



UNMIK

Investigation Task Force

Irregularities in a contract for the supply and construction of office containers for Air Traffic Control Services and in a single source Annex Agreement for additional office accommodation, lunchroom and showers for the KFOR multinational force at Pristina Airport (Case 0279/04)

I. INTRODUCTION

1. This case arises out of an audit report dated 28 February 2003 into the financial statements of Pristina International Airport conducted by the Chartered Accountants, which led to an investigation concerning alleged corruption and irregularities arising in the course of procurements and contracts at Pristina International Airport.
2. There are five specific allegations in this report of investigation:
 - Procedural concerns were raised over the award of the main contract due to the fact that only one bid was received for the supply and construction of office containers for Air Traffic Control Services (ATCS) and there was a gap of two months between the selection of the winning bidder and signature of the contract;
 - a routing slip dated 13 January 2003 created a misleading impression by stating that the lowest evaluated bid has been recommended, when only one bid was received for the main contract;
 - a single source contract was added less than two months after the award of the main contract;
 - the value of the single source Annex Agreement exceeded the permitted authorisation limit for the sign and approve a contract which deviated from the normal procurement procedure;
 - capital expenditure approval for the Annex Agreement was sought after completion of the contract.

II. APPLICABLE TERRITORIAL LAWS AND UNITED NATIONS PROCEDURAL RULES

Section 1 of UNMIK Regulation 1999/24 dated 12 December 1999 as amended, states that the law applicable in Kosovo shall be:

- a) "The regulations promulgated by the Special Representative of the Secretary General (SRSG) and subsidiary instruments issued pursuant to those regulations; and
- b) The Law in force in Kosovo on 22 March 1989."

UN Staff Regulations 1.2 (b) stipulates “Staff members shall uphold the highest standards of efficiency, competence and integrity”

UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds provides that:

Article 6.3 1–“When the total estimated value of the contract does not exceed DM 50,000, (25,000 Euro) the Authorising Officer of the requesting entity may approve... the use of Direct-Single Source Procurement or Single-Source Selection of Consultants.”

Article 8.2 –“Procuring entities shall maintain records of Public Procurement in sufficient details for the PPRB to verify that the provisions of this Instruction have been followed. For each procurement, the record shall contain as a minimum: justification pursuant to 6.3, (a) of the method of procurement chosen if that method differs from the normal method specified by this Instructions, or (b) of the procedures followed if they differ from the normal procedures specified by this instructions for the method of procurement chosen...”

Article 24 – “Direct Single Source Procurement may be used for Goods, Works or Ancillary Physical Services:

24.1 - If such Direct Single Source Procurement is not used to

24.1.1 - Avoid Competition

24.1.2 – Discriminate against other suppliers and

24.2 – Direct Single Source Procurement is the appropriate method to be used:

24.2.1 as the Goods, Works or Services can be provided by only one supplier;.....”.

III. METHODOLOGY

3. This investigation was conducted pursuant to Executive Decision No 2003/16 on the establishment of the Investigation Task Force. The ITF investigators conducted an enquiry into the allegations raised by interviews with persons indicated to be witnesses and persons potentially implicated in the allegations; by obtaining documents from the Pristina Airport administration and from Pillar IV, which were then analysed for relevance to the inquiry at hand.

IV. BACKGROUND INFORMATION

4. Pristina International Airport constitutes a state owned enterprise under Yugoslavian law. The assets of the airport include the runways, terminal buildings, hanger, fuel storage facilities and equipment. During the period covered by this investigation, from 2001 until 2003, they were maintained by the Public Enterprise Airport Pristina, (PEAP) in cooperation with Military Units of the Kosovo Force (KFOR). Pursuant to United Nations Security Council Resolution 1244 dated 10 June 1999, and UNMIK Regulation No 1/1999 dated 25 July 1999. UNMIK is mandated to administer the territory of Kosovo, including state owned and publicly owned assets. This includes Pristina International Airport.
5. Until the end of June 2002, responsibility for the administration of the Pristina Airport was entrusted to the Civil Administration Pillar (Pillar II) of UNMIK, Official 1 and Official 2. UNMIK Pillar II supervised the Department of Transport and Infrastructure (DOTI) Official 1. DOTI Official 2 was recruited by the DOTI as an international staff member on 31 July 2000 in charge of airport operations,

reporting to DOTI Official 1, and continued in this role until 30 September 2001. Engineering expertise was provided by a series of engineers seconded from the armed forces of a United Nations member state, specifically Airport Engineer 1, Airport Engineer 2 and Airport Engineer 3, and later by the Consultant from the Consulting Firm.

6. On 1 July 2002, the responsibility for the administration of the Airport passed from Pillar II to the Kosovo Trust Agency (KTA) and Pillar IV. The Divisional Manager was appointed to the Airport Sector, KTA at the same time. Under him were PEAP Official and the Air Traffic Control Services (ATCS) Official.
7. On 1 April 2004 Pristina International Airport, which had until that time been under the jurisdiction of KFOR, was handed over to civilian jurisdiction, under ICAO regulations.
8. It is against this background of change that procurement procedures relating to the following contract have been examined.

V. INVESTIGATION DETAILS

This part of the investigation relates to the Contract for the supply and construction of office containers for Air Traffic Control Services at Pristina Airport. It also deals with an Annex Agreement for additional office accommodation, lunchroom and showers for the KFOR multinational force. The value of the main contract was €93,033.49 and the Annex Agreement, €49,970.

Allegation 1

(It is alleged that there were procedural irregularities concerning the award of the main contract for the supply and construction of office containers for Air Traffic Control Services due to the fact that only one bid was received and there was a gap of two months between the selection of the winning bidder and signature of the contract.)

9. On 26 September 2002 a bid evaluation exercise took place for a contract to supply and construct office containers for Air Traffic Control Services at Pristina Airport. Thirteen companies appear as having been sent bidding documents. However, only one bid was received for the contract from the Vendor. This gave rise to procedural concerns by the ITF as to whether the contract should have been re-tendered, due to the absence of sufficient offers.
10. Following evaluation of the bid, a contract was signed two months later in December 2002 by Official 3 and the Deputy to the Divisional Manager of the KTA on behalf of ATCS with the Vendor, in the sum of €93,033.49.
11. The Procurement Officer having conduct of the tender was asked in interview why there was a gap of two months between the tender and the signature of the contract. He/she replied that the difference between the date of the evaluation in October 2002 and the contract signature date of December 2002 was due to the fact that initially a decision was taken that the main contract be postponed after only one offer had been received. Airport Engineer 3 had indicated that he/she could find cheaper, second hand containers. However, Airport Engineer 3 was

unsuccessful in doing so, with the result that the need for the containers had become urgent. A decision had therefore been taken to accept the offer from the Vendor.

12. This explanation was also given by the ATCS Official in a meeting with the ITF . The ATCS Official added that the decision to accept the offer from the Vendor had been taken by Airport Engineer 3 and the KTA Divisional Manager.
13. Having regard to the fact that the office containers were urgently needed, the fact that bids were issued to 13 companies, and the delay in the signature of the contract resulted from an attempt to source the office containers more cheaply, the ITF makes no adverse finding concerning the allegation of procedural irregularity due to the acceptance of the only bid or due to the delayed signature of the contract.

Allegation 2

(It is alleged that a routing slip dated 13 January 2003 created a misleading impression by stating that the lowest evaluated bid has been recommended, when only one bid was received for the main contract.)

14. A routing slip from the KTA Procurement Officer to the then Deputy SRSG and the Deputy to the KTA Divisional Manager states that “the lowest evaluated bid has been unanimously recommended for contract award.” This implies that more than one bid was received and evaluated.
15. When asked about this apparent inconsistency, the Procurement Officer stated that it was due to his/her insufficient knowledge of English, which led him to follow the normal wording used in the routing slip for indicating the winning bid. He/she added that the evaluation report would have been attached to the routing slip, and would have indicated that 13 companies had been issued with tender documents.
16. In view of this explanation, the ITF does not take the view that the statement was intended to create a misleading impression.

Allegation 3

(It is alleged that a single source contract was added less than two months after the award of the main contract.)

17. A request was made from the new “Lead Nation at the Airport” (Iceland) for additional office accommodation, lunchroom and showers for the KFOR multi-national force at a meeting between the KTA Divisional Manager, KFOR and UNMIK on 7 January 2003.
18. A further note from the Commander of the Iceland Crisis Response Unit (ICRU), to the ATCS Official and the KTA Divisional Manager dated 21 January 2003 indicates that the supplementary works were urgent.
19. The KTA Divisional Manager signed a justification for the supplementary works on 29 January 2003 and an Annex Agreement dated 7 February 2003 was signed by the KTA Divisional manager on behalf of ATCS Pristina Airport and the

Vendor for the supplementary work to be carried out by means of a single source contract in sum of €49,970.00.

20. Concerns were raised due to the fact that a supplementary single source contract was added for additional office accommodation, lunchroom and showers less than two months after the main contract for office containers for the Air Traffic Control Services. When asked about this issue, the KTA Divisional Manager indicated that the issue had arisen due to the transfer of KFOR management in March 2003 from the Italian Air Force to a multi-national force led by Iceland.
21. The accommodation that had been used by the Italian Air Force belonged to the British Army, who decided to remove it. Therefore, an urgent need had arisen to provide accommodation for the multi-national KFOR staff, both for a skeleton emergency overnight crew for medical evacuations and for a lunchroom and kitchen during the daytime.
22. This response is confirmed in the notes of a meeting dated 7 January 2003 which record that a request was made to UNMIK / Air Traffic Control Services to provide accommodation, offices and a lunch-room for KFOR staff providing over-night emergency evacuation cover, and a second note dated 21 January 2003 which requests that the work be expedited so as to complete the work by the end of February. The notes detail points of agreement at the meeting on 7 January 2003.

Allegation 4

(The value of the single source Annex Agreement exceeded the permitted authorisation limit for the KTA Divisional Manager to sign and approve a contract, which deviated from the normal procurement procedure under Article 6.3 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds.)

and

Allegation 5

(Capital expenditure approval for the Annex Agreement was sought after completion of the contract.)

23. A capital expenditure approval dated 4 March 2003 indicates that the KTA Divisional Manager authorised the Annex Agreement to proceed as a single source contract in spite of the fact that the contract exceeded his/her authorisation limit of €25,000.
24. In addition, the capital expenditure approval indicates that the additional office accommodation, lunchroom and showers had already been completed by the time that financial approval was sought for the expenditure.
25. The KTA Divisional Manager was asked in interview why the capital expenditure approval was sought after the work had been completed in view of the fact that the work had been proposed in January 2003. He/she replied that it was due to pressure from KFOR to complete the required work for the transition from Italy to the KFOR multi-national force, coupled with the slow pace of clearance for contract through the KTA, which he/she attributed to queries raised by the KTA auditor. The KTA Divisional Manager added that verbal approval for the work was given in January by the Deputy to the KTA Divisional Manager, but the work had

to be done to enable the transfer from the Italian Air Force to the KFOR multi-national force to take place.

VI. CONCLUSIONS

26. Having regard to the fact that the office containers were urgently needed, the fact that bids were issued to 13 companies, and the delay in the signature of the contract resulted from an attempt to source the office containers more cheaply, the ITF makes no adverse finding concerning the allegation of procedural irregularity due to the acceptance of the only bid or due to the delayed signature of the contract.
27. In the light of the response by the Procurement Officer to the ITF, the ITF does not conclude that the routing slip drafted by the Procurement Officer dated 13 January 2003 was intended to create a misleading impression by stating that the lowest evaluated bid has been recommended, when only one bid was received for the main contract.
28. The single source Annex Agreement for additional office accommodation, lunchroom appears to have been justified by the urgency of the KFOR accommodation requirements. However, the KTA Divisional Manager should not have been the signatory for it, since it exceeded his/her financial authorisation limit to sign and approve a contract, which deviated from the normal procurement procedure under Article 6.3 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds. In view of the urgency to complete the works, an emergency procurement procedure would have been the appropriate course of action.
29. In addition, capital expenditure approval for the Annex Agreement was sought by the KTA Divisional Manager after completion of the additional office accommodation, lunchroom and showers, thereby creating a contractual obligation to pay the Contractor before capital expenditure had been approved.

VII. RECOMMENDATIONS

30. It is recommended that given the KTA Divisional Manager has left the employ of the KTA, UNMIK should ensure that the D/SRSG Pillar IV is provided with this report so that a copy can be placed on his/her personnel file for future reference. (IV04/279/01)
31. It is recommended that the D/SRSG ensure that staff in Pillar IV and the KTA are aware of the necessity to follow established procedures in contract management. (IV04/279/02)