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INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

INTERNAL AUDIT DIVISION I  
OFFICE OF INTERNAL OVERSIGHT SERVICES

TO: Mr. Jean-Marie Guéhenno,  
A: Under-Secretary-General for Peacekeeping Operations

DATE: 22 November 2005

Mr. Jayantilal Karia, Officer-in-Charge  
Procurement Service, OCSS

REFERENCE: AUD-7-5:66( 05) <sup>00253</sup>

FROM: Patricia Azarias, Director  
DE: Internal Audit Division I, OIOS

*P. Azarias*

SUBJECT: **OIOS Audit No. AP2005/682/06: Review of Supply of Rations to UNTAET/UNMISSET**  
OBJET:

1. I am pleased to present herewith the final report on the above-mentioned audit, which was conducted in June 2005. The audit was conducted in accordance with the general and specific standards for the professional practice of internal auditing in United Nations organizations and included such tests as the auditors considered necessary.
2. We note from your response to the draft report that DPKO and Procurement Service have generally accepted the recommendations. Based on the response, we are pleased to inform you that we have closed recommendations 5, 8 and 9 in the OIOS recommendations database. In order for us to close out the remaining recommendations (1, 2, 3, 4, 6, 7 and 10), we request that you provide us with the additional information as discussed in the text of the report and a time schedule for their implementation. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as critical (i.e. recommendations 1, 2, 3, 6 and 7) in its annual report to the General Assembly and semi-annual report to the Secretary-General.
3. IAD is assessing the overall quality of its audit process and kindly requests that you consult with your managers who dealt directly with the auditors and complete the attached client satisfaction survey form.
4. I take this opportunity to thank the management and staff of DPKO and Procurement Service for the assistance and cooperation provided to the auditors in connection with this assignment.

Copy to: Ms. Donna-Marie C -Maxfield, OIC, ASD/DPKO  
UN Board of Auditors  
Ms. Margaret Simon, Chief Administrative Officer, UNOTIL  
Programme Officer, OIOS  
Mr. Nawal Yadav, Auditor-in-Charge

# Office of Internal Oversight Services

## Internal Audit Division I



### **Review of Supply of Rations to UNTAET/UNMISSET**

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**Audit no:** AP2005/682/06  
**Report date:** 22 November 2005  
**Audit team:** Nawal Yadav, Auditor-in-Charge

**EXECUTIVE SUMMARY**  
**OIOS Review of Supply of Rations to UNTAET/UNMISSET(AP 2005/682/06)**

OIOS conducted an audit of Review of Supply of Rations in UNTAET/UNMISSET in June 2005 at the request of DPKO. The main objectives of the audit was to assess the implementation of the rations contract in UNTAET/UNMISSET in the light of contractual provisions, to assess the validity of the contractor's claim, and to evaluate factors considered in the BOI report. The objective of the review was also to identify procedural and internal control weaknesses/deficiencies in the administration of the contract.

The contractor had claimed a loss of \$6.7 million due to non payment of certain overhead rates dating back to the inception of the contract in early 2000. The contractor claimed that they had not been paid for bulk, break, transportation cost to the central warehouse and insurance for which they were entitled. The Mission assumed that the contractor's itemized rate for ration was inclusive of all cost items.

The implementation of the Rations Contract in UNTAET/UNMISSET was not managed in an efficient and effective manner. The Mission did not consult Headquarter Procurement Service, UNHQ when they deviated from the previous practice of contract implementation. Moreover, approval of the OIC Administration was not sought at the time of the change in the implementation of the contract. As a result of this approach, the Mission paid a total amount of \$276,803 for bulk, break, transportation to central warehouse and insurance for the period January to June 2004, a payment which was not being paid for the first four years of the contract. Such payment at the ending stage of the contract was a serious decision in favor of the contractor and could be used as a basis to support the contractor's claim. OIOS considers that the officials who interpreted the contract provisions without the approval of the Procurement Service should be held accountable under the Rule 101.2 of Financial Regulations and Rules and the organization should take necessary action to recover \$276,803.

Moreover, OIOS noted that the contract was not clearly worded and it appeared that there were some ambiguities in the interpretation of the contract. Both the contract and the Statement of Requirement clearly set out eligible payments (mobilization, warehouse, equipment, pallet, cooler services), however, it was not mentioned in the contract whether the contractor was eligible for payment of bulk, break, insurance and transportation cost to central warehouse based on the ceiling man-day rate (CMR) table. Regarding rations, it was stated that the contractor would be paid as per the itemized rate quoted by the contractor. Furthermore, the price quoted by the contractor was INCOTERM 1990 (Delivery Duty Paid), which means that the price included all these cost components. Moreover, the objective of defining CMR was only for control purpose and it might not serve as a basis for payment unless specifically stated in the contract. Hence, the contractor's claim on the basis of CMR table does not seem tenable.

OIOS is also of the opinion that even if the contractor's claim is considered to be correct, the maximum liability of the UN would be only the unpaid value (CMR minus already paid amount), which is (i) \$2.2 million if applied to the entire contract period; (ii) \$234,992 if applied for the period after the first notification to the Mission on 5th August 2002; and (iii) \$72,399 if applied for the period after the notification to PS on 12 July 2003. Nonetheless, the contractor was also negligent for not raising the issue that there were some ambiguities regarding implementation of the

contract and also not invoicing bulk, break, insurance and transportation cost to the central warehouse until December 2003.

The Mission has also paid \$7,336,714 to the contractor for transportation cost for "delivery to the contingent" for the whole period of the contract term, although the contract did not specifically state that the contractor was entitled to such payment. It was paid after clarifications with the contractor in the Contractor Meeting at Rations Cell UNTAET held at the initial stage of the contract and approval of PS was not sought. The Mission had also overpaid \$320,750 for warehouse rent due to non-application of the reduced rent stipulated in the amendment to the contract

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## I. INTRODUCTION

1. The UNHQ Procurement Division signed a contract (contract no. PD/C0027/00) with Eurest Support Service (hereafter termed as "the contractor") for the supply of rations to the military contingents of UNTAET (subsequently UNMISSET) on 17 February 2000. The contract was initially signed for 24 months with an option to renew the contract for two additional terms of 12 months each. The contract became effective since 01 March 2000 and was extended till 30 June 2004. The value of the contract was \$37 million for the first two years of the contract period and subsequently extended up to \$61 million.
2. The contractor, in its letter dated 16 July 2004 to the UN Procurement Service, claimed loss of revenue due to non-payment of certain overhead rates dating back to the inception of the contract in early 2000. The UNMISSET (the Mission) Administration had convened a Board of Inquiry (BOI) No. 289 on this matter. The potential underpayment to the contractor was estimated to be \$6.7 million.
3. The Procurement Service (formerly known as the Procurement Division) reviewed the BOI report and raised certain questions. Further, it also raised concern that in spite of the fact the BOI report avoids any direct statement on the subject of payment of the outstanding claim from the contractor, it would appear that there was no dispute/contest of the contractor's request for payment of approximately \$6.7 million and identified the need for further review on this issue.
4. In the light of the magnitude of the disputed amount and in order to ensure an independent review of the relevant facts, the Director of Logistics Support Division, Department of Peacekeeping Operations (DPKO) requested OIOS to conduct a review of the implementation of this contract.
5. The comments made by DPKO and the Procurement Service on the draft audit report have been included in the report as appropriate and are shown in italics.

## II. AUDIT OBJECTIVES

6. The main objective of this review was to assess the implementation of the rations contract in UNTAET/UNMISSET in the light of contractual provisions, to assess the validity of the contractor's claim, and to evaluate factors considered in the BOI report. The objective of the review was also to identify procedural and internal control weaknesses/deficiencies in the administration of the contract.

## III. AUDIT SCOPE AND METHODOLOGY

7. The review covered the entire period of the contract from March 2000 to June 2004. The methodology included scrutiny of documents, analysis of the relevant data and the review of BOI report. The review did not include the detailed checking of invoices to confirm accuracy and correctness of payments, but focused on various factors which might be helpful in determining the legitimacy of the contractor's claim and suggesting improvements in contract administration.



#### IV. OVERALL ASSESSMENT

8. The implementation of the Rations Contract in UNTAET/UNMISSET was not managed in an efficient and effective manner. The Mission did not consult Headquarters' Procurement Service, UNHQ when they deviated from the previous practice of contract implementation. Moreover, approval of the OIC Administration was not sought at the time of the change in the implementation of the contract. As a result of this approach, the Mission inappropriately paid total amount of \$276,803 for bulk, break, transportation to central warehouse and insurance for the period January to June 2004, a payment which was not being paid for the first four years of the contract. OIOS considers that the officials who interpreted the contract provisions without the approval of the Procurement Service should be held accountable under the Rule 101.2 of Financial Regulations and Rules and the organization should take necessary action to recover \$276,803.

9. It appeared that there were some ambiguities in the interpretation of the contract. Both the contract and the Statement of Requirement set out eligible payments (mobilization, warehouse, equipment, pallet, cooler services), however, the contract did not mention whether the contractor was eligible for payment of bulk, break, insurance and transportation cost to central warehouse based on the ceiling man-day rate (CMR) table. Regarding rations, it was stated that the contractor would be paid as per the itemized rate quoted by the contractor. Furthermore, the price quoted by the contractor was INCOTERM 1990 (Delivery Duty Paid), which means that the price included all these cost components.

10. OIOS is also of the opinion that even if the contractor's claim is considered to be correct, the maximum liability of the UN would be only the unpaid value (CMR minus already paid amount), which is (i) \$2.2 million if applied to the entire contract period; (ii) \$234,992 if applied for the period after the first notification to the Mission on 5th August 2002; and (iii) \$72,299 if applied for the period after the notification to PS on 12 July 2003. Nonetheless, the contractor was also negligent for not raising the issue that there was ambiguity regarding implementation of the contract and also not invoicing bulk, break, insurance and transportation cost to the central warehouse until December 2003. Therefore, the contractor should be held accountable for not performing with due diligence, efficiency and sound administrative practices as required by Section 19.1 of the contract.

11. In OIOS opinion, the Mission incorrectly paid \$7,336,714 to the contractor for transportation cost for "delivery to the contingent" for the whole period of the contract term without the approval of PS. Moreover, the Mission had also overpaid \$320,750 for warehouse rent due to non-application of the reduced rent stipulated in the amendment to the contract. In OIOS view, appropriate action in accordance with Financial Regulations and Rules should be taken against the officials who allowed these situations to take place.

#### V. AUDIT FINDINGS AND RECOMMENDATIONS

##### A. Ceiling Man-day Rate (CMR)

12. The basis of the dispute between UNTAET and the contractor was the interpretation of the CMR, which is defined as the established maximum cost of food entitlement for each contingent member. As per the contract provisions, the CMR is used a control tool and the average cost of all cost items should not exceed this amount. The contractor claimed that they had not been paid for bulk, break, transportation cost to the central warehouse and insurance for which they were entitled.

The CMR for the ordered items was \$4.90 and the Mission assumed that this was inclusive of all cost items, however, the contractor claimed that they did not include bulk, break, transportation to central warehouse and insurance costs in the itemized rates of rations, but only the food component. Before coming to a conclusion about the dispute it is essential to look into all relevant terms of the contract and related documents, which could be helpful in interpreting the CMR. The relevant provisions of the contract and its related documents are in Annex 9.

13. The CMR is the maximum value of food to be allowed for the contingent. There are two choices for the contingents: Basis of Provision – A (BOP A) for western food and another is Basis of Provision –B (BOP B) for other than western food. The food items are divided into 19 categories and each category; there are certain options to choose. Appendix B of the contract comprises the detailed CMR quantities allowed per contingent as per UN rations Scale and also the contractor has quoted the price for each food item.

14. The Title heading of Appendix B (Request for Proposal) is “Ceiling Rate: US\$ per man/day” and below are the food items for which the contractor had to quote item wise rate and also the total price. At the end of the list, there is the ‘total’ row. Therefore, it is clear that the total value of CMR is the total of the items of Appendix B. It is also to be noted that almost everywhere in the contract, wherever there is comparison between invoice and CMR, it is generally stated as “applicable CMR” which could mean BOP A or BOP B. There is no provision which says that the invoices will be compared with the “food cost component” of the CMR.

15. The contractor is paid as per the detailed items supplied multiplied by the rate quoted in Appendix B of the contract. OIOS noted that the contractor had quoted the detailed itemized rate of food items, and total price for each item and also stated total CMR as \$5.548 for BOP A and \$5.680 for BOP B in Appendix B of the RFP (Refer Annex-1). OIOS checked the above total CMR with the sum of the detailed itemized CMR cost. This revealed that the actual CMR total comes to \$5.53 and \$5.81 resulting difference of \$0.02 and \$0.13 respectively in the same Appendix B of the RFP. In the first case the difference could be fairly assumed to be as a result of rounding up as the total consist of three digits after decimal but the difference in second case could not be correlated (Refer Annex –2).

16. OIOS also tried to match the CMR \$5.548 (BOP A) and \$5.680 (BOP B) as stated in Appendix B with the detailed CMR table as shown in Appendix C and D of the RFP where the elements of CMR were broken down into the following components (for details refer Annex 3 and Annex 4):

<b>Cost breakdown</b>	<b>BOP A</b>	<b>BOP B</b>	<b>Remarks</b>
Food cost	<b>\$4.084</b>	<b>\$4.097</b>	
Transport to Central Warehouse, Bulk, break, repackaging for delivery	\$0.7956 to 0.8738	\$07956 to 0.8738	Rates vary according to location
Insurance	\$0.038	\$0.038	
<b>Sub total</b>	<b>\$ 4.917 to 4.996</b>	<b>\$4.930 to 5.009</b>	
Delivery to contingent	\$0.3783 to 2.9500	\$0.3783 to 2.9500	Rates vary according to location
CMR Total	\$5.374 to 7.867	\$ 5.387 to 7.880	
Weighted Average CMR (Computed by OIOS)	<b>\$5.575</b>	<b>\$5.588</b>	



17. The CMR based on the Contractor's rate indicated in detailed itemized in Appendix B comes to \$5.53 and 5.81 for BOP A and BOP B respectively as stated in Paragraph 14. If we compare those CMR with the CMR Table as stated in Paragraph 15 (Food cost-\$4.084 and \$4.097, sub total \$4.996 and \$5.009 and Total CMR \$5.575 to \$5.588) then they come closer to the total CMR (only difference of (\$0.05 and \$0.23 respectively). Therefore ambiguity arises because the contractor did not reconcile the divergent Total CMR in Appendix B and the CMR Table. In this situation, it can be assumed that the rates quoted by the contractor are not only the food cost, but includes all costs (transport to central warehouse, bulk, break, repackaging for delivery, insurance and delivery to contingent).

#### Application of CMR in the contract administration

18. Appendix B contains various items of similar nature to enable the contingents to have an option to choose among the alternative food items. Sometimes the contingent may choose an expensive substitute item. In that case though, the quantity could be as per the Rations Scale but the CMR could go higher than the expected. Therefore, the CMR is a control on the quantity of supply. Hence, CMR could not be used as a basis for payment unless the contract specifically stated this.

19. The contract was signed for 24 months for the period 01 March 2000 to 28 February 2002. During this period the contractor never raised any disagreement in the interpretation of CMR.

20. It needs to be noted that Amendment No-1 was signed for one-year only on 18 July 2002. That amendment increased the rate of certain meat and bread items by 7.5%. At that point, the contractor also did not raise any dispute. Hence, it is evident that the contractor was satisfied with the existing payment procedure. A 7.5% change in the prices of some food items were requested by the contractor, however, the bulk, break, transportation to central warehouse and insurance costs constitute 14.5% of total CMR were not demanded.

21. The contractor first raised the issue of bulk, break, transportation to central warehouse and insurance costs during Contractor Performance Meeting held at UNMISSET Rations Cell on 5th August 2002. The Item No 6 of the Minutes states "Eurest (the contractor) raised the issue of CMR being set US\$4.9 and the other components of this figure. Eurest considers this is an operational oversight. UNMISSET is of the view this figure was agreed by Eurest to be set at this level. Plus UNMISSET is not in a position to comment on this as the complete offer and the case records of this case, when the contract was awarded to Eurest are at UNHQ and PD. This is an issue that cannot be decided at this level and Eurest has to raise it with UNHQ and not with the Mission". The contractor had not raised this issue (bulk, break and insurance) in the meeting dated 17 May 2000 when they raised the issue of payment of "delivery to contingent".

22. OIOS noted that a memo issued by Mr. Denis Cameron, OIC Joint Support Center UNMISSET on 27 October 2003, through Mr. Hugh Price, Chief Integrated Support Services and Colonel Philip Edwards, addressed to all Commanding Officers stated that "The Ceiling Man Rate (CMR) is the value of rations allowed to be ordered, per person, per day in UNMISSET. The CMR has been operating at the \$4.90 for some time in error. This rate incorrectly included transportation to warehouse and insurance costs in the food cost (CMR)". This memo was issued without consulting PS and OIC Administration UNMISSET.

23. The Mission started paying an additional amount for bulk, break, and transportation to

central warehouse and insurance since January 2004. OIOS noted that the decision was taken by the Mission without seeking appropriate authority from PS. Moreover, the OIC Administration was also not consulted for such an important change in the implementation of the contract. Since the contractor was aware that the official in Rations Cell had accepted their interpretation, they raised the invoice for those cost components and were paid accordingly.

24. OIOS also noted that a decision to reduce the CMR from 4.90 to 4.10 was initiated by Mr. Bruce Read, OIC Rations Cell who was appointed on a consultant contract for four months (24 September 2003- 13 January 2004). In the BOI Interview on 20 October 2004 Mr. Read mentioned that:

- There were large stocks in contingent kitchen and he wanted to utilize these stocks.
- Because of excess stocks, he proposed to reduce CMR from \$4.90 to \$ 4.10.
- He proposed the figure \$4.10 in order to convince the contingents for the reductions in the ordered quantity of rations; as this amount was stated in the contract.
- Confirmed that the reduced CMR \$4.10 was still inclusive of bulk, break and insurance as was the previous figure of \$4.90; therefore, the only change was in the quantity of the orders.
- Also mentioned that he did not use the word "error" in his draft memo but his supervisor added in the final memo.

25. Mr. Denis Cameron stated in his BOI Interview on 20 October 2004 that he added the sentence (about error) in order to convince the contingent to reduce the CMR. He also confirmed, with the understanding of Mr. Read, that \$4.10 was inclusive of Bulk, break and insurance. Furthermore, he also accepted that he did not check the contractor's invoice (which he should have done) that the contractor had claimed separately for bulk, break and insurance on top of \$4.1. He admitted that the Mission had been overpaying for bulk, break and insurance since January 2004 so the Mission can claim against the contractor.

26. OIOS considers that the Officials involved in paying unauthorized amount without consulting appropriate authorities (PS and UNMISSET's OIC Administration) should be held personally accountable under Rule 101.2 of the Financial Regulations and Rules and the organization should take the necessary action to recover \$276,803 (For details Refer Annex-5) from the contractor. This has not only resulted in excess payment to the contractor, but the contractor was given the impression that their claim was justified, which can be used as evidence against the UN resulting in further complication in the case.

27. Section 12.2.2 of the Rations Contract (PD/C0027/00), prohibits the contractor from supplying amounts exceeding CMR. Therefore, if the contractor deliberately delivered rations in excess of that allowable by CMR (as the contractor interprets), then the contractor was in breach of contract according to Section 19.1, which states " The contractor shall perform its obligations under this contract with due diligence and efficiency and in conformity with sound professional, administrative and financial practices." Section 19.2 states "The contractor shall act at all times so as to protect, and not be in conflict with, the interest of the UN, and shall use its best efforts to keep all costs and expenses at a reasonable level." Therefore the contractor has no basis to claim for the period prior to the date it raised the matter formally to PS.

28. OIOS is of the opinion that even if the UN has to accept liability due to some other evidences, the liability will start only from the date the contractor notified the UN. Furthermore, the contractor cannot claim any amount exceeding CMR value. So they can claim a maximum of unpaid CMR value (CMR minus amount already paid). The Mission has calculated total value of unpaid bulk, break, and transportation to central warehouse and insurance amounting to \$7.1 million and unpaid CMR value of \$2.2 million from March 2000 to December 2003. The unpaid CMR component is as follows:

- (a) If the 5 August 2002 on which the contractor for the first time informed the Mission is taken then the UN may have to pay \$234,992 (for details refer Annex-6).
- (b) If the 12 July 2003 (the contractor claims that they had informed PS) is taken then UN may have to pay \$72,299 (for details refer Annex-7).

### **B. Invoicing by the contractor**

29. Section 16.2 of the contract states that "Invoices for food rations shall be accompanied by copies of the Requisition for Rations and the original contractor's Delivery Notes and shall clearly indicate including (iii) the number of man-days supplied multiplied by the applicable Ceiling Man-day Rates..." Accordingly the contractor submitted invoices along with the CMR Reconciliation table. The contractor, in the Monthly CMR Reconciliation table, had taken the CMR Sub total of \$4.90 (including bulk, break and insurance) for comparing the invoice amount. Therefore it is apparent that the contractor had also agreed with the same interpretation otherwise they would have compared the invoice with CMR Food cost of \$4.10. Moreover, the invoices raised from March 2000 to December 2003 never demanded any payment separately for bulk, break, transportation to the central warehouse and insurance.

30. It is accepted as a commercial practice to raise invoice at full value for the service rendered unless the contract required invoicing to be done partially and Section 16.1 and 16.2 of the contract also explicitly requires such a practice. The invoice serves as evidence that the supplier requested payment under the contract. Section 16.1 (d) of Appendix A Part-I Statement of requirement states that "Invoice shall be paid on the basis of food ordered, inspected and received by the Mission, against the Mission's Authorized Rations Requisition. The total sum of the invoice shall not exceed the applicable Ceiling Man/Day Rate (CMR) multiplied by the number of troops and days of supplies covered by the Mission's Authorized Rations Requisition..."

31. The contractor is obliged to perform with due diligence and sound professional, administrative and financial practice, which requires timely raising of invoice for the service rendered. Furthermore, the contractor was also responsible to protect interest of the UN. Accordingly, if the contractor had any basis to make a claim, they should have raised invoice for those items which would have compelled UN to resolve the dispute on a timely manner. If this had been done there would have been two situation as follows:

- (a) If the UN had not agreed with the contractor's argument then it would have rejected the claim and in that case either the contractor would have accepted or the UN might not have extended the contract beyond 28 February 2002;

(b) If the UN would have accepted the contractor's argument then it would have reduced the CMR from \$4.90 to \$4.10 and as a result of this the volume of food supplied would have been also reduced and there would not have been any loss to the UN.

Therefore it can be concluded that the contractor had not performed in a professional manner in accordance with its responsibility.

### **C. Payment for delivery to the contingent**

32. Section 2.0 of the Annex- A "Instruction to Proposers" annexed to the RFP states that "All pricing must be quoted under INCOTERM 1990: Delivery Duty Paid to delivery locations as identified in the statement of Work. It should be noted that the Contractor was responsible for all custom clearances and any costs incurred during transportation of food stuff to and within the Mission area and/ or sectors". Section 2.1 further stated "The Price Proposal must contain fully completed formats provided under Appendix D, E, F of Annex B. Every individual product item must be separately priced."

33. OIOS noted that a meeting (Ms. Jacqueline Partridge Representative of Supply Section, DPKO) with the contractor was held in UNTAET on 17 May 2000. Item no. 12 of the Minutes of Meeting stated "On CMR, this was stated by the Eurest (the contractor) that their unit prices do not include the delivery to the site. So the transportation charge as per contract will be in addition to the food cost on the invoice, in accordance with the provisions of the contract." This was a major item for payment so it should not be raised in the Contractor Performance Meeting at the Mission level rather the contractor should have contacted PS and provided supporting documents so that PS could review and verify the legitimacy of their argument. However, the decision to pay for transportation cost was taken without proper scrutiny and analysis of the documents and also without consulting Legal Section and PS.

34. The interpretation of the contract implemented at such meeting resulted in additional payments to the contractor of \$7.337 million (see Annex 8 for calculation) for deliveries from central warehouse in Dili to the contingents. As described above, the Contract provides that prices quoted are inclusive of all costs, including delivery to contingents. Therefore, OIOS is of the opinion that the decision to make such additional payments was a significant change and a de facto amendment to the contract and caused the organization to incur expenditures in excess of those contemplated by PS and approved by the HCC. PS, which is solely authorized to change or amend the Contract pursuant to Section 45 of the Contract was not involved in this decision. Accordingly, by amending and changing the terms of the Contract (i) the contractor was in breach of such provision of the contract and (ii) all payments made by the mission on such basis should be considered as improperly invoiced by the contractor.

35. Section 16.6 of the contract states that "Each invoice paid by the United Nations shall be subject to a post payment audit by the United Nations auditors or authorized agents. At any time during the term of the contract, and for a period of two (2) years following the expirations or prior to termination of this contract, the United Nations is entitled to a refund from the contractor of any amounts shown by such audits to have been improperly invoiced and paid by the UN".

36. Based on the above facts OIOS is of the opinion that the PS should analyze this issue with



all other related documents that the contractor had submitted to PS to confirm the status of these payments. If so, UN should recover the amount from the contractor and also determine whether the official involved in this decision is personally accountable in accordance with Financial Regulations and Rules.

#### **D. BOI Report**

37. On 21 September 2004 UNMISSET convened a Board of Inquiry (BOI No 289) comprising Mr. Donald Gillies, Chief General Services as chairperson, Mr. Carl Rechards, Legal Officer and Mr. Yanic Van Der Beke, Permanent Member of BOI. OIOS found that the conclusion of the BOI report dated 9 December 2004 has addressed the managerial and administrative issues at the mission, but had not fully addressed the issues of contract interpretation.

38. The BOI also did not analyze how the CMR of \$5.548 (for BOP A) and \$5.680 (for BOP B) has been calculated and how it was linked with the CMR schedule. OIOS does not agree with the BOI's conclusion that the contractor itemized food cost does not include cost for bulk, break, transportation to central warehouse and insurance. Even if the contractor's interpretation was correct then they should be held accountable for supplying excess food without drawing this to the attention of PS and not performing in a professional manner.

39. OIOS also noted the comment in the BOI Report of Mr. Christian Saunders, Chief Procurement Services in letter dated 17 March 2005 addressed to Chief, Specialist Support Services/ DPKO which raised various questions and also stated that "In spite of the fact that the report avoids any direct statement on the subject of payment of the outstanding claim from the contractor, it would appear that there is no dispute contest of the contractor's request for payment of approximately \$6.7 million! In our opinion, however the UN does not need to try to determine to what degree, if any Eurest were culpable or negligent and thus if any dollar value should be attributed to this, given that they were surely aware of the contract terms and conditions and yet continued to quietly supply the additional quantities of the food for several years prior to bringing the issue formally to the attention of the UN". The Mission's CAO reply dated 14 April 2005 agreed with Mr. Saunders's comment.

#### **E. Administration of the Contract**

40. The UNTAET/UNMISSET Rations Contract was not managed in an efficient and effective manner. There were lapses in the implementation and monitoring of the contract. The Mission did not consult PS, which was the authorized body to make any changes, modification in the contract, and the Mission decided on its own to make additional payment. Also, PS did not adequately monitor administration of the contract. The following weaknesses were noted in the administration of contract.

##### At UNHQ level:

- (a) The contractor did not reconcile their total CMR figure with their detailed breakdown chart.. If the contractor had done this at the RFP evaluation stage, then the issue would have been clarified at the initial stage. Perhaps some mission staff involved in the contract did not have a clear understanding about the CMR concept and its application. LSD, in consultation with

PS, could have provided further briefing/training and additional documentation to further understanding of the concept.

- (b) Review of Minutes of Contractor Performance Meeting: It appears that PS has no formal system to review the Minutes of Contractor Performance Meeting in order to identify the significant issues to resolve them timely and intervene if necessary.
- The Mission decided to pay the transportation charge as per the decision taken in the Contractor Performance Meeting held on 17 May 2000. This was a serious issue, of which PS was not informed and resulting in an additional charge over the life of the contract of \$7.3 million..
  - Item No. 6 of the Minute of the Contractor Performance Meeting held on 5 August 2002 in Rations Cell UNMISSET stated, "Eurest (the contractor) raised the issue of CMR being set US\$4.90 and the other components of this figure. Eurest considers this is an operational oversight. UNMISSET is of the view that this figure was agreed by Eurest to be set at this level. Plus UNMISSET is not in a position to comment on this as the complete offer and the case records of this case, when the contract was awarded to Eurest are at UNHQ and PD. This is an issue that cannot be decided at this level and Eurest has to raise it with UNHQ and not with the Mission". PS should have clarified this issue with the contractor and should have asked why this issue was not raised before the extension of the contract, which was just signed two weeks before 18 July 2002. The contractor should have clarified this issue with PS and should have explained why this issue was not raised before the extension of the contract, which was signed two weeks before 18 July 2002. Additionally, the issue should have been raised at the meeting dated 17 May 2000 when the contractor asked for payment for delivery to contingent charges..
  - From 14 to 28 June 2003 Ms. Vevine Stamp from DPKO's Supply Section visited UNMISSET. However, she did not address the issue of bulk, break, transportation to central warehouse and insurance in her visit report and also did not draw the attention of PS.
- (c) LSD had no system to check the invoice on a sample basis to ensure the payments were being made in compliance with the provisions of the contract. Complete reliance on the Mission has a risk since the Mission staff did not have all the background information (RFP, Evaluation and other correspondence with the contractor.) and also might not have had enough experience. As a result of this the weakness/shortcoming in the implementation of the contract might not be detected and addressed timely.
- (d) Amendment of Contract:
- OIOS noted that the contract was extended twice but the amendments were not done on a timely manner. Amendment No. 1 was signed by PS on 22 July 2002 and Amendment No. 2 on 19 May 2003, which was 144 days and 70 days respectively after the extension date.
  - OIOS noted that Amendment No. 1 to the Contract was signed by the contractor on 18 July 2002. After two weeks the issue of bulk, break, transportation to central warehouse and insurance emerged (in contractor's Meeting dated 5 August 2002). Point No 5 of



Amendment No. 1 used the term "Percentage of Variation Ceiling Man-day Rates and Unit Price (Food component only) further added to the ambiguity. Similarly, Point No. 6 (a) of the same Amendment No.1 changed the rate of transport, bulk, break and repackaging to \$0.7956 (Previously 0.7956 and 0.8738 depending upon location). LSD should also have communicated to the Mission about the implications of this amendment. Prior to this amendment, the contractor had never asked for any payment for those items as it was being assumed that their itemized rates covered them.

41. At Mission Level:

The Mission should administer the contract as per the provisions of the contract. If there were any ambiguities, the Mission should have sought clarification and instruction from UNHQ. The following weaknesses were noted in this contract:

(a) Any decision having financial implication should have been brought to the attention of competent authority (PS) emphasizing the magnitude of the issue and also other related bodies e.g. Rations Cell LSD/DPKO and the Mission Administration. Only sending a copy of Minute of Contractor Performance Meeting, as a regular part of business might not draw adequate attention. Serious issues should have been addressed separately with all the background information and supporting documents. Also follow up should be done if they did not get response on time.

(b) The CAO had overall responsibility for the administration of the contract, however, she was not informed about the issue and her guidance was not sought.

(c) The Mission should pay the contractor based on the contract to avoid a situation of overpayment. But there was an overpayment by \$320,750 for warehouse rent due to non-application of reduced rent as per the amendment of the contract.

(d) OIOS requested the Mission to provide Minutes of Contractor Performance Meeting and Correspondence File relating to this contract for the period March 2000 to June 2004. Due to the downsizing of the Mission these files were sent to Archive Section. But they could only locate a Minutes File for March 2003 to March 2004 and an envelope of correspondence from July to December 2000. OIOS noticed that the Minutes were not properly filed and some of the minutes were missing also. Therefore, OIOS was unable to review the above document relating to this issue. Since the contractor has made claim against UN, which is not yet settled, it is important to ensure the documents are kept safely and in order.

#### **F. Recommendations**

42. As a result of the audit, OIOS made the following recommendations:

##### **Recommendations 1, 2 and 3**

The Procurement Service should:

(i) In conjunction with Office of Legal Affairs, request a refund from the Contractor for the improperly (as per Section 16.6 of the contract) paid amount of \$276,803 for bulk, break, transportation to central warehouse and insurance for the period January to June 2004 (AP2005/682/06/01);

(ii) Take action to recover \$320,750 for the excess warehouse rent paid to the Contractor and hold the responsible officials accountable under Rule 101.2 of the UN Financial Regulations and Rules (AP2005/682/06/02); and

(iii) In conjunction with Office of Legal Affairs, review the contractor's documents submitted to support the claim for "Delivery to Contingent" and determine whether the payment of \$7.337 Million made to the contractor without approval of PS should be recovered from the contractor (AP2005/682/06/03).

43. *The Procurement Service accepted recommendations 1, 2 and 3 and stated that in view of the large sums of money involved and the fact that the contractor has five similar contracts in other missions, a task force should be appointed to develop a corporate approach to this matter. The task force should critically examine all the details of the contract and its administration to clearly establish the UN's strategic position in case the matter is arbitrated. Recommendations 1, 2 and 3 remain open in OIOS' recommendations database pending receipt of documentation from the Procurement Service to show that they have been fully implemented.*

#### **Recommendation 4**

The Procurement Service should, in future ration contracts, ensure that all issues are resolved before extending the contract so that there are no carry forward of any issues pending resolution (AP2005/682/06/04).

44. *The Procurement Service accepted recommendation 4 but noted that in some instances for the operational reasons, minor amendments and changes to contracts that do not impact on service delivery may have to be conducted after exercising the option to extend. Recommendation 4 remains open in OIOS' database pending confirmation by the Procurement Service that it has been implemented.*

#### **Recommendation 5**

The Procurement Service should provide complete set of contract documents including all annexes to the Mission. Furthermore, it should provide other relevant information/documents and provide briefing and guidance about the provision of contract to the staff involved in contract administration at Mission level (AP2005/682/06/05).

45. *The Procurement Service accepted recommendation 5 and stated that PS as part of its standing operating procedure already provides a complete set of contract documents including all annexes to DPKO for onward transmission to the Mission. In addition DPKO provides briefing and guidance on contract administration at the mission level. Based on the Procurement Service's response, OIOS has closed recommendation 5.*

#### **Recommendations 6 and 7**

DPKO should:

(i) In conjunction with the Procurement Service, initiate action against the officials who improperly authorized the payment of \$276,803 to the Contractor without approval of Procurement Service and UNMISSET's OIC Administration under Rule 101.2 of the UN Financial Regulations and Rules (AP2005/682/06/06); and

(ii) In conjunction with Office of Legal Affairs, in the event that it is determined that the amount of \$7.337 million for "delivery to contingents" is found to have been incorrectly paid, action under Financial Regulations and Rules should be taken against the officials who approved this payment without obtaining proper authority (AP2005/682/06/07).

46. *The Logistics Support Division of DPKO partially accepted recommendations 6 and 7 and stated that it may be premature to implement these recommendations until a final determination of the level of loss to the Organization is made. Recommendations 6 and 7 remain open in OIOS' recommendations database pending receipt of documentation from DPKO showing that they have been fully implemented.*

#### **Recommendations 8 and 9**

DPKO should:

(i) Ensure there is a system to carry out periodical check on a sample basis to ensure the payments are made in compliance with the contract (AP2005/682/06/08); and

(ii) Establish a procedure to provide a review of Minutes of Contractor Performance Meeting held in missions and take action on any issue having potential significance (AP2005/682/06/09).

47. *The Logistics Support Division accepted recommendations 8 and 9 and stated that DPKO has formally established a monthly reporting regime which requires missions to provide information on payment status and copies of the minutes of contractor performance meeting held in missions.*

*This data is reviewed in HQ by DPKO desk officers as they are received. This system will be strengthened.* Based on the DPKO response, OIOS has closed recommendations 8 and 9.

#### **Recommendation 10**

DPKO should, in liaison with UNOTIL, ensure that all relevant papers relating to this contract are properly indexed and safely stored as those documents may be needed at any time during external audit, investigation or settlement of claim (AP2005/682/06/10).

48. *The Logistics Support Division accepted recommendation 10 and stated that DPKO has requested UNOTIL to secure and store all the relevant papers related to this case for transmission to New York.* Recommendation 10 remains open pending confirmation by DPKO that it has been implemented.

#### **VI. ACKNOWLEDGEMENT**

49. We wish to express our appreciation to the Management and staff of UNOTIL for the assistance and cooperation extended to the auditors during this assignment.



Annex 1

Code No	Commodity	Qty	BCP '14	Qty	Price	BCP '15	Qty	Price	Unit Price (US\$/Kg/L)	Total Price	
		(grams)	Days	kg/L	(kg)	Days	kg/L	(kg)		BCP '14 (US\$)	BCP '15 (US\$)
19.17	CURRY POWDER	0.19	30.00	0.000	3.00	30.00	0.000	3.00	3.47	0.00	0.00
19.18	DILL	0.03	30.00	0.000	0.50	30.00	0.000	0.50	3.44	0.00	0.00
19.19	DRIED CHILLI	0.03	30.00	0.000	0.20	30.00	0.000	0.20	6.75	0.00	0.00
19.20	FONDCR	0.03	30.00	0.000	0.20	30.00	0.000	0.20	9.25	0.00	0.00
19.21	GARLIC POWDER	0.08	30.00	0.000	1.20	30.00	0.000	1.20	3.84	0.00	0.00
19.22	GELATINE	0.03	30.00	0.000	0.50	30.00	0.000	0.50	12.00	0.00	0.00
19.23	GINGER FRESH	0.03	30.00	0.000	0.20	30.00	0.000	0.20	4.77	0.00	0.00
19.24	GINGER GROUND	0.03	30.00	0.000	0.20	30.00	0.000	0.20	6.00	0.00	0.00
19.25	GROUND TARRAGON	0.03	30.00	0.000	0.20	30.00	0.000	0.20	10.22	0.00	0.00
19.26	KOKUMAR	0.03	30.00	0.000	0.60	30.00	0.000	0.60	4.70	0.00	0.00
19.27	LEMON ACID EXTRACT	0.50	30.00	0.000	15.00	30.00	0.000	15.00	4.61	0.00	0.00
19.28	MARJORAM	0.03	30.00	0.000	0.50	30.00	0.000	0.50	8.44	0.00	0.00
19.29	MONO SODIUM GLUTAMATE	0.03	30.00	0.000	0.50	30.00	0.000	0.50	4.43	0.00	0.00
19.30	MUSTARD DRY	0.15	30.00	0.000	4.50	30.00	0.000	4.50	5.29	0.00	0.00
19.31	MUSTARD SEED	0.03	30.00	0.000	0.50	30.00	0.000	0.50	2.25	0.00	0.00
19.32	NUTMEG	0.02	30.00	0.000	0.20	30.00	0.000	0.20	12.00	0.00	0.00
19.33	ONION FLAKES	0.03	30.00	0.000	0.60	30.00	0.000	0.60	6.75	0.00	0.00
19.34	ONION POWDER	0.03	30.00	0.000	0.60	30.00	0.000	0.60	5.83	0.00	0.00
19.35	OREGANO	0.03	30.00	0.000	0.50	30.00	0.000	0.50	3.44	0.00	0.00
19.39	PAPRIKA	0.03	30.00	0.000	0.50	30.00	0.000	0.50	6.00	0.00	0.00
19.37	PARSLEY	0.05	30.00	0.000	1.50	30.00	0.000	1.50	14.54	0.00	0.00
19.38	PEPPER, PURE BLACK	0.33	30.00	0.000	9.90	30.00	0.000	9.90	12.07	0.00	0.00
19.39	PEPPER, PURE WHITE	0.33	30.00	0.000	9.90	30.00	0.000	9.90	11.65	0.00	0.00
19.40	PEPPER, RED (CAYENNE)	0.33	30.00	0.000	9.90	30.00	0.000	9.90	7.12	0.00	0.00
19.41	PICKLING SPICE	0.05	30.00	0.000	1.50	30.00	0.000	1.50	9.17	0.00	0.00
19.42	POPPY SEED	0.03	30.00	0.000	0.60	30.00	0.000	0.60	3.67	0.00	0.00
19.43	POULTRY SEASONING	0.03	30.00	0.000	0.20	30.00	0.000	0.20	9.72	0.00	0.00
19.44	ROSMARY	0.03	30.00	0.000	0.20	30.00	0.000	0.20	6.75	0.00	0.00
19.45	SAGE	0.03	30.00	0.000	0.20	30.00	0.000	0.20	7.68	0.00	0.00
19.46	SALT, TABLE	20.00	30.00	0.020	600.00	30.00	0.020	600.00	6.36	0.01	0.01
19.47	SAVORY	0.03	30.00	0.000	0.60	30.00	0.000	0.60	9.72	0.00	0.00
19.48	TABASCO	0.22	30.00	0.000	6.60	30.00	0.000	6.60	6.95	0.00	0.00
19.49	TARRAGON	0.03	30.00	0.000	0.20	30.00	0.000	0.20	7.72	0.00	0.00
19.50	THYME	0.03	30.00	0.000	0.20	30.00	0.000	0.20	5.63	0.00	0.00
19.51	TURMERIC	0.03	30.00	0.000	0.20	30.00	0.000	0.20	3.28	0.00	0.00
19.52	VANILLA EXTRACT	0.20	30.00	0.000	6.00	30.00	0.000	6.00	3.24	0.00	0.00
19.53	VINEGAR	5.65	30.00	0.005	169.50	30.00	0.005	169.50	0.38	0.00	0.00
19.54	YEAST, DRIED	As Required							3.02		

Total CNR US\$ 5.348 5.890

NAME/RANK	SIGNATURE	APPT.	DATE
DEMANDING OFFICER:			
AUTHORIZING OFFICER			
ISSUING OFFICER:			
RECEIVING OFFICER:			

## ESS Contract

## Summary of RFP-Appendix B( Detailed Food Cost)

	Total Price	Total Price
Food Classification (Code No.)Category	BOP- A	BOP-B
1.01 to 1.73	1.31	1.13
2.01	0.26	0.26
3.01 to 3.39	0.37	0.45
4.01 to 4.17	0.13	0.15
5.01 to 5.27	0.74	0.80
6.01 to 6.02	0.05	0.05
7.01 to 7.05	0.28	0.32
8.01 to 8.20	0.07	0.07
9.01 to 9.47	0.64	0.73
10.01 to 10.10	0.12	0.12
11.01 to 11.04	0.05	0.07
12.01 to 12.21	0.19	0.19
13.01 to 13.65	0.62	0.63
14.01 to 14.04	0.07	0.13
15.01 to 15.09	0.05	0.03
16.01 to 16.14	0.14	0.16
17.01 to 17.14	0.35	0.45
18.01 to 18.10	0.08	0.06
19.01 to 19.54	0.01	0.01
<b>Total</b>	<b>5.53</b>	<b>5.81</b>
Total CMR stated in Appendix B	5.548	5.68
Difference	-0.018	0.13
Reason	May be due to rounding up	unexplained



**ESS Contract  
Cost Summary  
Ceiling Manday rate  
East Timor  
BOP A**

Location	Strenth	Food cost	As per ESS RFP				OIOS computed		
			Transport to Central warehouse, Bulk break, reopackaging for delivery	Insurance	CMR SubTotal	Delivery to contingent	CMR Total	Total cost	Weighted Average CMR
Dili	2229	4.084	0.8738	0.038	4.996	0.3783	5.374	11,978.87	
Bacau	1436	4.084	0.8738	0.038	4.996	0.3783	5.374	7,717.21	
Lautern	175	4.084	0.8738	0.038	4.996	0.3783	5.374	940.47	
Viqueque	542	4.084	0.8738	0.038	4.996	0.3783	5.374	2,912.76	
Manatutu	225	4.084	0.8738	0.038	4.996	0.3783	5.374	1,209.17	
Ailliu/Ailleu	155	4.084	0.8738	0.038	4.996	0.3783	5.374	832.99	
Ainaro	155	4.084	0.7956	0.038	4.917	1.5700	6.487	1,005.49	
manufahi	310	4.084	0.7956	0.038	4.917	1.5700	6.487	2,010.97	
Kovasilima	635	4.084	0.7956	0.038	4.917	1.5700	6.487	4,119.25	
Bonbonaro	1292	4.084	0.8738	0.038	4.996	0.3783	5.374	6,943.34	
Ermera	627	4.084	0.8738	0.038	4.996	0.3783	5.374	3,369.56	
Liquica	328	4.084	0.8738	0.038	4.996	0.3783	5.374	1,762.70	
Ambeno	175	4.084	0.7956	0.038	4.917	2.9500	7.867	1,376.73	
<b>Total</b>	<b>8284</b>							<b>46,179.49</b>	<b>5.575</b>

Stated in Appendix B of contractor's RFP(detailed food items summary cost)

Excess in Appendix B

5.548  
0.027

**ESS Contract**  
**Cost Summary: Ceiling Manday Rate – East Timor – BOP-B**

Location	Strength	Food cost	As per ESS RFP				CMR SubTotal	Delivery to contingent	CMR Total	Total cost	Computed by OIOS Weighted Average CMR
			Transport to Central warehouse, Bulk break, repackaging for delivery	Insurance	CMR	CMR					
Dili	2229	4.097	0.8738	0.038	5.009	0.3783	5.387	12,007.85			
Bacau	1436	4.097	0.8738	0.038	5.009	0.3783	5.387	7,735.88			
Lautern	175	4.097	0.8738	0.038	5.009	0.3783	5.387	942.74			
Viqueque	542	4.097	0.8738	0.038	5.009	0.3783	5.387	2,919.81			
Manatutu	225	4.097	0.8738	0.038	5.009	0.3783	5.387	1,212.10			
Aliliu/Alleu	155	4.097	0.8738	0.038	5.009	0.3783	5.387	835.00			
Ainaro	155	4.097	0.7956	0.038	4.930	1.5700	6.500	1,007.50			
manufahi	310	4.097	0.7956	0.038	4.930	1.5700	6.500	2,015.00			
Kovasilima	635	4.097	0.7956	0.038	4.930	1.5700	6.500	4,127.50			
Bonbonaro	1292	4.097	0.8738	0.038	5.009	0.3783	5.387	6,960.13			
Ermera	627	4.097	0.8738	0.038	5.009	0.3783	5.387	3,377.71			
Liquica	328	4.097	0.8738	0.038	5.009	0.3783	5.387	1,766.97			
Ambeno	175	4.097	0.7956	0.038	4.930	2.9500	7.880	1,379.00			
<b>Total</b>	<b>8284</b>							<b>46,287.18</b>		<b>5.588</b>	

Stated in Appendix B of contractor's RFP(detailed food items summary cost)

Excess in Appendix B

5.680  
-0.092

## ESS Contract

## Payment for bulk, break, transportation to central warehouse &amp; insurance for 2004

Voucher No	Month	Week No	Bulk Break, repackaging @0.7956	Insurance @0.038	Total
4-30-02091	Jan-04	1	11,082.71	529.34	11,612.05
		2	11,110.55	530.67	11,641.22
		3	11,873.53	567.11	12,440.64
		4	11,021.45	526.41	11,547.86
		5	11,155.11	532.80	11,687.91
4-30-03244	Feb-04	6	10,949.05	522.96	11,472.01
		7	10,893.36	520.30	11,413.66
		8	10,854.37	518.43	11,372.80
		9	10,843.23	517.90	11,361.13
4-30-04106	Mar-04	10	10,949.05	522.96	11,472.01
		11	11,439.14	546.36	11,985.50
		12	10,871.08	519.23	11,390.31
		13	10,648.31	508.59	11,156.90
4-30-06016	Apr-04	14	10,536.13	503.23	11,039.36
		15	11,371.51	543.13	11,914.64
		16	11,527.45	550.58	12,078.03
		17	10,842.44	517.86	11,360.30
4-30-06-06285	May-04	18	10,898.92	520.56	11,419.48
		19	10,926.77	521.89	11,448.66
		20	11,077.34	529.97	11,607.31
		21	11,155.90	532.84	11,688.74
4-30-08184	Jun-04	22	9,178.04	438.37	9,616.41
		23	8,270.26	395.01	8,665.27
		24	5,580.34	266.53	5,846.87
		25	4,488.78	214.40	4,703.18
		26	2,812.45	134.33	2,946.78
		27	1,826.70	87.25	1,913.95
<b>Total</b>			<b>264,183.97</b>	<b>12,619.01</b>	<b>276,802.98</b>

**Maximum Amount that could be allowed as per CMR for 2002  
( after the contractor notified UNMISSET on 5th August 2002)**

WEEK	PERIOD COVERED		TOTAL TROOPS	TOTAL MANDAYS	MAX. AMOUNT ALLOWED (RATIONS UNIT)	TOTAL PAID/ DELIVERED (EUREST)	UNDER SPENDING REPORTED BY RATIONS UNIT
	From	To					
32/2002	4-Aug-02	10-Aug-02	4,657	32,599	202,082.06	199,479.25	2,602.81
33/2002	11-Aug-02	17-Aug-02	4,685	32,795	203,298.03	200,541.89	2,756.14
34/2002	18-Aug-02	24-Aug-02	4,925	32,203	199,631.53	198,213.38	1,418.15
35/2002	25-Aug-02	31-Aug-02	4,570	31,838	197,364.50	194,331.58	3,032.92
36/2002	1-Sep-02	7-Sep-02	4,823	33,609	208,343.13	207,108.22	1,234.91
37/2002	8-Sep-02	14-Sep-02	4,743	30,783	190,826.01	190,908.02	(82.01)
38/2002	15-Sep-02	21-Sep-02	4,781	33,467	207,466.71	207,690.48	(223.77)
39/2002	22-Sep-02	28-Sep-02	4,960	34,720	203,904.97	202,320.09	1,584.88
40/2002	29-Sep-02	5-Oct-02	4,958	34,706	215,147.93	213,139.94	2,007.99
41/2002	6-Oct-02	12-Oct-02	5,032	33,100	194,392.85	191,019.57	3,373.28
42/2002	13-Oct-02	19-Oct-02	4,923	32,346	200,516.32	198,535.51	1,980.81
43/2002	20-Oct-02	26-Oct-02	5,082	33,219	195,090.10	192,302.10	2,788.00
44/2002	27-Oct-02	2-Nov-02	4,864	31,670	196,325.14	189,613.01	6,712.13
45/2002	3-Nov-02	9-Nov-02	4,714	30,750	190,618.19	185,761.31	4,856.88
46/2002	10-Nov-02	16-Nov-02	4,569	31,983	198,262.63	195,853.94	2,408.69
47/2002	17-Nov-02	23-Nov-02	4,461	31,227	193,575.65	190,132.24	3,443.41
48/2002	24-Nov-02	30-Nov-02	4,329	30,303	194,691.53	191,843.41	2,848.12
49/2002	1-Dec-02	7-Dec-02	4,172	26,796	172,158.03	169,094.00	3,064.03
50/2002	8-Dec-02	14-Dec-02	3,902	27,314	175,486.49	172,341.43	3,145.06
51/2002	15-Dec-02	21-Dec-02	4,072	28,504	183,135.32	181,084.82	2,050.50
52/2002	22-Dec-02	28-Dec-02	3,872	27,104	174,139.48	174,070.31	69.17
<b>Total</b>							<b>51,072.09</b>

Unpaid CMR value as per ration record	Amount
Year 2002	51,072.09
Year 2003 (Annex-6)	183,919.95
<b>Total</b>	<b>234,992.04</b>

**Maximum amount could be allowed without exceeding CMR for 2003  
(after the contractor notified UNMISSET)**

WEEK	PERIOD COVERED		TOTAL TROOPS	TOTAL MANDAYS	MAX. AMOUNT ALLOWED (RATIONS UNIT)	TOTAL PAID/ DELIVERED (EUREST)	UNDER SPENDING(Allowed as per CMR- Paid) REPORTED BY RATIONS UNIT
	From	To					
01/2003	29-Dec-02	4-Jan-03	4070	28490	183,044.50	182,672.50	372.00
02/2003	5-Jan-03	11-Jan-03	4172	29204	187,632.59	183,229.23	4,403.36
03/2003	12-Jan-03	18-Jan-03	4069	28483	182,999.73	180,359.96	2,639.77
04/2003	19-Jan-03	25-Jan-03	3981	27867	179,041.56	176,038.96	3,002.60
05/2003	26-Jan-03	1-Feb-03	3937	27559	177,062.48	174,275.68	2,786.80
06/2003	2-Feb-03	8-Feb-03	3919	27433	176,254.14	173,456.58	2,797.56
07/2003	9-Feb-03	15-Feb-03	3945	27615	177,422.53	175,262.12	2,160.41
08/2003	16-Feb-03	22-Feb-03	3980	27860	178,996.37	176,716.71	2,279.66
09/2003	23-Feb-03	1-Mar-03	3877	26636	171,134.60	168,767.65	2,366.95
10/2003	2-Mar-03	8-Mar-03	3898	27189	174,687.77	171,192.13	3,495.64
11/2003	9-Mar-03	15-Mar-03	3935	27387	175,956.85	171,351.21	4,605.64
12/2003	16-Mar-03	22-Mar-03	3739	26173	168,156.60	164,058.97	4,097.63
13/2003	23-Mar-03	29-Mar-03	3739	26173	168,156.38	166,292.54	1,863.84
14/2003	30-Mar-03	5-Apr-03	3753	26271	168,786.09	165,184.49	3,601.60
15/2003	6-Apr-03	12-Apr-03	3717	26391	174,855.80	170,202.61	4,653.19
16/2003	13-Apr-03	19-Apr-03	3595	25165	166,730.50	162,673.93	4,056.57
17/2003	20-Apr-03	26-Apr-03	3599	25193	166,916.04	161,851.21	5,064.83
18/2003	27-Apr-03	3-May-03	3494	24020	159,145.27	155,807.89	3,337.38
19/2003	4-May-03	10-May-03	3417	23919	158,480.88	154,366.11	4,114.77
20/2003	11-May-	17-May-	3611	25277			4,204.72



	03	03			167,479.54	163,274.82	
21/2003	18-May-03	24-May-03	3586	25102	166,319.92	161,960.10	4,359.82
22/2003	25-May-03	31-May-03	3509	24563	162,742.74	144,667.73	18,075.01
23/2003	1-Jun-03	7-Jun-03	3498	24486	162,238.05	159,330.05	2,908.00
24/2003	8-Jun-03	14-Jun-03	3511	24577	162,841.06	160,090.44	2,750.62
25/2003	15-Jun-03	21-Jun-03	3538	24766	164,093.45	160,321.34	3,772.11
26/2003	22-Jun-03	28-Jun-03	3671	25697	170,262.62	165,476.06	4,786.56
27/2003	29-Jun-03	5-Jul-03	3605	25235	167,201.23	162,973.64	4,227.59
28/2003	6-Jul-03	12-Jul-03	3541	24787	164,232.60	159,396.41	4,836.19
Sub total							<b>111,620.82</b>
29/2003	13-Jul-03	19-Jul-03	3488	24416	161,776.65	154,845.94	6,930.71
30/2003	20-Jul-03	26-Jul-03	3498	24486	162,240.49	156,463.13	5,777.36
31/2003	27-Jul-03	2-Aug-03	3508	24556	162,701.90	158,509.18	4,192.72
32/2003	3-Aug-03	9-Aug-03	3516	24612	163,072.98	160,241.58	2,831.40
33/2003	10-Aug-03	16-Aug-03	3608	25256	167,340.38	164,605.49	2,734.89
34/2003	17-Aug-03	23-Aug-03	3477	24339	161,264.42	158,891.92	2,372.50
35/2003	24-Aug-03	30-Aug-03	3644	25508	168,975.40	165,852.47	3,122.93
36/2003	31-Aug-03	6-Sep-03	3559	24913	165,040.45	161,021.73	4,018.72
37/2003	8-Sep-03	14-Sep-03	3551	24857	164,669.38	162,145.32	2,524.06
38/2003	15-Sep-03	21-Sep-03	3600	25200	166,942.01	164,187.61	2,754.40
39/2003	22-Sep-03	28-Sep-03	3569	24983	165,503.64	162,078.62	3,425.02
40/2003	29-Sep-03	5-Oct-03	3558	24906	164,993.40	161,993.15	3,000.25
41/2003	5-Oct-03	11-Oct-03	3519	24633	163,184.40	160,244.11	2,940.29
42/2003	12-Oct-03	18-Oct-03	3524	24443	161,925.38	159,395.80	2,529.58
43/2003	19-Oct-03	25-Oct-03	3182	22274	147,552.72	145,888.72	1,664.00
44/2003	26-Oct-03	1-Nov-03	3211	22477	148,897.88	146,259.91	2,637.97
45/2003	2-Nov-03	8-Nov-03	2967	20769	137,579.99	135,659.73	1,920.26
46/2003	9-Nov-03	15-Nov-03	2869	20083	133,034.28	130,933.29	2,100.99



47/2003	16-Nov-03	22-Nov-03	2767	19369	128,303.03	125,809.41	2,493.62
48/2003	23-Nov-03	29-Nov-03	2629	18403	121,901.92	120,500.64	1,401.28
49/2003	30-Nov-03	6-Dec-03	2555	17885	118,469.45	116,025.73	2,443.72
50/2003	7-Dec-03	13-Dec-03	2352	16464	109,057.55	106,101.67	2,955.88
51/2003	14-Dec-03	20-Dec-03	2028	14196	94,028.88	90,885.71	3,143.17
52/2003	21-Dec-03	27-Dec-03	2005	14035	92,964.69	90,581.27	2,383.42

Unpaid CMR for July- Dec 2003 9As per Ration Cell record)

**72,299.13**

Total

**183,919.95**

**ESS Contract**  
**Transportation cost paid to contractor for delivery to contingent**

Year 2000		Year 2001		Year 2002		Year 2003		Year 2004	
Week No	Amount	Week No	Amount	Week No	Amount	Week No	Amount	Week No	Amount
18/2000	38,097.98	01/2001	49,922.80	01/2002	54,138.04	01/2003	24,239.74	01/2004	5,269.72
19/2000	54,564.52	02/2001	50,505.27	02/2002	58,204.77	02/2003	24,827.78	02/2004	5,282.96
20/2000	51,993.24	03/2001	51,991.31	03/2002	57,050.16	03/2003	24,617.50	03/2004	5,645.75
21/2000	53,384.91	04/2001	52,597.79	04/2002	51,858.49	04/2003	23,937.09	04/2004	5,240.59
22/2000	52,998.38	05/2001	52,729.14	05/2002	46,475.75	05/2003	24,023.82	05/2004	5,304.14
23/2000	51,387.00	06/2001	52,913.51	06/2002	43,170.27	06/2003	23,779.45	06/2004	5,206.16
24/2000	52,366.47	07/2001	57,208.01	07/2002	43,366.39	07/2003	23,920.69	07/2004	5,179.68
25/2000	50,848.49	08/2001	54,828.97	08/2002	42,841.10	08/2003	23,829.27	08/2004	5,161.15
26/2000	52,236.85	09/2001	56,326.18	09/2002	42,618.19	09/2003	22,624.72	09/2004	5,155.85
27/2000	51,445.30	10/2001	54,105.37	10/2002	42,790.17	10/2003	23,225.84	11/2004	5,206.16
28/2000	51,076.93	11/2001	52,746.15	11/2002	43,083.98	11/2003	23,874.04	12/2004	5,439.20
29/2000	50,466.53	12/2001	51,748.93	12/2002	41,960.09	12/2003	22,509.61	13/2004	5,169.99
30/2000	50,305.56	13/2001	51,962.63	13/2002	42,243.50	13/2003	22,683.56	14/2004	5,063.17
31/2000	50,277.08	14/2001	52,009.11	14/2002	41,615.33	14/2003	22,758.55	14/2004	5,009.83
32/2000	45,808.88	15/2001	54,650.53	15/2002	42,260.73	15/2003	22,823.49	15/2004	5,407.04
33/2000	50,323.33	16/2001	55,101.40	16/2002	42,830.71	16/2003	21,755.87	16/2004	5,481.19
34/2000	45,015.27	17/2001	55,598.59	17/2002	46,770.52	17/2003	21,944.90	17/2004	5,155.47
35/2000	49,691.85	18/2001	56,615.76	18/2002	45,044.93	18/2003	19,280.98	18/2004	5,182.33
36/2000	48,927.61	19/2001	58,195.59	19/2002	42,579.05	19/2003	19,191.88	19/2004	5,195.57
37/2000	48,767.19	20/2001	56,599.08	20/2002	39,539.31	20/2003	19,207.84	20/2004	5,267.07
37/2000	4,273.43	21/2001	53,174.19	21/2002	39,451.09	21/2003	19,546.60	21/2004	5,304.52
38/2000	48,669.41	22/2001	53,027.44	22/2002	34,408.96	22/2003	19,509.30	22/2004	4,364.07
39/2000	46,692.56	23/2001	53,320.49	23/2002	35,835.74	23/2003	19,668.13	23/2004	3,932.43
40/2000	47,521.81	24/2001	54,728.88	24/2002	37,551.65	24/2003	19,386.67	24/2004	2,653.40
41/2000	48,084.68	25/2001	39,344.81	25/2002	36,541.50	25/2003	19,765.30	25/2004	2,134.37
42/2000	49,335.41	26/2001	38,989.43	26/2002	34,387.26	26/2003	20,178.69	26/2004	1,337.29
43/2000	50,725.37	27/2001	54,943.69	27/2002	29,441.18	27/2003	19,930.77	27/2004	868.58
44/2000	51,914.11	28/2001	55,151.94	28/2002	28,433.43	28/2003	19,429.48		
45/2000	41,589.45	29/2001	54,805.04	29/2002	27,832.39	29/2003	19,142.71		

46/2000	53,931.28	30/2001	55,043.28	30/2002	27,538.88	30/2003	19,184.24		
47/2000	51,270.75	31/2001	53,876.31	31/2002	27,910.59	31/2003	18,927.38		
48/2000	51,357.11	32/2001	53,464.97	32/2002	28,379.02	32/2003	19,031.23		
49/2000	53,229.31	33/2001	53,814.50	33/2002	28,723.02	33/2003	19,382.07		
50/2000	51,850.18	34/2001	53,690.32	34/2002	29,159.17	34/2003	18,929.88		
51/2000	52,423.71	35/2001	53,320.64	35/2002	27,829.42	35/2003	19,566.49		
52/2000	50,228.65	36/2001	54,021.74	36/2002	28,643.89	36/2003	19,434.73		
		37/2001	53,901.26	37/2002	28,362.62	37/2003	19,413.55		
		38/2001	53,564.68	38/2002	28,065.47	38/2003	19,640.49		
		39/2001	53,855.67	39/2002	29,583.26	39/2003	19,606.99		
		40/2001	53,551.82	40/2002	29,210.16	40/2003	19,564.62		
		41/2001	53,200.79	41/2002	30,239.67	41/2003	19,332.66		
		42/2001	53,987.39	42/2002	28,601.73	42/2003	18,367.83		
		43/2001	53,842.30	43/2002	29,297.89	43/2003	13,403.60		
		44/2001	54,366.34	44/2002	29,285.46	44/2003	12,883.39		
		45/2001	53,198.09	45/2002	29,072.47	45/2003	11,980.40		
		46/2001	53,136.77	46/2002	28,239.72	46/2003	11,713.95		
		47/2001	53,702.70	47/2002	27,558.68	47/2003	11,388.30		
		48/2001	53,621.33	48/2002	25,944.49	48/2003	10,981.22		
		49/2001	53,776.63	49/2002	25,587.65	49/2003	10,160.48		
		50/2001	51,829.47	50/2002	24,090.39	50/2003	8,720.47		
		51/2001	54,560.27	51/2002		51/2003	5,370.35		
		52/2001	53,942.59	52/2002		52/2003	5,309.44		
<b>Total</b>	<b>1,650,428.23</b>		<b>2,771,111.89</b>		<b>1,805,648.33</b>		<b>983,908.03</b>		<b>125,617.68</b>

**G. Total**

**7,336,714.16**

**Some provisions of the Contract**

1. Section 19.1 of the contract defines the General Obligation of the Contractor, as “The contractor shall perform its obligations under this contract with due diligence and efficiency and in conformity with sound professional, administrative and financial practices.” Furthermore, Section 19.2 states “The contractor shall act at all times so as to protect, and not be in conflict with, the interest of the UN, and shall use its best efforts to keep all costs and expenses at a reasonable level.”
2. Section 45 of the contract states that “Pursuant to the Financial Regulations and Rules of the United Nations only the Procurement Division in New York possesses the authority to agree on behalf of the United Nations to any modification or change in this contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against the United Nations unless provided by an amendment to this contract signed by the Contractor and the Chief or Deputy Chief of the Procurement Division.”
3. Section 6.1 of the contract states that “The Chief Administrative Officer (CAO) of the UNTAET shall have overall responsibility for the management of this Contract..”
4. Section 8.1 of the contract stated that “The contractor shall deliver the food rations to the locations in East Timor designated in the Statement of Work as specified in the Requisition for Rations issued by UNTAET, Delivered Duty Paid (INCOTERMS 1990)...”. Further Section 4.1 of Appendix A Part-I Statement of Requirement has elaborated, “...which means that the seller fulfills his obligation to deliver when the goods have been made available at the point of delivery in the country of importation. The seller must bear the costs and the risks involved in bringing the goods to the final destination and the risk involved in storing and transporting the goods until the delivery to the unit locations where they are received and verified.”
5. Section 1.2 of the contract states that “The basis of provision of food is the UN Rations Scale and the Ceiling Man-Day Rate further described herein. The UN Rations Scale provides the maximum allowable entitlement for specific food items for such contingent member. The Ceiling Man-Day Rate sets out the maximum cost of food entitlement per day for each contingent member...”
6. Section 12.2.2 of the contract states “The quantities of food rations to be provided shall be as per written instructions of the UNTAET Designated Official in the relevant Requisition for Rations. At no time will the contractor deliver rations in quantities that would exceed the Basis of Provisioning of the UN Rations Scale (30 days cycle) or, if the total of their individual unit prices multiplied by the respective quantities were to be divided by the number of man days for which the rations were intended, exceed the applicable Ceiling Man-day Rate shown in sub-section 15.4.”
7. Section 15 of the contract deals with the payment to the contractor. Section 15.3 of the contract states that “The cost of food rations shall be based on the Contractor’s Unit Price set out in Appendix “B” which shall remain firm and unchanged during the term of this contact, and shall not exceed the Ceiling Man-Day Rates based on a total troop strength of (8284) excluding discounts set

forth in this contract, provided in Appendix B". Here the cost of food could be interpreted as all cost and accordingly, the rate quoted in Appendix-B could be fairly assumed as inclusive of all cost.

8. Section 16.1 (d) of the Statement of Requirement states that "Invoice shall be paid on the basis of food ordered, inspected, and received by the Mission... The total sum of the invoices shall not exceed the applicable CMR..." Further, Section 16.2 states about invoices for Warehousing Services and Equipment and Section 16.3 states about invoices for Pallets and cooler boxes.