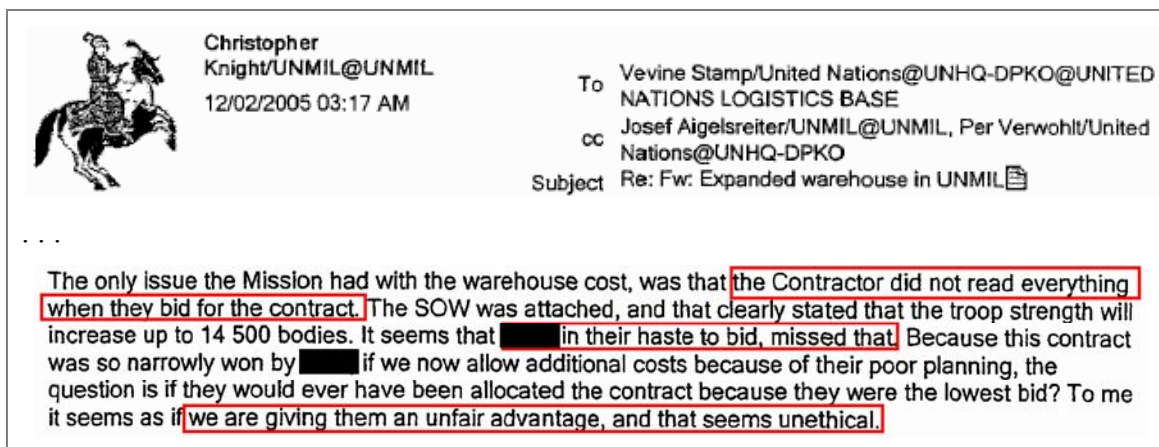


Figure : Christopher Knight email to Vevine Stamp (12 February 2005)

139. The concerns expressed in Mr. Knights’s email were valid and appropriate. However, DPKO’s and UNMIL’s objections were overruled and Amendment 1 was executed. UNMIL and the DPKO were troubled by the decision of the Procurement Service to authorize increased warehouse costs for the Subject Company as is evident in the e-mail below:²⁹⁸

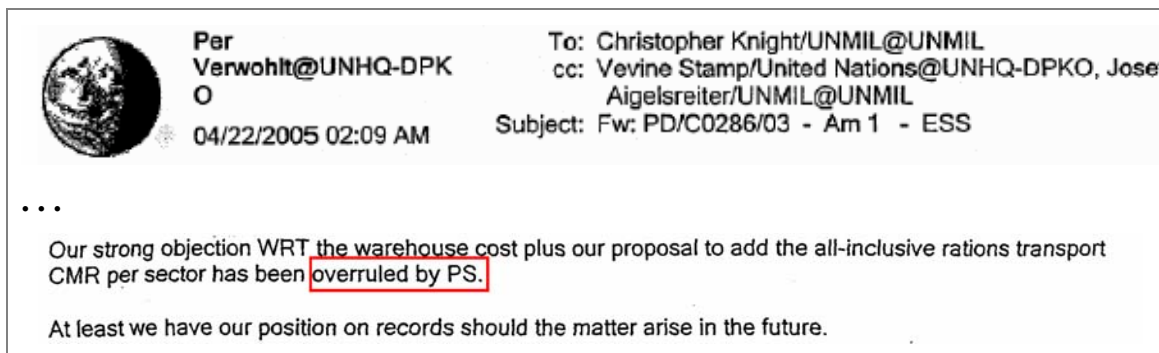


Figure: Per Verwohlt email to Christopher Knight (22 April 2005)

140. The Subject Company was paid retroactively an amount of US\$617,749 for additional warehouse costs up until March 2005, after which its monthly warehouse cost increased to US\$129,820.²⁹⁹ ES-KO’s warehouse costs for 15,000 troops, quoted in their original bid, was merely US\$115,660 per month, or US\$14,160 per month less than what the Organisation ultimately paid the Subject Company.³⁰⁰

141. The Task Force obtained evidence showing that Mr. Yakovlev actively assisted the Subject Company in securing the contract amendment regarding warehouse costs. Mr. Yakovlev made a number of false representations to UNMIL in support of the

²⁹⁸ Per Verwohlt email to Christopher Knight (22 April 2004). Per Verwohlt is a DPKO Logistics Officer.

²⁹⁹ Carl Markussen letter to Wilberforce Tengey (29 April 2005) (identifying Mr. Markussen as UNMIL’s Chief Aviation Officer and Mr. Tengey as OIC of the Finance Section at UNMIL).

³⁰⁰ ES-KO Price Proposal Index (23 October 2003).

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contract amendment. Although Mr. Yakovlev sought confirmation of warehouse costs in order to present the case before HCC, the increase in warehouse costs was in fact never presented to the HCC.³⁰¹ Further, in response to a March 2005 query from UNMIL that the Subject Company thought Amendment 1 was already approved, Mr. Yakovlev told the Mission that the Subject Company was in possession of only a draft of the proposed amendment, pending confirmation from UNMIL, and that in fact the amendment was not approved.³⁰² However, Mr. Yakovlev's response was false in so far as he authorized the increase as early as December 2004, and the Subject Company had already executed the Amendment on 18 February 2005.³⁰³ According to Staff Member 1, Mr. Yakovlev effectively side-lined other Procurement Service staff members from substantive involvement in the Liberia contract amendment process.³⁰⁴

3. Amendment 2 – Payment Terms and Lipton Tea

a. Payment Terms

142. The Liberia contract required UNMIL to pay the Subject Company for services rendered within 30 days of the invoice receipt.³⁰⁵ However, the contract was amended to allow for more favourable payment terms for the Subject Company. Amendment 2, signed by the Subject Company on 28 April 2005 and by the United Nations on 9 June 2005, modified the payment terms to require 90% payment of the entire invoice sum within seven days of presentation of the invoice, with the balance to be paid within 30 days.³⁰⁶

143. The Subject Company presented a proposal for changed payment terms to UNMIL, claiming that it suffered from a “serious financial impact” as a consequence of delayed payments.³⁰⁷ UNMIL, however, asserted that as of November 2004—several months prior to execution of Amendment 2—its payments were timely, and previous delays were caused in part by the Subject Company's poor performance and paperwork.³⁰⁸ The Subject Company confirmed that it bore some of the responsibility for

³⁰¹ Vevine Stamp email to Christopher Knight (15 February 2005).

³⁰² Alexander Yakovlev email to Christopher Knight (18 March 2005).

³⁰³ Andy Seiwert email to Alexander Yakovlev (19 January 2005); Amendment 1 to Liberia contract.

³⁰⁴ Staff Member 1 interview (27 and 28 June 2006).

³⁰⁵ Liberia contract. The normal terms of payment by the United Nations are 30 days (or similarly discounted payment terms if offered by bidder) upon satisfactory delivery of goods or performance of services and acceptance thereof by the United Nations. RFP 550, “Annex A – Terms of Conditions to Submit Proposal,” p. 2 (12 September 2003).

³⁰⁶ Amendment 2 to Liberia contract (signed by Mr. Seiwert on 28 April 2005 and Mr. Mitsui on behalf of Christian Saunders on 9 June 2005).

³⁰⁷ Stephen Kemp letter to Stephan Setian (20 October 2004).

³⁰⁸ Savitri Butchey letter to Mike Davy (4 June 2004) (warning the Subject Company in the “Notice of Unsatisfactory Performance” that failure to correctly prepare its delivery notes caused a delay in UNMIL's processing of invoice payments); Staff Member 8 interviews (12 April and 9 May 2006); Josef Aigelsreiter email to Vevine Stamp (23 November 2004). Josef Aigelsreiter was UNMIL's Administrative Assistant. Staff Member 6 interview (18 March 2006).

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UNMIL's delayed payments.³⁰⁹ In early 2005, well before Amendment 2 was signed, the Subject Company even expressed satisfaction with the processing of payments by UNMIL.³¹⁰

e. **Payment for Rations Delivered.** We are pleased to note that UNMIL has now started to make payments for services provided under the Rations Contract within the 30-day period following receipt of the invoices provided by [REDACTED].
Observation: This is a very welcome improvement to UNMIL meeting its own contractual requirements!

Figure: The Subject Company letter to Stephan Setian (11 January 2005)

144. The evidence suggests that the amendment favouring the Subject Company was supported by the Procurement Service and endorsed by Mr. Yakovlev. On 19 January 2005, just a week after the Subject Company sent a letter to Stephan Setian thanking him for the timely processing of payments, Mr. Seiwert expressed his gratefulness to Mr. Yakovlev for the offer of the 90% prompt payment provision.³¹¹

- **PROMPT PAYMENT** – we are grateful to have received your offer for 90% prompt payment, this will go along way in assisting us to have a much improved cash flow in the UN contracts and we would appreciate if you could consider the same for the UNAMIS and UNMIK contract as well. I have the relevant signed documents with me and will hand them to you in our meeting.

Figure: Andy Seiwert email to Alexander Yakovlev (19 January 2005)

145. One day after conveying his appreciation to Mr. Yakovlev, Mr. Seiwert reported to Mr. Harris that “we received the agreements for 90% prompt payment, on presentation of invoices and 10% within 30 days for below contracts [including] . . . UNMIL.”³¹²

- **PROMPT PAYMENT** – we received the agreements for 90% prompt payment on presentation of invoices and 10% within 30 days for below contracts (I signed the agreements and am waiting for signature of Christian Saunders within 1 week) this will go along way in assisting us to have a much improved cash flow

Figure: Andy Seiwert email to Peter Harris (20 January 2005)

146. Meanwhile, officials within the DPKO solicited comments from other missions regarding the proposed change in payment terms because such an alteration in practice had serious implications for all missions.³¹³ On 11 February 2005, Mr. Divers informed Mr. Saunders that missions did not support the amendment “since payments were

³⁰⁹ Subject Company Representative 2 interview (4 July 2006) (confirming that the Subject Company's short-fall deliveries and incomplete paperwork contributed to delays in UNMIL's payments).

³¹⁰ The Subject Company letter to Stephan Setian (11 January 2005).

³¹¹ Andy Seiwert email to Alexander Yakovlev (19 January 2005).

³¹² Andy Seiwert email to Subject Company Representative 4 (20 January 2005).

³¹³ Ian Divers facsimile to the United Nations Missions (30 December 2004).

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effected expeditiously and within the contract terms.”³¹⁴ Mr. Divers further added that some missions have expressed concerns that making a payment prior to the completion of the formal inspection procedures could be contrary to the United Nations financial rules.³¹⁵ Despite these protestations, the Procurement Service went forward with Amendment 2.

147. Notably, the Subject Company took UNMIL by surprise when it presented UNMIL with a signed copy of Amendment 2 even before the United Nations notified the Mission.³¹⁶ The DPKO was also surprised by the execution of the Amendment and viewed it as a commercial decision taken by the Procurement Service.³¹⁷

148. Significantly, at the time of its submission, ES-KO had offered a payment discount of 0.15% if payments were effected within 30 days of the presentation of the invoices.³¹⁸ ES-KO’s offer was not considered at the time of the evaluation of bids, only to later provide better payment terms to the Subject Company without any reciprocal discount offered by the company.³¹⁹ Because of the extraordinary value of these contracts, the significance of the discount initially offered by ES-KO is not unimportant. The failure to consider ES-KO’s proposal in the first instance was extremely problematic and constituted improper favourable treatment towards the Subject Company.

149. According to Staff Member 4, Mr. Yakovlev at the time “pushed” the proposed change in payment terms for the Subject Company.³²⁰ Staff Member 4, however, considered Amendment 2 a good commercial decision, arguing that the new payment terms had long-term benefits for the Organisation because they would prompt contractors to ultimately lower their prices.³²¹ The Task Force finds Staff Member 4’s explanation implausible in regard to the Liberia contract.

150. Staff Member 1 stated that he could not recall discussions about proposed changes in payment terms, but conceded that Amendment 2 presented a material change to the contract and therefore should have been referred to the HCC.³²² Staff Member 2, who signed the Amendment, also acknowledged that it constituted a material change to the contract and required presentation to the HCC and prior approval of the Assistant Secretary-General for the Office of Central Support Services.³²³ However, the

³¹⁴ Ian Divers memo to Christian Saunders (11 February 2005).

³¹⁵ *Id.*

³¹⁶ Josef Aigelsreiter email to Vevine Stamp (12 July 2005); Staff Member 22 interview (16 March 2006).

³¹⁷ Clemens Adams facsimile to Ronnie Stokes (2 August 2005); Staff Member 10 interviews (24 February and 1 March 2006).

³¹⁸ ES-KO Price Proposal Index (23 October 2003).

³¹⁹ Staff Member 4 interview (19 June 2006) (acknowledging that failure to consider the discount terms proposed by ES-KO was a matter of concern).

³²⁰ *Id.*

³²¹ *Id.*

³²² Staff Member 1 interview (27 and 28 June 2006).

³²³ Staff Member 2 interview (27 June 2006).

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Amendment was not presented to the HCC and consequently the approval of the Assistant Secretary-General was not sought.³²⁴

151. The amendment to payment terms resulted in a lost opportunity for the Organisation to receive a discount from overall costs, and appeared to have no meaningful benefit to the Organisation. Further, invoices were required to be processed twice because they needed to be processed for 90% and 10% portions of the total due payments. Such a practice does not seem justified, especially in light of the fact that both the DPKO and UNMIL did not deem the change in payment terms necessary and that the Mission was making sufficiently prompt payments to the Subject Company.

b. Lipton Tea

152. Amendment 2 also provided for an increase in the fixed price of tea from US\$4.03 to US\$12 per unit, with retroactive effect from the date of the commencement of the contract.³²⁵

153. The Liberia contract established that prices could not be changed within the first 12 months of the contract, and thereafter could only be changed if supported by proper documentation showing corresponding changes in the market conditions.³²⁶ The Liberia contract further established that the Subject Company had to supply tea to UNMIL at a fixed price of US\$4.03, the unit price which was quoted by the Subject Company.³²⁷ Lipton tea was specified as the preferred brand.³²⁸ For the first few deliveries, the Subject Company supplied a non-preferred brand instead of Lipton tea.³²⁹ At the request of UNMIL, in March 2004, the Subject Company began delivering Lipton, the preferred brand, continuing to invoice UNMIL at the original fixed unit price of US\$4.03.³³⁰

154. After about six months of providing Lipton tea, the Subject Company sought retroactive compensation for providing the more expensive brand (i.e., Lipton).³³¹

³²⁴ *Id.* (admitting that he should have been more careful); Frank Eppert routing slip to the Task Force (28 April 2006); Staff Member 10 interviews (24 February and 1 March 2006) (stating that she considered the amendment to be a material change to contract terms).

³²⁵ Amendment 2 to Liberia contract.

³²⁶ The Subject Company Price Proposal to Liberia contract, "Cost Summary – Special Instructions" (23 October 2003).

³²⁷ The Subject Company Financial Proposal to Liberia contract, "Annex A – Price List and Ceiling Man Day rate (CMR), Destination Point: Monrovia," p. 4 (containing a reference to Code no. 7.04); Financial Proposal of ES-KO for Supply of Food Rations, "Price List and Ceiling Man Day Rate," p. 5 (23 October 2003) (quoting a fixed price of US\$5.05 for the same food item).

³²⁸ Liberia contract Statement of Work, "Part II- Specifications for the Supply of Dry and Frozen Food," p. 35 (September 2003).

³²⁹ Staff Member 15 interview (15 March 2006).

³³⁰ *Id.*; The Subject Company Invoice no. 329 (Delivery Date 2 April 2004); Subject Company Representative 7 interview (4 July 2006). Subject Company Representative 7 stated that the Subject Company relented and delivered Lipton tea in response to Ms. Eleazar's insistence that the Subject Company comply with the Liberia contract and deliver Lipton Tea as specified in the contract. *Id.* Subject Company Representative 7 further remarked that Lipton tea was available on the market. *Id.*

³³¹ *Id.*; Michael Dent letter to Stephan Setian (8 October 2004); Subject Company Representative 5 statement (30 January 2006); Staff Member 12 interview (14 March 2006).

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According to the Subject Company, the new prices were to apply retroactively since the commencement of the contract.³³² No justification for the increase was presented by the Subject Company, as the contract required.³³³ The increase resulted in an approximate trebling of the fixed unit price, from US\$4.03 to US\$12. UNMIL referred the issue to the Procurement Service, objecting to the increase as “too excessive” and recommending market research.³³⁴

155. Nevertheless, the payment to the Subject Company was approved by the Procurement Service, and the new cost for the preferred brand was included in Amendment 2.³³⁵ Following the execution of Amendment 2, the Subject Company was paid a total of US\$244,053.³³⁶ When asked why he signed the Amendment, Staff Member 2 represented to the Task Force that the figures in Amendment 2 appeared “small” and insignificant when compared to the contract amount.³³⁷

156. Effectively, because of Amendment 2, the price of tea was increased without justification.³³⁸ The effect of the increase in the tea unit price resulted in an overall increase of the original CMR by US\$2 million over a period of five years. If this price increase had been accounted for in the original bid proposals for the Liberia contract, the Subject Company would not have been the lowest bidder.

157. In Staff Member 4’s view, the Subject Company should have justified the increased price for delivering Lipton tea, whereupon a written agreement should have been executed.³³⁹ Staff Member 4 recalled that the invoice for an increase was brought to his attention, but could not remember subsequent discussions.³⁴⁰

158. Staff Member 1 could not recall the price increase for tea, but agreed that the Subject Company should have provided justification for the increase.³⁴¹ He further believed that Mr. Yakovlev intended to let Staff Member 2 sign the Amendment as he

³³² Amendment 2 to Liberia contract; Tommy Jonsson letter to David McLean (26 August 2004) (identifying Mr. Jonsson as OIC of Integrated Support Services at UNMIL).

³³³ The Subject Company Financial Proposal to Liberia contract, “Cost Summary – Special Instructions” (23 October 2003); Staff Member 8 interviews (12 April and 9 May 2006) (stating that it is the responsibility of the Procurement Service to do market research); Staff Member 7 interview (10 April 2006) (stating that it was not about the quality of the tea, but the justification of the increase); Staff Member 10 interviews (24 February and 1 March 2006) (stating that the Mission opposed the increase, but as contract authority, the Procurement Service made the final decision).

³³⁴ Tommy Jonsson letter to David McLean (26 August 2004) (stating that in UNMIL’s view, the original price of US\$4.03 referred to the preferred brand); Stephan Setian facsimile to Christian Saunders (28 October 2004) (attaching the Subject Company letter and invoice); Christopher Knight email to Vevine Stamp 10 (6 June 2005).

³³⁵ Amendment 2 to Liberia contract.

³³⁶ Ronnie Stokes facsimile to J.P. Morgan Chase Bank (31 August 2005); Minutes of Meeting between UN and the Subject Company (9 February 2005) (showing that UNMIL agreed to switch to “Eldorado” brand).

³³⁷ Amendment 2 to Liberia contract; Staff Member 2 interview (27 June 2006).

³³⁸ Staff Member 9 interview (11 April 2006) (stating that it was irregular to have replaced the price of a line item in the Ration Scale as it was a quoted price).

³³⁹ Staff Member 4 interview (19 June 2006).

³⁴⁰ *Id.*

³⁴¹ Staff Member 1 interview (27 and 28 June 2006).

was “easier with signatures than Staff Member 4 who was more critical and careful,” although he also believed that Mr. Yakovlev manipulated Staff Member 4.³⁴²

4. Amendment 3 – Food Rations Delivery Costs

159. In July 2005, following discussions between the Procurement Service and the Subject Company, the parties executed contract Amendment 3, modifying the pricing mechanism for the transportation of food rations. The Liberia contract provided for transportation costs to be paid at US\$235 per truck for the first 50 kilometers, with an additional cost of US\$4.85 for each kilometer traveled thereafter.³⁴³ This provision was contrary to the Statement of Work, which specified that the proposal for delivery costs should be based on transporting the rations in increments of 50 km.³⁴⁴ Amendment 3 modified the Liberia contract by providing for an all-inclusive transportation cost of 63 cents at a daily rate per man. This flat rate was referred to as delivery man-day rate (“DMR”).³⁴⁵

160. Before the Liberia contract was signed, in November 2003, the Subject Company agreed to provide the Procurement Service with a flat DMR. On 3 December 2003, Staff Member 10 of the DPKO requested Mr. Yakovlev, Staff Member 4, and Staff Member 1 to ensure that the contract included a flat DMR.³⁴⁶ However, despite this request and the Subject Company’s agreement, the Procurement Service did not include a flat DMR in the Liberia contract.³⁴⁷ Staff Member 10 could not provide an explanation as to why the DPKO’s request was not taken into account.³⁴⁸ Notably, in its Financial Proposal, ES-KO quoted a road transport cost per man at 29 cents per man per day, considerably less than the eventual 63 cents of Amendment 3.³⁴⁹

161. From the outset, UNMIL found the pricing mechanism in the Liberia contract to be ambiguous and costly, and referred the matter to the Procurement Service.³⁵⁰ The Procurement Service and the DPKO instructed UNMIL that payment for bread deliveries should be withheld pending resolution by the Procurement Service.³⁵¹

³⁴² *Id.*

³⁴³ The Subject Company Financial Proposal to Liberia contract, “Cost Summary – Ceiling Man Day Rate” (23 October 2003).

³⁴⁴ Liberia contract Statement of Work, sec. 1.5.

³⁴⁵ Amendment 3 to Liberia contract (signed by Mr. Seiwert on 11 July 2005 and Mr. Mitsui on behalf of Mr. Saunders on 15 July 2005).

³⁴⁶ Staff Member 10 email to Alexander Yakovlev (3 December 2003).

³⁴⁷ The Subject Company Financial Proposal to Liberia contract, “Cost Summary – Ceiling Man Day Rate” (23 October 2003); Staff Member 10 email to Alexander Yakovlev (3 December 2003); Staff Member 8 memorandum to Staff Member 4 (19 May 2004).

³⁴⁸ Staff Member 10 interviews (24 February and 1 March 2006).

³⁴⁹ ES-KO Financial Proposal for Supply of Food Rations for UNMIL, “Cost Summary – Delivery to Sectors and Contingent Locations within Mission Area,” (23 October 2003).

³⁵⁰ Staff Member 6 interview (28 March 2006); Staff Member 5 interview (31 March 2006); Staff Member 9 interview (11 April 2006).

³⁵¹ Staff Member 4 interview (19 June 2006); Clemens Adams memorandum to Staff Member 4 (19 May 2004).

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162. Staff Member 5 stated that when he received the first invoice from the Subject Company he was shocked to see that the delivery cost was twice as much as normal.³⁵² Staff Member 5 explained that in the case of the Liberia contract, delivery costs amounted to 20% of the value of goods.³⁵³ Normally such costs equal just 12%.³⁵⁴ In some instances, UNMIL was required to pay the Subject Company up to US\$235 for deliveries at locations 3 kilometer away.³⁵⁵

163. Although the Subject Company provided the Procurement Service with a flat DMR proposal in March 2004, no immediate decision was taken to address the exorbitant transport costs the Subject Company charged for bread deliveries.³⁵⁶ On 22 April 2005, Staff Member 11 informed UNMIL that its proposal for all-inclusive transport DMR had been overruled by the Procurement Service.³⁵⁷ In June 2005, UNMIL urged the United Nations Headquarters to address the transport cost issue.³⁵⁸

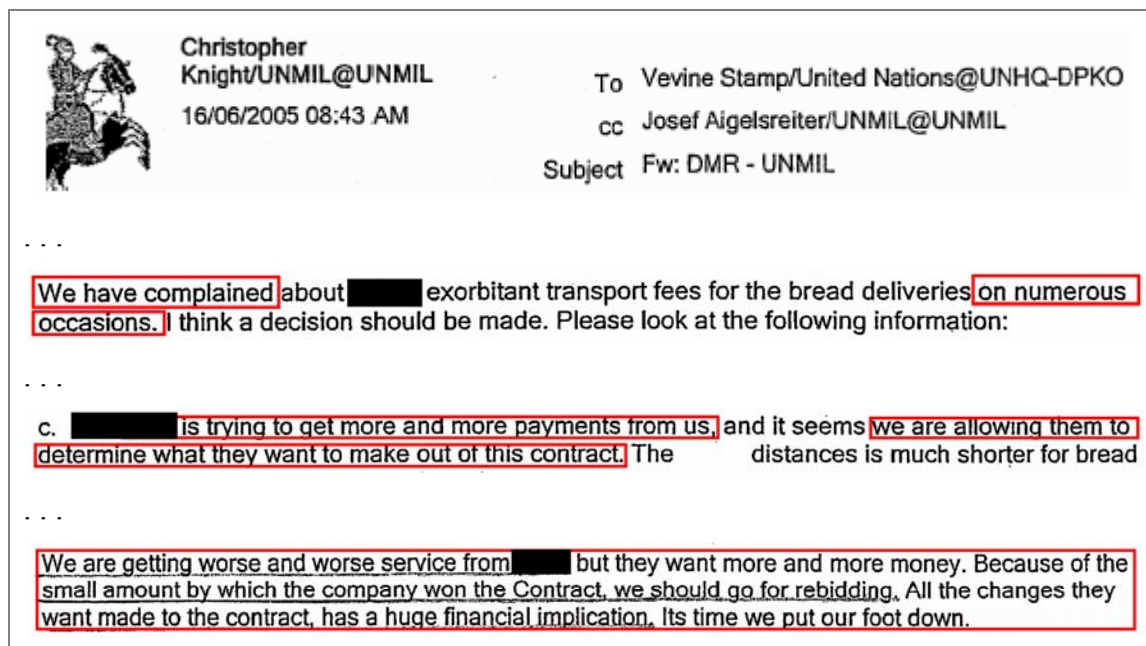


Figure : Christopher Knight email to Vevine Stamp (16 June 2006)

³⁵² Staff Member 5 interview (31 March 2006).

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ Staff Member 15 (15 March 2006); Week 5-8 Bread Deliveries for Requisition period 30 January 2004 – 28 February 2004.

³⁵⁶ Mike Davy letter to Alexander Yakovlev (29 March 2004); Vevine Stamp email to Josef Aigelsreiter (17 August 2004) (stating that the Subject Company's proposed delivery costs were four times higher than delivery costs in other missions); Savitri Butchey facsimile to Clemens Adams (24 August 2004) (commenting that the Subject Company should not have signed amendment prior to UNMIL's comments); Staff Member 8 interviews (12 April and 9 May 2006); Mike Davy letter to Stephan Setian (15 June 2004).

³⁵⁷ Per Verwohlt email to Christopher Knight (22 April 2005).

³⁵⁸ Christopher Knight email to Vevine Stamp (16 June 2005).

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164. Subsequently, the Procurement Service, the DPKO and the Subject Company agreed to negotiate a DMR to address the problem of transportation charges.³⁵⁹ While the DPKO, in conjunction with the Procurement Service, calculated a DMR of 67 cents per man per day, the Subject Company proposed 63 cents “based on actual costs incurred,” and UNMIL calculated transport costs at a mere 22 cents.³⁶⁰ The Subject Company’s proposal was nevertheless accepted by the Procurement Service as fair, and, under Amendment 3, the Subject Company was paid an amount of over US\$2 million, covering a period of 1 January to 14 July 2005.³⁶¹ This included an additional charge for bread deliveries, invoiced by the Subject Company at an amount of approximately US\$1.5 million.³⁶² As stated by Staff Member 9 and Staff Member 7, the bread delivery costs should have been an integral part of the transportation costs and not charged additionally.³⁶³

165. Staff Member 1 commented that delivery costs were a problem from the start.³⁶⁴ He was aware of correspondence and negotiations to resolve the problem and was involved in finding a solution.³⁶⁵ The matter was brought to a close by Subject Company Representative 3 and Staff Member 4.³⁶⁶

166. Similarly, Staff Member 4 could not explain why the issue was not addressed from the start as UNMIL had requested.³⁶⁷ According to Staff Member 4, he was not involved with the calculations, and the Procurement Service relied on the DPKO’s calculations.³⁶⁸ Staff Member 4 did not consider negotiating with the Subject Company as essential as the United Nations “should have a fair relationship with the Supplier,” and in Staff Member 4’ view, a DMR of 63 cents seemed reasonable compared with the 67 cent figure estimated by the DPKO.³⁶⁹

167. As was the case with Amendment 2, Staff Member 2 signed Amendment 3 without a presentation to the HCC even though he admitted that it constituted a material

³⁵⁹ Clemens Adams to Ronnie Stokes (20 July 2005).

³⁶⁰ DPKO, “Transport Costs of Bread Deliveries” (undated); UNMIL, “Transportation Costs of Bread Deliveries” (undated); Staff Member 9 interview (11 April 2006); Staff Member 17 interview (13 March 2006) (stating that UNMIL’s calculations of CMR of 22 cents based on real delivery costs, were rejected by the Procurement Service and that UNMIL did not agree with the DPKO’s cost calculation of 67 cents); Staff Member 12 interview (14 March 2006); Staff Member 9 interview (11 April 2006) (stating that UNMIL’s figure was too general and in the end it was decided to accept 63 cents); Ian Divers facsimile to Ronnie Stokes (29 August 2005) (confirming that UNMIL’s proposal of 50 cents was rejected).

³⁶¹ Ronnie Stokes facsimile to J.P. Morgan Chase Bank (31 August 2005).

³⁶² The Subject Company Invoice (7 June 2005).

³⁶³ Staff Member 9 interview (11 April 2006); Staff Member 7 interview (10 April 2006).

³⁶⁴ Staff Member 1 interview (27 and 28 June 2006).

³⁶⁵ *Id.*

³⁶⁶ *Id.*; Subject Company Representative 3 statement (23 January 2006).

³⁶⁷ Staff Member 4 interview (19 June 2006) (further stating that they failed to address the issue sooner, probably because they were overworked or because of ongoing discussions between the relevant parties).

³⁶⁸ *Id.*

³⁶⁹ *Id.*

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change to the contract.³⁷⁰ Staff Member 2 expressed regret that he was not more careful.³⁷¹ UNMIL was thereafter presented with a copy of the signed Amendment 3 by the Subject Company.³⁷²

G. THE SUBJECT COMPANY PERFORMANCE

168. The Subject Company's unsatisfactory performance in its execution led to UNMIL's issuance of a Notice of Unsatisfactory Performance.³⁷³ As a result, officials in UNMIL, the Procurement Service, and the DPKO considered terminating the Liberia contract because of the consistently unsatisfactory performance of the Subject Company.³⁷⁴ From the start, the Subject Company had inadequate warehousing space, problems with delivery of food rations, and history of substituting food items without UNMIL's approval.³⁷⁵ However, instead of terminating the Liberia contract, the DPKO, UNMIL and the Procurement Service agreed to wait for the results of the Subject Company's performance inspection carried out by SGS Nederland B.V. ("SGS").³⁷⁶

169. In August 2004, the Procurement Service was presented with a final inspection report showing that the Subject Company had improved its performance significantly, but nevertheless still needed to improve on their quality Management System.³⁷⁷ Whether the environment that prevailed during the inspection was a true reflection of the Subject Company's performance is questionable. Staff Member 4, in agreement with Mr. Vaughan, delegated Staff Member 1 the responsibility to attend a joint inspection with Mr. Vaughan, carried out simultaneously with the visit by the SGS inspectors.³⁷⁸ Mr. Vaughan considered Mr. Staff Member 1's presence very helpful during the visit and suggested a similar process for the next "fact-finding mission."³⁷⁹

170. According to the Subject Company staff present in Liberia at the time of the events, the Subject Company did not meet the specifications of the Liberia contract as it procured the cheapest and most inferior products available. According to these employees, the company was not primarily concerned with the specifications of the

³⁷⁰ Amendment 3 to Liberia contract; Frank Eppert routing slip to the Task Force (28 April 2006); Contract Summary (4 August 2005); Staff Member 2 interview (27 June 2006).

³⁷¹ *Id.*

³⁷² Josef Aigelsreiter email to Vevine Stamp (20 July 2005); Ian Divers facsimile to Ronnie Stokes (29 August 2005) (the Subject Company agreed to reduce their initial offer to 56 cents with effect from 15 July 2005).

³⁷³ Savitri Butchey letter to Mike Davy (4 June 2004); Meetings between UNMIL Administration and the Subject Company Management Team (6 April 2004); Savitri Butchey facsimile to Clemens Adams (5 March 2004).

³⁷⁴ Notes from Meeting on Liberia contract (29 June 2004).

³⁷⁵ Meeting between UNMIL Administration and the Subject Company Management Team (6 April 2004).

³⁷⁶ Notes from Meeting on Liberia contract (29 June 2004).

³⁷⁷ SGS Report, p. 5.

³⁷⁸ Staff Member 4 email to Allan Vaughan (6 July 2004); Staff Member 1 interview (27 and 28 June 2006); Staff Member 4 interview (19 June 2006).

³⁷⁹ Allan Vaughan email to Staff Member 1 (undated) (recovered from Staff Member 4 computer at the United Nations).

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United Nations.³⁸⁰ According to Subject Company Representative 2, “[Mr.] Harris and [Mr.] Seiwert would enforce deliverance of non-compliant food and use Seiwert to pacify New York.”³⁸¹ In addition, the Subject Company offices in Liberia were understaffed and lacked mechanical handling.³⁸² However, according to Subject Company Representative 2, knowing that inspection of its performance was imminent, the Subject Company made necessary preparations and the “audit went well.”³⁸³

171. The July 2004 inspection of the Subject Company’s performance carried out by SGS concluded that “if current practices are maintained and continue to improve, the Contractor will be able to perform operations in conformity with the Performance Level required.”³⁸⁴ Disappointingly, however, the Subject Company’s performance slipped shortly after their inspection in August 2004:³⁸⁵

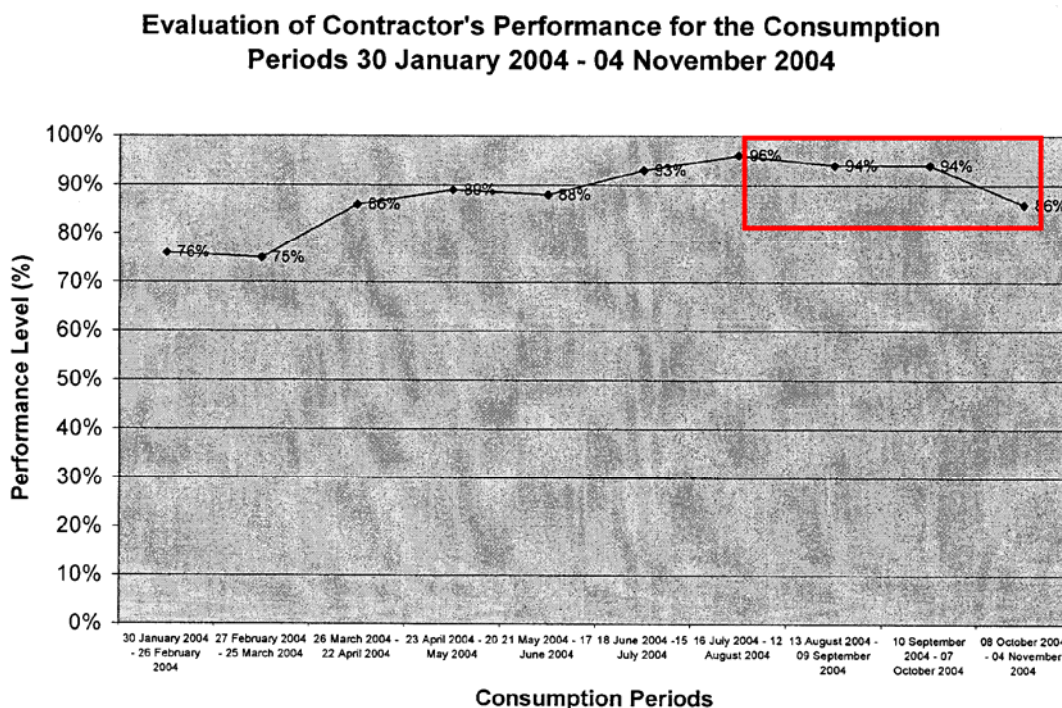


Figure : Evaluation of Contractor’s Performance for Consumption – Periods 30 January 2004 – 04 November 2004 (undated)

³⁸⁰ Subject Company Representative 7 interview (4 July 2006); Subject Company Representative 2 interview (4 July 2006); Michael Dent email to Andy Seiwert (26 November 2004) (stating in reference to the ongoing sensitivity of the Liberia contract that “our frustrations with the ‘system’ and the previous failures must on occasions show through”).

³⁸¹ Subject Company Representative 2 interview (4 July 2006).

³⁸² Subject Company Representative 7 interview (4 July 2006).

³⁸³ Subject Company Representative 2 interview (4 July 2006).

³⁸⁴ SGS Report, p. 33.

³⁸⁵ UNMIL, “Evaluation of Contractor’s Performance for the Consumption Periods 30 January 2004 – to 4 November 2004” (undated).

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172. Staff Member 9 described the Subject Company's performance as "messy," and sufficiently deficient to have triggered the issuance of a "Notice of Cure" by the Procurement Service.³⁸⁶ However, the Procurement Service was influenced by the Subject Company's allegations against the DPKO staff.³⁸⁷ Staff Member 8 stated that the DPKO was put on the defensive by both the Subject Company and the Procurement Service, specifically Mr. Yakovlev, who felt that the DPKO was criticizing the Subject Company and not adequately recognizing the Subject Company's performance.³⁸⁸ Staff Member 4 supported Mr. Yakovlev's assessment in this regard.³⁸⁹ Staff Member 8 further stated that Staff Member 1 seemed to have sided with Mr. Yakovlev, who in Staff Member 8's view never allowed anybody to properly supervise him.³⁹⁰ In Staff Member 8's view, Mr. Yakovlev was extremely intelligent individual capable of effectively blocking decisions that he did not support.³⁹¹

173. The Task Force concludes that there is merit to the allegation that the Liberia contract was drafted in an ambiguous way, allowing for the effort to recoup sums of money through subsequent amendments and later charges. The Task Force further concludes that Mr. Yakovlev actively assisted in the execution of the Subject Company's scheme by purposefully favouring the Subject Company during the negotiation and contract drafting process, contrary to the interests of the Organisation. Mr. Yakovlev's actions were carried out in the absence—if not complete lack—of proper supervision. Mr. Yakovlev was allowed to effectively control the negotiation and contract drafting process. Staff Member 1 agreed that there was a lack of supervision over Mr. Yakovlev on his part, adding that this was largely due to the efforts of Mr. Yakovlev.³⁹² UNMIL's objections against unjustified cost increases via amendments to the benefit of the Subject Company were constantly disregarded, and their warnings and concerns not properly heeded. Rather, largely due to the efforts of Mr. Yakovlev, the Procurement Service perceived UNMIL's objections as petty and attributable to an unjust animosity towards the Subject Company.³⁹³ The Procurement Service's failure to properly oversee the contract and amendment negotiation process resulted in actual financial loss to the Organisation of at least US\$860,000.

³⁸⁶ Staff Member 9 interview (11 April 2006).

³⁸⁷ Staff Member 8 interviews (12 April and 9 May 2006).

³⁸⁸ *Id.*; Staff Member 1 interview (27 and 28 June 2006) (stating that he at all times had an excellent relationship with the Subject Company); Staff Member 4 interview (19 June 2006) (stating that he did not have a relationship with the Subject Company, but believed in being polite and working in a partnership with Suppliers to get the best service and reach good business deals in negotiations). Staff Member 4 also stated that circumstances sometimes dictate that Procurement Service compromises probably more than they would normally like, but with the best need and interest of the Organisation at heart. *Id.*

³⁸⁹ Staff Member 8 interviews (12 April and 9 May 2006).

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² Staff Member 1 interview (22 November 2006).

³⁹³ When interviewed by the Task Force, Subject Company Representative 6 stated that he had a perception that the Subject Company was favoured by the Procurement Service. Subject Company Representative 6 statement (10 January 2006).

XII. FINDINGS

174. The Task Force finds that the procurement exercises held in connection with the food rations contracts for UNMIL and UNMEE were severely tainted, and the integrity of the process severely undermined by the nefarious actions of officials of the Subject Company, IHC, and Mr. Yakovlev, the United Nations Procurement Officer. The Subject Company, through the collective effort of a number of its officials, and with the assistance of a procurement officer within the Organisation, fraudulently secured and obtained sensitive and confidential United Nations documents and financial information of its competitors from the facility in which the bid submissions were maintained. By acquiring this confidential and sensitive information the Subject Company corrupted the procurement exercise and compromised the integrity of the process. Through the benefit of such information, the company was thereafter able to re-draft and replace its own financial submissions, securing the Liberia and Eritrea contracts. These efforts, perpetrated in a hotel room just a few blocks away from the United Nations Headquarters where the bidding exercises took place, constituted a fraudulent effort to achieve the contracts through corrupt means, and illegal acts. These actions firmly undermined the integrity of the procurement process and the ultimate overriding goal of the selection of a company through fair, independent, objective, and honest means.

175. Further, the Subject Company acted in a fraudulent manner in securing additional sums of money under the contracts by artificially lowering its initial costs to gain an improper advantage over its competition in furtherance of its effort to secure the United Nations contracts and thereafter seeking contract amendments to cover costs which it asserted were originally not contemplated. However, it is evident that the ultimate sums paid by the Organisation after the execution of the amendments exceeded the projected sums of its competitors for these very same services, which were clearly expected to be incurred at the time of the bidding exercise. These efforts to achieve additional compensation through the backdoor were assisted by Mr. Yakovlev, who was primarily responsible for drafting, advancing, and securing the execution of the contract amendments that were implemented to the significant benefit of the Subject Company, and to the detriment of the Organisation.

176. The Task Force's investigation further established numerous instances when IHC, through its President, Mr. Testa, obtained and further disseminated confidential United Nations documents and proprietary and sensitive information of competing vendors in connection with a number of on-going and anticipated procurement exercises of the Organisation. Mr. Testa in fact acknowledged taking possession of confidential United Nations documents while visiting the United Nations offices, and lifting documents from copy machines in the United Nations Headquarters. The Task Force finds it particularly disturbing that individuals other than United Nations procurement officers had such access and ability to obtain confidential and sensitive information of the Procurement Service on a repeated basis, and that procurement official(s) assisted the effort.

177. Based upon all the facts and circumstances, as well as reasonable inferences to be drawn therefrom, it is evident that at least some of the confidential documents and

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information obtained by the Subject Company, IHC, and Mr. Testa were provided to them by Mr. Yakovlev, the procurement officer who was entrusted with the possession of the confidential financial submissions. At the current time, the Task Force has not yet identified evidence that either the Subject Company or IHC bestowed upon Mr. Yakovlev anything of value in exchange for his efforts in this regard. However, Mr. Testa acknowledged pursuing a business venture with Mr. Yakovlev while Mr. Yakovlev was employed by the United Nations as a procurement officer, which constituted a clear conflict of interest and a violation of relevant rules and regulations of the Organisation. Mr. Yakovlev never disclosed this business venture to the Organisation or recused himself from handling procurement exercises in which IHC and the Subject Company were involved. Further in this regard, IHC has admitted employing Mr. Yakovlev's son and providing a mobile phone to Mr. Yakovlev in connection with this business endeavor that Mr. Yakovlev used for a period of several years while employed with the United Nations. During this time, IHC was acting as a vendor intermediary on behalf of a number of companies seeking to do business with the Organisation, and as a party to contracts with the Organisation in its own right.

178. The amendments to the Liberia contract proposed by the Subject Company were accepted by the Procurement Service as a result of efforts by Mr. Yakovlev in favour of the Subject Company, despite the poor performance of the company in its execution under the contracts. United Nations procurement officers Staff Member 4, Staff Member 1, and Staff Member 2 failed to exercise a sufficient duty of care over Mr. Yakovlev to ensure that the amendments in the Liberia contract were properly justified, and that they were executed in the best interests of the Organisation. At the time, Staff Member 4 and Staff Member 1 conceded that they lacked confidence in Mr. Yakovlev and held a concern about his ethics. It should be noted that Staff Member 1 and Staff Member 2 agree in principal with the Task Force's conclusions in this regard, and they should be credited for their acceptance of responsibility.

179. As a result of the deficiencies noted above, the contract amount was unnecessarily increased in excess of US\$2 million, and the Organisation suffered financial losses of at least US\$860,000.

180. The Task Force's investigation did not find any basis to support allegations that Staff Member 5 and Staff Member 6 engaged in any inappropriate conduct in favour of the Subject Company or ES-KO. However, the investigation revealed that for a period of at least seven months, Mr. Picco served as the Chairman of the Board of IHC while serving as Under-Secretary-General. At that time, IHC actively sought to achieve United Nations business, and was representing various vendors in their efforts to secure United Nations contracts. In this regard, Mr. Picco appears to have suffered from a conflict of interest.

XIII. CONCLUSIONS

181. By orchestrating a scheme to obtain valuable United Nations contracts through fraudulent means, the Subject Company, and the officials who participated in this effort

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identified herein, committed criminal acts. The Subject Company also violated, and caused to be violated, United Nations procurement rules which prohibit the United Nations vendors from engaging in corrupt practices during the procurement process. The conduct of the Subject Company caused financial loss to the Organisation in excess of US\$860,000 in relation to the Liberia contract alone.³⁹⁴

182. The Task Force concludes that by soliciting, receiving, and exchanging a significant number of confidential United Nations documents, IHC and the Subject Company acted in an improper and unlawful manner, and corrupted the procurement exercise and the integrity of the procurement process.

183. IHC and Mr. Testa further compromised the integrity of the procurement process by engaging in a joint business venture with Mr. Yakovlev. This relationship existed while IHC was acting as a United Nations contractor and also an agent for a number of United Nations vendors at a time when Mr. Yakovlev was serving as a United Nations procurement officer and supervising procurement exercises when IHC represented a vendor participating in a procurement exercise. During this time, IHC provided Mr. Yakovlev with tangible and intangible benefits.

184. The Task Force concludes that by favouring the Subject Company in the procurement process, and by committing the acts described above, Mr. Yakovlev violated the Staff Regulations 1.2(b) and 1.2(e), as well as Procurement Manual Sections 4.2(1), in that he failed to act in the best interests of the Organisation, and failed to uphold the highest standards of honesty, competence, integrity, and truthfulness.

185. The Task Force concludes that by providing confidential information and documents to the Subject Company, Mr. Yakovlev participated in the scheme to defraud the Organisation, and violated the Staff Regulations 1.2(b), 1.2(g), and 1.2(e), as well as Section 4.1.5(4)(a) of the Procurement Manual.

186. By engaging in a joint business pursuit with a vendor/intermediary, and accepting a communication device paid for by the vendor/intermediary, and utilizing it for his own purposes as well as those of the vendor/intermediary, Mr. Yakovlev violated the Staff Regulations 1.2(b), 1.2(g) and 1.2(l) and Section 4.2.1(2) of the 2004 Procurement Manual prohibiting staff members from accepting gifts from any non-governmental source without obtaining the proper approval.

187. At the present time, the Task Force has not identified evidence of payments to Mr. Yakovlev by either IHC or the Subject Company for the information provided to them. However, without full ability to subpoena and obtain all relevant financial records, and the fact that IHC refused to disclose its relevant bank account records, the Task Force cannot reach a conclusive view on this issue.

188. The Task Force concludes that Staff Member 4 and Staff Member 1 did not exercise proper care in the execution of the Liberia contract, placing the Organisation at

³⁹⁴ Liberia contract, arts. 18.1, 18.2, 27, and 34.2; Eritrea contract, arts. 18.1, 18.2, 25, and 34.2; See, e.g., 2006 Procurement Manual, secs. 4.3(2)(a) and 4.3(2)(c); 2004 Procurement Manual, sec. 4.2.5(2)(iii).

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financial risk. Further, Staff Member 4 and Staff Member 1 did not properly supervise Mr. Yakovlev, a shortcoming that contributed to the Subject Company's successfully achieving these contracts to the detriment of the Organisation.

189. Based on the foregoing, and in light of the fact that both Staff Member 4 and Staff Member 1 held reservations about Mr. Yakovlev's integrity and ethics, the Task Force finds that Staff Member 1 and Staff Member 4 failed to properly examine claims that the Subject Company and ES-KO received confidential information, and failed to refer the matter to the appropriate investigative authorities within the Organisation once allegations of misconduct were brought to their attention. While Staff Member 4 did refer Mr. Yakovlev to the Investigations Division of the OIOS in 2002 concerning an unrelated matter, this fact does not constitute a waiver of one's obligation to make other referrals in connection with separate and significant additional matters.

190. The Task Force further concludes that Staff Member 2 did not exercise proper care in connection with the execution of the Liberia contract and the contract amendments, which resulted in the Organisation's expenditure of funds for services above and beyond those originally envisioned at a lower cost.

191. The Task Force did not identify any evidence of wrongdoing on the part of DPKO officials in connection with the Liberia contract.

192. The Task Force did not identify any evidence of improper conduct on the part of Staff Member 5 and Staff Member 6 in relation to Liberia contract.

XIV. RECOMMENDATIONS

193. The Task Force recommends that the Subject Company be permanently removed from the vendor registration list in accordance with Procurement Manual Section 7.12.2(1)(a), and that the company, in any form and in any capacity, be banned from United Nations business, either directly or indirectly, including as a subsidiary of its parent company or of another vendor.

194. The Task Force recommends that IHC Services Inc. be permanently removed from the vendor registration list in accordance with Procurement Manual Section 7.12.2(1)(a). Furthermore, The Task Force recommends that IHC Services Inc. and Mr. Testa be banned from any interaction with the United Nations in any capacity, including as agents or vendor intermediaries for third parties, or as a subsidiary of any third party.

195. The Task Force recommends that appropriate legal action be taken against the Subject Company to the extent that actions set forth in this Report give rise to either civil or criminal liability against the company itself, the officials of the company identified herein, or the company's parent, the Subject Parent Company.

196. The Task Force further recommends that these matters be referred to the appropriate law enforcement authorities in Italy, the United Kingdom, and the United States.

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197. The Task Force recommends that appropriate action be taken with regard to Staff Member 1's failure to exercise proper care in respect to the evaluation of the food rations contracts for Liberia, Eritrea, and the Democratic Republic of the Congo, the execution of the Liberia contract, and the supervision of Mr. Yakovlev.

198. The Task Force recommends that appropriate action be taken with regard to Staff Member 2's failure to exercise proper care in respect to the evaluation of the food rations contracts for Liberia, Eritrea, and the Democratic Republic of the Congo, the execution of the Liberia contract, and the supervision of Mr. Yakovlev.

199. The Task Force recommends that appropriate action be taken with regard to Staff Member 4's failure to exercise proper care in respect to the evaluation and execution of the food rations contracts for Liberia, Eritrea and the Democratic Republic of the Congo, the supervision of Mr. Yakovlev, and the overall management of the Procurement Section at the time. In that regard, this Report supplements the Task Force's Report on Staff Member 4 dated [REDACTED], and recommends that the [REDACTED] Report on Staff Member 4 be incorporated by reference as the matters set forth herein were reported in part in the [REDACTED] Report.³⁹⁵ In that regard, this Report should be made available to the Administrative Law Unit of the Office of the Human Resources Management.

³⁹⁵ Procurement Task Force, "Report on Staff Member 4" ([REDACTED]).

XV. APPENDIX A

REDACTED

XVI. APPENDIX B

REDACTED