



## Investigation Task Force

### Investigation into allegations of irregularities in two tender processes for the supply of cleaning machines to Pristina Airport. (Case 0280/04)

#### 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 two specific allegations in this report of investigation:
  - no proper description of the cabins for the cleaning machines was included by companies submitting bids in the first tender;
  - tender specifications for both tenders the cleaning machines were taken from the brochure of one of the companies submitting a tender, thereby giving it an unfair advantage in the tender process.

#### II. APPLICABLE TERRITORIAL LAWS AND UNITED NATIONS PROCEDURAL RULES

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

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

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

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

**Article 4 1** – "Competition among and participation in the procurement process shall be maximised."

**Article 4.1.1** – "All Suppliers and Contractors and their tenders shall be treated fairly, equally, and non-discriminatorily, without favouritism or prejudice and each Tender shall be judged on its merits."

**Article 4.3.3.** – "If a consultant or any principal, officer or employee of such consultant has participated or will participate in any manner in the preparation of

the UNMIK Kosovo Interim Administration's Tendering for a contract, including but not limited to preparations of specifications or any other Tender Documents,

no such consultant nor any principal officer or employee of such consultant, no "related person" nor any "illegal payer" may tender for or sponsor or participate in the Tendering for such contract."

**Article 15.1** – "Technical specifications and descriptions of the Goods, Works, or Services to be procured shall be carefully prepared to foster fair and open competition among all suppliers."

**Article 15.4** – "There shall be no requirements or reference in the technical specifications to a particular trademark, brand name, patent, design, type, origin, producer or service provider unless (a) there is no sufficiently precise or intelligible way of describing the procurement requirements and (b) qualifying words, such as "or equivalent" are included in such requirement or reference."

**Staff Rule 110.1: Misconduct.** "Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and the Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, leading to the institution of disciplinary measures for misconduct."

## I. 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.

## II. 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, including Official 1 and Official 2. Pillar II supervised the Department of Transport and Infrastructure (DOTI) Official 1. The DOTI was later known as the Transport Sector of the UNMIK Directorate of Infrastructure Affairs. DOTI Official 1 left UNMIK at the end of June 2002. DOTI Official 2 was recruited by 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 the PEAP Official and the Air Traffic Control Services (ATCS) Official 1.
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.

### **III. INVESTIGATION DETAILS**

9. This part of the investigation relates to two tenders for a contract, for the supply of cleaning machines at Pristina Airport. The value of the contract was €180,816.00.

#### **Allegation 1**

*(It is alleged that the first tender was irregularly cancelled due to the fact that no proper description of the cabins for the cleaning machines was included by companies submitting bids in the first tender)*

10. A bid evaluation report drawn up by the Procurement Officer, dated 18 April 2003, identifies that bids were opened in an evaluation process to select a company to supply cleaning machines to Pristina Airport on 18 April 2003. However, a notification letter from the PEAP Official and the KTA Divisional Manager to the companies participating in the tender exercise dated 6 June 2003 confirms that this tender was cancelled.
11. When asked about the reason for the cancellation, the Procurement Officer 1 stated to the ITF that the technical specifications for the first tender were taken from a catalogue of a certain producer, which offered those machines, as a result of which it predetermined the winner. He/she added that machinery specified was of the most expensive type. (See below allegation 2)
12. The Maintenance Official and Member of the Evaluation Committee, when asked the same question, stated that the first tender was cancelled due to the fact that the Procurement Officer 1 indicated there had been no proper description of the cabins for the cleaning machines in the bids submitted. However, he/she added that from his/her knowledge at least two of the companies had included a proper description of the cabins in their bid documents.

13. An Engineer at the Pristina Airport, told the ITF that the Airport requested cleaning machines with cabins in order that cleaning could be carried out in different weather conditions. However, the bidders did not include the cabin in their bids. He/she did not indicate that two bidders included a proper description in their bid documents.
14. In the light of the evidence provided, and detailed below, the ITF does not find that the first tender was irregularly cancelled due to the fact that no proper description of the cabins for the cleaning machines was included by companies submitting bids in the first tender.

## **Allegation 2**

### **First tender**

*(It is alleged that tender specifications for both tenders the cleaning machines were taken from the brochure of one of the companies submitting a tender, thereby giving it an unfair advantage in the tender process)*

15. The person responsible for drawing up the specifications for the both tenders was the Engineer at the Pristina Airport, who confirmed in interview that he/she had been asked to draw up the specifications by the Member of the Evaluation Committee. He/she also confirmed that the Member of the Evaluation Committee provided him with signed photocopies from the brochure of Vendor 1 in order to assist him in drawing up the specifications. The Engineer at the Pristina Airport added that he/she used them as a basis for the technical specifications. The ITF located a draft of an undated handwritten note from the Engineer at the Pristina Airport to the KTA Divisional Manager, which confirms that he/she used the photocopies from the brochure to assist him in drawing up the technical specifications for the cleaning machines. The Member of the Evaluation Committee confirmed to the ITF that he/she handed the signed pages to the Engineer at the Pristina Airport to assist in the preparation of the technical specifications for the cleaning machines.
16. The Engineer at the Pristina Airport and the Member of the Evaluation Committee were asked in interview whether they were aware of the provision of Article 15 of Financial Administration Instruction No. 2/1999, and in particular Articles 15.1 and 15.4. The Engineer at the Pristina Airport indicated that he/she worked on the general principle set out in Article 15.1, but had not seen Article 15.4; whilst the Chairman of the Evaluation Committee appeared to be ignorant of Article 15 altogether.

### **Second tender**

17. A bid evaluation report dated 30 June 2003 indicates that a second tender exercise was undertaken following the cancellation of the first one.
18. Pristina Airport Procurement Officer 2 in the second tender indicated that although Procurement Officer 1 published the tender, Procurement Officer 2 did the bid opening and was the Member of the Evaluation Committee. This is confirmed in a memorandum from Procurement Officer 2 to the PEAP Official

dated 9 July 2003, which identifies the evaluation committee members and in an ITF interview with Procurement Officer 2, the PEAP Official did not refer to Procurement Officer 2 or the second tender evaluation committee in his/her interview.

19. Procurement Officer 2 added that the evaluation committee chose Vendor 2. However, after he/she had drafted the contract and letter of acceptance for signature, he/she was instructed by the Airport management, although he/she did not state by whom, to put it on hold until the technical evaluation committee and airport management had organised a meeting with the Procurement Officer 1.
20. According to Procurement Officer 2, the reason for the meeting was due to concerns that the winning bid was the second most expensive and doubts that the technical specifications had given an unfair advantage to one company.
21. An examination of the technical evaluation report and Vendor 2's bid documentation suggests that the specification produced by Vendor 2 was very similar to the specification requirement, although there is no evidence that it was provided with the technical specifications in advance. In addition, Vendor 1, the company from whose brochure the specifications were taken, did not submit a bid.
22. An Internet search indicates Vendor 1 is the second largest producer of industrial cleaning machines in one United Nations member state being founded in 1966. It went into insolvency in 2002 and was bought by a multi-national company. An Internet search of its directors does not indicate any connection with Vendor 2. There is also no indication that Vendor 2 is connected to the multi-national company.
23. The Engineer at the Pristina Airport, in interview with the ITF, also stated that the evaluation committee had raised doubts as to whether it would be worthwhile purchasing the cleaning machines, which whilst meeting the specification criteria, came at a high price.

#### **IV. FINDINGS OF FACT**

24. The first tender for cleaning machines was cancelled due to alleged deficiencies in the description of the cabins for the cleaning machines in the bids submitted and the fact that a brochure from the Vendor 1 was used in the preparation of the technical specifications for the cleaning machines. This gave rise to concerns that the technical specifications had given an unfair advantage to one company, namely Vendor 1.
25. The second tender was not awarded due to concerns that the technical specifications produced from the brochure of Vendor 1 had given an unfair advantage to one company; and doubts as to the high purchase cost of the cleaning machines which met the specification criteria.

## **V. CONCLUSIONS**

26. On the available information, the decision leading to the cancellation of the first tender was correct, since concerns had been raised concerning both the descriptions of the machines to be purchased and the fact that a brochure from Vendor 1 was used in the preparation of the technical specifications for the cleaning machines. This gave rise to concerns that the technical specifications had given an unfair advantage to one company in breach of Article 15.1 of

UNMIK Finance Administrative Instruction 1999/2 on Public Procurement using Kosovo Consolidated Budget Funds.

27. The reasons for the second tender not proceeding appear to be well founded if concerns were expressed over the offer price and the technical specification. However, there is insufficient evidence to indicate whether in this instance, the use of technical specifications from a particular company brochure was a deliberate attempt to corrupt the tender process or due to ignorance of the regulations.

## **VI. RECOMMENDATION**

28. Based on the above information, the ITF recommends that UNMIK refer this report to the D/SRSG Pillar IV for any action deemed appropriate with regard to ensuring that staff involved in preparing tenders do not utilise technical specifications that would give an unfair advantage to individual companies in the course of subsequent tender exercises (IV04/280/01).