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

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**FINAL REPORT ON A CONCERNED
UNITED NATIONS STAFF MEMBER
AND UNOPS PROCUREMENT**

Report no. PTF-R012/07

Case no. PTF/048/06

STRICTLY CONFIDENTIAL

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15 August 2007

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I. INTRODUCTION

1. This Report resulted from an investigation conducted between December 2006 and June 2007 by the Procurement Task Force (“the Task Force”) of the Office of Internal Oversight Services (“OIOS”). The Task Force was created on 12 January 2006 to address all procurement matters referred to the Office of Internal Oversight Services. The creation of the Task Force was the result of perceived problems in procurement initially identified by the Independent Inquiry Committee into the Oil-for-Food Programme.

2. Under its Terms of Reference, the Task Force operates as part of OIOS, and reports directly to the Under-Secretary General for OIOS.¹ The remit of the Task Force is to investigate all procurement cases, including all matters involving procurement bidding exercises, procurement staff, and vendors doing business with the United Nations (“the United Nations” or “the Organisation”).²

3. This investigation of the Task Force focuses on Subject 1, an Operations Assistant at the United Nations Office for Project Services (“UNOPS”). Subject 1 was a supervisory procurement official handling contract selection exercises for UNOPS’ Eastern and Southern Africa Regional Office in Nairobi (“ESARO”). The investigation has identified that Subject 1, together with her husband, Subject 2, and certain UNOPS vendors, participated in a scheme to steer contracts to companies connected to Subject 1. This was done through the submission of fictitious bids from companies that were, purportedly, but not truly independent in the process and were, in fact, associated with Subject 2. Subject 1 was instrumental to this scheme, as she steered UNOPS contracts to companies with ties to her husband, as well as improperly shared confidential United Nations information with these companies to facilitate the alteration of bid documents by her husband and his associates.

4. On 6 June 2007, the Task Force issued its Interim Report on Subject 1 and UNOPS procurement operations (“the Interim Report”).³ The Interim Report focused on allegations that Subject 1 had been systematically corrupting the procurement process in the ESARO office. After conducting a thorough and independent review of Subject 1’s activities while employed at UNOPS, the Task Force found that Subject 1, together with her husband, participated in a scheme to steer contracts to Depasse Logistics, owned and managed by Subject 2.⁴ As a result of this scheme, Subject 1 and Subject 2 improperly benefited at the expense of the Organisation.

5. The purpose of this second report is to inform the Organisation of the full scope of the illegal conduct perpetrated by Subject 1, her husband, Subject 2, and associated

¹ Terms of Reference of the Procurement Task Force (12 January 2006).

² *Id.*

³ Procurement Task Force, Interim Report On a Concerned United Nations Staff Member and UNOPS Procurement, Report no. PTF-R003/07 (6 June 2007).

⁴ The scheme was accomplished through the submission of purportedly independent bids from companies which appeared to be legitimate competitors. In fact, the bids were not independent as their submission was organized by Subject 2 and his associates, and, in each case, included a proposal from Depasse.

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companies, as identified by the Task Force. To this end, this Final Report focuses on other companies in addition to Depasse Logistics that are similarly controlled by Subject 2 and his associates. Specifically, it addresses the full extent of the scheme to defraud the Organisation that was executed by Subject 1 and her husband. This Report sets forth clear and persuasive evidence that, in addition to improperly directing UNOPS contracts to Depasse Logistics, Subject 1 steered a number of additional contracts to other companies, such as MicroSun and Solutions (Kenya) Ltd., associated with and, in some cases, owned by Subject 2. Further, the Task Force has identified evidence that Subject 2 and Subject 1 accepted kickbacks from at least two other ESARO vendors (apart from those owned by Subject 2). As a result of this scheme, the Organisation has incurred substantial financial loss.

6. The Task Force has made multiple requests for documents and records of a number of companies associated with Subject 2 and involved in the relevant procurement exercises. Several of these entities and their principals have failed to cooperate with the Task Force's requests, including Subject 2 who has not cooperated at all.

II. OVERVIEW

7. Subject 1 was first employed at UNOPS-ESARO in Nairobi, Kenya in early January 2006. Originally, Subject 1's job title was "Operations Assistant," although her title later changed to "Administrative Associate." As a member of the Operations Section and assistant to the Operations Manager, she played a key role in ESARO procurement in 2006. Around March–April 2006, she became the *de facto* ESARO procurement officer.

8. Subject 2 is the owner of two ESARO vendors, namely Depasse Logistics and MicroSun and Solutions (Kenya) Ltd. He is also associated with several other companies, namely Company 1, Compfit Systems, Joy-Mart Enterprises, Kenelec Supplies Ltd., Zambezi Investments, and Joe's Freighters.

9. Subject 1 failed to disclose to the Organisation the conflict of interest created by her husband's and her own links to ESARO vendors, as expressly required by the UNOPS Procurement Manual.⁵ In fact, not only did she directly violate her obligation as a UNOPS staff member to excuse herself from the procurement process in matters relating to these vendors, Subject 1, together with her husband and his associates, conspired to steer contracts to companies owned by or associated with Subject 2.⁶ In so doing, Subject 1 and Subject 2 defrauded the Organisation and corrupted the procurement process for personal enrichment and to benefit her husband, Subject 2.

10. As described in the Interim Report, Subject 1 initially instructed Subject 3, the Procurement Assistant at the time in question, to pass contracts to her husband's company, Depasse Logistics. Later, once Subject 1 became the *de facto* procurement

⁵ See Section 1.6.1 (4) of the UNOPS Procurement Manual, Rev. 1 (February 2007) ("Individuals having a personal or financial interest in a supplier responding to a solicitation are prohibited from any involvement in the procurement process. . . Any procurement personnel maintaining a conflict of interest or potential conflict of interest should immediately notify his supervisor.").

⁶ *Id.*

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officer, she had full autonomy to decide which companies would receive requests for quotations during the solicitation process. In furtherance of the scheme, and in direct violation of UN Staff Regulations and UNOPS Procurement Ethics, Subject 1 would send requests to her husband's private email address, as well as to the email addresses of companies he owned or with which he was associated.

11. One particularly compelling piece of evidence demonstrating Subject 1's participation in this scheme is an email dated August 2006 from an ESARO vendor to Subject 1's brother. This email reads, "Ref mail from Subject 1 that approx a 3000 tender, we can use MSS Kenya for that one. Ask Subject 1 to bring the big dogs the 30 million [sic] deals! When do you get back?"⁷ This email is a reference to Subject 1's passing information to vendors in an attempt to steer contracts to persons with whom she has a personal relationship.

12. The bids ESARO received were, therefore, not from either well-known or reputable local or international suppliers or from longstanding ESARO vendors used prior to Subject 1's employment. Rather, bids were submitted by companies that were, in effect, brokers for actual suppliers, operating from Post Office Boxes and mobile telephones. In certain instances, the Post Office Box number these companies gave out was, in fact, the same number as Subject 1 had indicated as her own on an employment form for the UN. Equally striking is the fact that the telephone number utilized by these companies in transactions with ESARO was exactly that of the mobile phone issued to Subject 1 herself by UNOPS. Likewise, the laptop computer on which correspondence from these companies to ESARO was drafted was Subject 1's own, issued to her in a professional capacity by UNOPS and kept in the private home she shared with Subject 2.

13. Posing as independent companies, Subject 2 and his associates arranged to rig bid prices for UNOPS contracts. This process was facilitated by Subject 1, who would feed her husband confidential information to which she was privy only as a result of her position at ESARO. The evidence of a widespread and prolonged pattern of fraud includes admissions of fraudulent activity by participants in the scheme, as well as material links between the companies and Subject 2, and often Subject 1. Moreover, the Task Force identified an array of evidence indicating a close association between the various companies bidding for ESARO contracts—namely, identical or linked owners and employees, shared contact addresses, as well as various similarities in appearance between the different companies' bids, suggesting that they were drafted using the same template or by the same person. As a result of this fraudulent scheme, Subject 1 and her husband, Subject 2, derived a personal benefit from these companies' contracts with UNOPS since either (i) Subject 2 owned or maintained a proprietary interest in the company awarded an ESARO contract; or (ii) a company associated with Subject 2

⁷ James Ochola email to Subject 1's brother (18 August 2006) (viewed during Mr. James Ochola's interview on 26 February 2007). Mr. James Ochola declined to print the emails but said he would forward them to the Task Force. He has not done so and has not responded to further attempts to contact him. Mr. James Ochola interview (26 February 2007); MSS Ethiopia (salesmss@ethionet.et) email to Mr. James Ochola (18 July 2006) (reviewed during Mr. James Ochola's interview on 26 February 2007).

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and/or Subject 1 was awarded a contract only after paying a kickback to either or both of them.

14. In addition to this scheme, the Task Force identified two other methods by which Subject 2 corrupted the ESARO procurement process: First, Subject 2 would obtain the invoices issued by the freight forwarding company Joe's Freighters and increase the bid price as it appeared on the invoices prior to submission to ESARO for payment. The result of this scheme was that Subject 2 pocketed the difference between the original cost set by Joe's Freighters and the artificially elevated cost he offered in its place. Second, Subject 2 routinely requested and, in some cases, received, commission payments for work by vendors, including Kenelec Supplies and Zambezi Investments, on their contracts with ESARO. Although the Task Force has not yet been able to determine whether the award of these contracts was itself a result of fraud, these payments to Subject 2 clearly represent a breach by the vendor of the UNOPS General Terms and Conditions of contract as well as a conflict of interest for Subject 1, given that Subject 2 is her husband.

15. On a more general level, this Report also details how the ESARO procurement system failed to prevent Subject 1 and her husband from systematically executing this scheme and thereby defrauding the Organisation. This was in part due to systems failures in the structure of ESARO, a lack of oversight by Subject 1's direct supervisors, as well as a number of ESARO staff members' failure to report the misconduct they knew or suspected was occurring.

III. ALLEGATIONS

16. In its Interim Report, the Task Force identified four Depasse contracts, totalling US\$15,441, awarded as a consequence of a scheme executed by Subject 1 and her husband, Subject 2. This Final Report discusses an additional eight contracts that the Task Force believes were achieved through fraud and corruption. These eight contracts were awarded to six companies, each of which is associated with Subject 2. In addition, this Report discusses Subject 2's connections to four other companies. The total value of the contracts awarded to these ten companies is in excess of US\$800,000. As a result of Subject 1's actions, it is quite possible that the majority of ESARO contracts awarded to local companies during the year 2006 were in some way tainted with fraud, irregularity and corruption.

17. This Report originally stems from a complaint to the Task Force regarding procurements for the United Nations International Strategy for Disaster Reduction. This complaint included allegations that certain procurement exercises had been manipulated to favour companies connected to Subject 2 in order to ensure that these companies achieved contracts with the Organisation. It was further alleged that Subject 2 had received a material benefit in connection with the award of these contracts. As set forth herein, after a thorough investigation, the Task Force has determined that these complaints are meritorious.

18. In addition, the complainant alleged ongoing systematic fraud at ESARO, carried out by Subject 1 and Subject 2, who colluded with several United Nations vendors to assist them in obtaining UNOPS contracts—thereby, improperly inflating the price of such contracts.

IV. APPLICABLE UNITED NATIONS STAFF REGULATIONS AND RULES

19. The following provisions of the **Staff Regulations of the United Nations** (“the Staff Regulations”) are relevant:

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

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

(iii) **Regulation 1.2(g)**: “Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favor. Nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favor.”¹⁰

(iv) **Regulation 1.2(i)**: “Staff members shall exercise the utmost discretion with regard to all matters of official business. They shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public.”¹¹

(v) **Regulation 1.2(m)**: “Staff members shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for the staff member or the profit-making, business or other

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

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

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

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

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concern to benefit from such association or financial interest by reason of his or her position in the United Nations.”¹²

(vi) **Regulation 1.2(r)**: “Staff members must respond fully to requests for information from staff members and other officials of the Organisation authorized to investigate possible misuse of funds, waste or abuse.”¹³

20. The following provision of the **Staff Rule of the United Nations** is relevant:

(i) **Rule 112.3**: “Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member’s gross negligence or of his or her having violated any regulation, rule or administrative instruction.”¹⁴

21. The following provisions of the **Financial Rules and Regulations of the United Nations** are relevant:

(i) **Regulation 5.12**: “The following general principles shall be given due consideration when exercising the procurement functions of the United Nations:

- (a) Best value for money;
- (b) Fairness, integrity and transparency;
- (c) Effective international competition;
- (d) The interest of the United Nations.”¹⁵

(ii) **Rule 105.14**: “[P]rocurement contracts shall be awarded on the basis of effective competition.”¹⁶

22. Provisions of Section 1.6 set forth in the current **UNOPS Procurement Manual** are relevant.¹⁷

1. 6 Procurement ethics

All procurement officials shall maintain an unimpeachable standard of integrity in all business relationships, both inside and outside UNOPS. Ethical conduct shall apply in all dealings with UNOPS clients, donors, Governments, partners and the general public. Procurement personnel shall never use their authority or office for personal gain and will seek to uphold and enhance the standing of UNOPS.

...

All individuals are responsible for the regularity of actions taken by them in the course of their official duties, and any staff member that takes action

¹² ST/SGB/2006/4, reg. 1.2(m) (1 January 2006).

¹³ *Id.*, reg. 1.2(r).

¹⁴ ST/SGB/2002/1, rule 112.3 (1 January 2002) (amended by ST/SGB/2005/1 dated 1 January 2005).

¹⁵ ST/SGB/2003/07, reg. 5.12 (9 May 2003).

¹⁶ *Id.*, rule 105.14.

¹⁷ UNOPS Procurement Manual, Rev. 1 (February 2007).

contrary to the FRR or the Staff Regulations and Rules of the United Nations may be held personally responsible and financially liable for the consequences of such action.

1.6.1 Ethics in dealing with suppliers

UNOPS shall seek to treat all suppliers in a fair and equal manner in line with the principle of fairness, integrity, and transparency in the procurement process.

Nothing should prevent suppliers from competing for UNOPS business on a fair, equal and transparent basis. Staff associated with the procurement function, therefore are responsible for protecting the integrity of the procurement process and maintaining fairness in UNOPS' treatment of all suppliers.

All UNOPS personnel, and others, involved in the procurement process on behalf of the organization must ensure to abide by the following standard of conduct:

1. During the pre-solicitation phase, no one must allow suppliers' access to specific, privileged information on a particular acquisition before such information is available to the business community at large.
2. During the solicitation phase, all suppliers must receive identical information. Any clarifications to the solicitation documents must be provided at approximately the same time, in writing, to all suppliers (see Chapter 5.3.1 Queries from suppliers, pre-bid conference and pre-site inspection)...
4. Individuals having a personal or financial interest in a supplier responding to a solicitation are prohibited from any involvement in the procurement process.
5. During the evaluation, the evaluation criteria specified in the solicitation documents must be applied in the same manner for each evaluated offer.

Any procurement personnel maintaining a conflict of interest or potential conflict of interest should immediately notify his supervisor.

...

1.6.3 Ethics behaviour of suppliers

Suppliers shall adhere to the highest ethical standards, both during the bidding process and throughout the execution of a contract.

The extreme case of unethical behaviour is when suppliers engage in corrupt practices. The list of definitions set forth below indicates the most common types of corrupt practices among suppliers:

1. Bribery. The act of unduly offering, giving, receiving or soliciting anything of value to influence the procurement process.

...

3. Fraud. The misrepresentation of information or facts for the purpose of influencing the procurement process.

4. Collusion. The agreement between bidders designed to result in bids at artificial prices that are not competitive.

UNOPS shall reject requests for vendor registration as well as offers from suppliers behaving unethically, and may declare firms ineligible - both the organization and its board of directors and/or personnel individually -, either indefinitely or for a stated period of time. The organization may also cancel or terminate contracts for the same reason.

Prior to exclusion of any supplier due to any of the reasons stated above, Global Service Centre (GSC) or a UNOPS legal advisor must always be consulted. The ultimate authority for exclusion of a supplier rests with the General Counsel.

23. The following provision from the **UNOPS General Terms and Conditions of Local Purchase Orders** is relevant:¹⁸

(i) **Article 19:** “The Vendor warrants that no official of the United Nations, UNDP, UNOPS or any Government has received or will be offered by the Vendor any direct or indirect benefit of any kind, or any gift, payment or other consideration in connection with or arising from the this Order or the award thereof. The Vendor agrees that breach of this provision is a breach of an essential term of this Order.”

V. RELEVANT CONCEPTS OF LAW

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

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

(ii) **Bribery:** Commonly, bribery is defined as an act of a public official to corruptly solicit, demand, accept or agree to accept anything of value from any person, in return for being influenced in the performance of any official act or being induced to do or omit to do any act in violation of the official duty of such official;

(iii) **Conspiracy:** Conspiracy is an agreement to do an unlawful act. It is a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act. In this case, it is the agreement

¹⁸ See, e.g., Local purchase order no. 2006-058 (6 March 2006).

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to engage in a scheme to improperly obtain sums of money under contracts with the United Nations not properly due and owing to them; and

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

25. If any evidence of bribery or fraud or other criminal offense is revealed during the course of the Task Force's investigations, a referral to the appropriate prosecutorial agency will be recommended.

26. The **Kenyan Anti-Corruption and Economic Crimes Act** is also relevant and applicable. The Act criminalizes bid-rigging, which is defined as any benefit that is an inducement or reward for

- (a) refraining from submitting a tender, proposal, quotation or bid;
- (b) withdrawing or changing a tender, proposal, quotation or bid; or
- (c) submitting a tender, proposal, quotation or bid with a specified price or with any specified inclusions or exclusions.¹⁹

27. The Kenyan Anti-Corruption and Economic Crimes Act further states that a person is guilty of such an offence if he or she

- (a) receives or solicits or agrees to receive or solicit a benefit to which this section applies; or
- (b) gives or offers or agrees to give or offer a benefit to which this section applies.²⁰

28. The Kenyan Anti-Corruption and Economic Crimes Act also prohibits abuse of office, which it defines as "the offense of improperly conferring a benefit on oneself or anyone else."²¹

VI. PROCEDURAL ISSUES

29. Previously, in her Response to the Interim Report, Subject 1 claimed that OIOS violated her due process rights.²² The following section sets forth the due process rights of Subject 1 as a subject of an OIOS investigation, and details the steps taken by the Task Force to ensure that Subject 1 was afforded her due process rights with respect to the matters dealt with in this Report.

¹⁹ Anti-Corruption and Economic Crimes Act, 2003, part V, sec. 44 (Kenya).

²⁰ *Id.*

²¹ *Id.*, sec. 46.

²² See Response to Interim Report Dated June 2007, Report no. PTF-R003/07, p. 2 (Undated) ("Subject 1 Response to the Interim Report").

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30. Under the OIOS Investigation Manual, and the various pronouncements from the United Nations Administrative Tribunal (UNAT), as well as the Office of Legal Affairs, the official standard of due process to which Subject 1 is entitled is “fairness.” The OIOS Manual specifies that the “fairness” requirements for a fact-finding exercise are met if the staff member has been:

- (i) made aware of any possible new instances of misconduct which arise during the investigation;
- (ii) made aware of the scope of the possible misconduct;
- (iii) given the opportunity to explain why his or her actions were proper; and
- (iv) given the opportunity to respond to the allegations, including presenting evidence, explanations, information, or witnesses to support their explanation.²³

31. It is absolutely clear that Subject 1 was afforded all of these rights in connection with the investigation. Throughout the investigation process, the Task Force ensured that Subject 1 was (i) made aware of new instances of misconduct that arose during the investigation—namely, that the Task Force was investigating the award of contracts to several companies in addition to the allegations initially brought against her concerning the award of contracts for the provision of goods and services to the United Nations International Strategy for Disaster Reduction (“ISDR”); (ii) made aware of the scope of the alleged misconduct through multiple interviews with the Task Force, as well as the Adverse Finding letter; (iii) given the opportunity to explain her actions in testimony given to the Task Force and in response to the Adverse Finding letter sent to her; and (iv) given the opportunity to respond to all allegations brought against her, including presenting additional evidence, explanations, information, or witnesses.

32. Subject 1 was interviewed on a total of four occasions. Any objective review of the Records of Conversations of Subject 1’s interviews demonstrates that Subject 1 was made fully aware of the scope of the Task Force investigations, as well as the matters of concern on which it intended to report. Thus, Task Force interviews with Subject 1 covered several issues, including those surrounding contracts awarded to multiple companies, in addition to the ISDR-related allegations. The interviews covered the actions of all companies dealt with in this Report.

33. In her very first interview, Subject 1 was made aware that the Task Force’s inquiry was of a general nature and did not pertain to any one specific allegation:²⁴

██████████ asked whether the inquiry was in response to a specific allegation. PTF replied that this was a general inquiry.

Figure: Subject 1 interview (7 December 2006)

²³ See OIOS Investigation Manual, pp. 9, 17-19.

²⁴ Subject 1 interview (7 December 2006).

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34. During her second interview, the Task Force posed the following questions to Subject 1 about multiple companies:²⁵

- 5 PTF said they would list a number of companies and wished to know the answers to the following questions:
- i a. Who she dealt with?
 - ii b. Who owns them?
 - iii c. What is her association with them outside of work?
 - iv d. What's her husband's role – owner, employee, consultant?
 - v e. How did she come to first hear of the company? Did she know them before she joined UNOPS?

Figure: Subject 1 interview (23 February 2007)

35. The companies for which the Task Force solicited answers to these questions included the following companies, all of whose actions and relationships to her husband formed part of the investigation and of this Report:

- (i) Kenelec Supplies;
- (ii) Joe's Freighters;
- (iii) Depasse Logistics;
- (iv) Company 1;
- (v) El Paso Interiors;
- (vi) Lins Consult;
- (vii) Joy-Mart Enterprises;
- (viii) Zambezi Investments;
- (ix) Diesel Care Ltd.;
- (x) MicroSun and Solutions (Kenya); and
- (xi) Compfit Systems.

36. Throughout interviews with the Task Force, Subject 1 was asked about multiple contracts, awarded to several of these eleven companies. She was also asked about her knowledge of the many individuals who figure prominently in this Report, since they are connected to these companies and to her husband. The procurement exercises discussed during the interviews concerned those for both UNOPS itself, as well as for other United Nations agencies, including ISDR. In addition, during interviews with the Task Force, investigators showed to Subject 1 key documents relied on in this Report and solicited her comments on them.

37. Further, Subject 1, prior to the issuance of the Report, was provided with an Adverse Finding letter which set out the proposed findings of the Task Force and

²⁵ Subject 1 interview (23 February 2007).

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solicited her response to these findings. This document gave Subject 1 a clear indication of the scope of the investigation, including the Task Force's intention to report on her and notice of the intention of the Task Force to report upon her husband's links to multiple companies. The purpose of this notice letter was to solicit and consider her views prior to the issuance of the Report, and comply with due process obligations. In that regard, the letter invited Subject 1 to comment on any of the proposed findings. Subject 1 did submit a response to the Adverse Finding letter, but nowhere in this response did she complain that she was not aware of the scope of the Task Force's inquires.

38. Moreover, the Adverse Finding letter also offered Subject 1 the opportunity both to submit any evidence she wished for the Task Force's consideration, and to make available for her review any of the documents on which the Task Force intended to rely. Subject 1 failed to avail herself of either of these opportunities.

39. Subject 1 cannot have had any doubt after these processes that the scope of the investigation covered much more than simply the allegation regarding ISDR in Nairobi—specifically, that the investigation covered all of her procurement activities as a UNOPS staff member in 2006 and focused on the actions of the companies detailed in this Report. In particular, the investigation dealt with the associations of these companies with her husband, as well as the procurement processes which lead to ESARO having awarded contracts to these companies. Further, Subject 1 was afforded the opportunity to explain her actions and respond to all allegations brought against her, including the opportunity to present additional evidence, explanations, information, or witnesses.

VII. METHODOLOGY

40. In December 2006, Task Force investigators interviewed a witness who asserted that Subject 1, an Operations Assistant with ESARO, was committing systematic fraud by improperly steering contracts to companies owned by or associated with Subject 2.²⁶ It was also learned at that time that Subject 1 was planning to take an imminent leave of absence. In light of this fact, as well as because the Task Force was aware that staff members allegedly involved in corruption maintained ongoing access to relevant files, the Task Force secured evidence (including documents and computer hard drives) and conducted preliminary interviews. In addition, investigators later examined voluminous forensic data, electronic media, and hard-copy documents. The use of forensic tools has been invaluable to this investigation.

41. The Task Force has also sought cooperation from relevant vendors, their representatives, and their principals. On a number of occasions, cooperation was not provided. This caused certain difficulties in collecting pertinent information and delayed the investigation. As stated elsewhere in this Report, as well as in other reports issued by the Task Force, it is important to emphasize that the Task Force has limited coercive powers and lacks any ability to issue subpoenas. The vendors and other third parties involved in investigations often view their cooperation as voluntary. Therefore, the Task Force must depend on their freely given consent when seeking their assistance.

²⁶ Confidential informant interview.

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42. Investigators visited Nairobi and interviewed former and current United Nations staff members, as well as representatives of various vendors and other witnesses. A written record of conversation was prepared after each such meeting with the interviewee. Thereafter, the Task Force invited all interviewed staff members to review this record for accuracy, as well as to propose additions, deletions, and amendments before signing this document. In interviews with witnesses, including staff members and vendor representatives, the Task Force reviewed numerous documents and subsequently offered these persons the opportunity to further review any additional materials the Task Force collected in the course of the investigation.

43. The Task Force interviewed Subject 1 on three separate occasions—namely, on 7 December 2006 and 23 and 25 February 2007. The Task Force repeatedly requested an interview with Subject 2, both directly, and indirectly through Subject 1. Subject 2 failed to comply with any and all requests to meet with investigators.²⁷ For this reason, the Task Force finds that Subject 2 was not cooperative with the investigation.

44. The Task Force investigators also collected and examined a large volume of documentary evidence, including electronic records. The records collected by the Task Force include:

- (i) Procurement files;
- (ii) Local Purchase Orders;
- (iii) Relevant bids and requisitions for the contracts involved;
- (iv) Vendor registration files;
- (v) Local Procurement Committee minutes;
- (vi) Telephone records;
- (vii) Personnel files;
- (viii) Correspondence files;
- (ix) Calendars and diaries; and
- (x) Various types of electronic evidence.

45. The Task Force made significant efforts to locate and obtain all files relevant to the allegations brought against Subject 1. However, many files located were incomplete and missing significant documentation.²⁸ Nevertheless, the Task Force recovered and rebuilt some of the missing records using forensic tools. Some of these records were extracted from data stored on various computers as well as retrieved from other sources through forensic tools. However, despite extensive efforts, the Task Force was unable to locate certain documents.

²⁷ The Task Force note-to-file (12 February 2007); The Task Force emails to Subject 2 (7 February, 7 March, and 10 April 2007); Subject 1 interview (25 February 2007).

²⁸ An internal ESARO review noted the fact that many files were incomplete, which was further corroborated by ESARO staff. Staff Member 2 email to the Task Force (5 March 2007) (attaching UNOPS internal review); Staff Member 3 interview (2 March 2007); Subject 3 interview (22 February 2007).

VIII. BACKGROUND

A. THE UNITED NATIONS OFFICE OF PROJECT SERVICES

46. UNOPS is a non-profit agency within the United Nations that provides a wide-range of operational management services to public and private institutions. These services include assisting clients in the hiring and training of project personnel, procuring goods and services, implementing projects, managing contracts, and supervising loan activities. UNOPS does not make a profit, but instead charges its clients a fee covering the cost of the services provided.²⁹

47. UNOPS offers customized procurement and contracting services to other United Nations agencies, international financing institutions, and governments. It has offices in Copenhagen, Denmark, as well as thirty three regional offices located worldwide. Although the main procurement office is located in Copenhagen, most procurement exercises are undertaken by these other regional and project offices.³⁰

B. EASTERN AND SOUTHERN AFRICA REGIONAL OFFICE

48. ESARO is a regional office of UNOPS, located in Nairobi, Kenya.³¹ From January until September 2006, Staff Member 6 served as the Regional Director for the office. The Operations Manager, Staff Member 7, oversaw operations for the office, including procurement activities. Subject 1 served as Staff Member 7's assistant in Operations. Staff Member 7 was also assisted by Subject 3, a Procurement Assistant with ESARO, as well as, on occasion, by Staff Member 13, a Logistics Assistant.³² Both Staff Member 7 and Staff Member 6 left the Organisation in December 2006.

C. SUBJECT 1

49. Subject 1's *curriculum vitae* reflects that she holds a degree in law and a Masters in Business Administration ("MBA"). According to her *curriculum vitae*, prior to joining the United Nations, Subject 1 worked for a law firm in Nairobi for two years. Her *curriculum vitae* also represents that Subject 1 served as an attorney with the Kenyan Attorney-General's Chambers prior to her employment with the Organisation.³³

²⁹ United Nations Office for Project Services, "Overview," www.UNOPS.org/UNOPS/Procurement/Overview.

³⁰ *Id.*

³¹ The ESARO was the Eastern and Southern Africa Regional Office. In October 2006, the WESARO (West Africa) merged with ESARO to become one Africa Office ("Africa Regional Office") under one Regional Director, instead of two. Staff Member 5 email to the Task Force (11 May 2007).

³² Staff Member 6 interview (13 April 2007); Staff Member 7 interview (26 February 2007); Subject 3 interviews (22 and 27 February 2007); Subject 1 interview (7 December 2006).

³³ Subject 1 *curriculum vitae* (undated) (obtained from Subject 1's ESARO personnel file).

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50. Subject 1 joined the United Nations in June 2005 as an intern with the Internal Audit Division of OIOS.³⁴ In January 2006, she was hired as a temporary Operations Assistant at ESARO.³⁵ As an Operations Assistant, Subject 1 assisted the Operations Manager, Staff Member 7, who supervised the procurement function for ESARO. At this time, Subject 3 worked for Staff Member 7 and handled virtually all procurement activities. Although Subject 1 was formally assigned to work under Staff Member 7's supervision, part of her role was to monitor and assist Subject 3 with UNOPS procurement.³⁶

51. In March 2006, after supervisors at ESARO determined that Subject 3 had failed to perform in a satisfactory manner, Subject 1 was given greater procurement responsibilities. Thereafter, although Subject 3 remained involved in the process, Subject 1 was put in charge of procurement exercises.³⁷ Subject 1 stated that she was interested in working on procurement because she felt that this area would allow her to better apply her MBA and legal skills. She told Task Force investigators that procurement was "the perfect fit for [her]."³⁸

52. In August 2006, Subject 1 became an Administrative Associate, a position she currently holds. Subject 1 has been on maternity leave since December 2006.³⁹

D. PROCUREMENT PROCEDURES

1. Rules and Procedures

53. The UNOPS Procurement Manual codifies the rules and acceptable practices for procurement in UNOPS, and governs procurement exercises undertaken by all UNOPS offices. A summary of the manual was found in Subject 1's office. This summary contained the rules and practices applicable to all procurement exercises as set forth in the UNOPS Procurement Manual, including the exercises discussed in this Interim Report.⁴⁰

54. The Task Force has determined from various sources, including Subject 1 herself, that Subject 1 did attend several training courses on UNOPS procurement practices and

³⁴ Christopher Bagot letter of recommendation for Subject 1 (18 November 2005) (identifying Mr. Bagot as the Chief of the Nairobi Audit Section).

³⁵ Subject 1 Temporary Assistance Agreement (3 January 2006).

Subject 1 interview (7 December 2006); Subject 3 interview (22 February 2007); Staff Member 3 interview (26 February 2007).

³⁷ It is clear from interviews and documents reviewed that from her initial appointment in January 2006, Subject 1's duties included procurement. Further, from at least March 2006, she had primary responsibility in ESARO for procurement. By the time that she returned from her trip to Copenhagen in May 2006 for procurement training, she had formally taken over from Subject 3 as the principal procurement officer in ESARO. This was despite the fact Subject 3's job title remained Procurement Assistant throughout 2006. Staff Member 7 interview (26 February 2006); Subject 1 interviews (7 December 2006 and 23 February 2007); Subject 3 interview (22 February 2006).

³⁸ Subject 1 interview (7 December 2006).

³⁹ Subject 1 Letter of Appointment (28 July 2006) (effective 3 August 2006).

⁴⁰ UNOPS Procurement Manual, ch. 2 (undated).

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ethics.⁴¹ Moreover, she studied business and professional ethics as part of her formal education.⁴²

55. As is the case with all United Nations procurement exercises, the Manual proffers that UNOPS staff members are to be guided by four key principles in handling procurement: (1) best value for money; (2) fairness, integrity, and transparency through competition; (3) economy and effectiveness; and (4) the interest of UNOPS and its clients. As a regional office, ESARO was bound by the UNOPS Procurement Manual. Indeed, Staff Member 6 informed the Task Force investigators that he strictly enforced the procurement rules and made sure his staff members were well-trained in this area.⁴³

56. Similar to other parts of the United Nations system, UNOPS employs four different methods in soliciting bids from companies for UNOPS contracts. These methods include (i) competitive shopping, (ii) a request for quotation (“RFQ”), (iii) an invitation to bid (“ITB”), and (iv) a request for proposals (“RFP”). The value of goods or services to be procured and the level of the staff member authorized to award the contract dictate the method of solicitation.⁴⁴

57. According to the UNOPS Manual, a minimum of three suppliers must be invited to submit a proposal or bid in all procurement exercises, unless a waiver justifying an exception has been obtained. Consequently, Subject 1 and Subject 3 were responsible for issuing solicitations to at least three independent vendors for competitive bidding exercises unless able to obtain a waiver.⁴⁵

58. ESARO did not maintain a formal bid opening process for submissions of those bids below US\$30,000. As a general rule, Subject 1 and Subject 3 both reviewed the bids and performed the subsequent financial analysis. Upon completion of these tasks, the bids and financial analysis, along with the attached quotes for verification, were to be forwarded to Staff Member 7.⁴⁶

59. In addition to UNOPS rules, ESARO adopted more stringent review requirements for its procurement of goods and services. With respect to submissions of a contract, a lower threshold was to be applied for submitting contracts for review to the Local Procurement Committee (“LPC”).⁴⁷ Whereas UNOPS generally requires procurements

⁴¹ Staff Member 8 interview (2 March 2007); Subject 1 interview (7 December 2006); Frederic Claus, PowerPoint presentation for Training Workshop – ESARO (20 July 2006) (entitled “Ethics in the Conduct of Procurement”); Staff Member 9 emails to the Task Force (14 and 18 April 2007).

⁴² Subject 1 Personal History Form (19 July 2005) (recovered from Subject 1’s laptop).

⁴³ *Id.*; Staff Member 10 interview (13 April 2007).

⁴⁴ UNOPS Procurement Manual, ch. 2, p. 5 (undated).

⁴⁵ *Id.*, sec. 2.15. A waiver can be obtained in exceptional circumstances, such as when the prices are fixed for a particular country or there is a sole source contract. In any event, the waiver must always be in writing and document the reason justifying it. *Id.*, sec. 2.17.

⁴⁶ Subject 1 interview (7 December 2006); Subject 3 interviews (15 and 23 May 2007).

⁴⁷ Staff Member 11 interviews (2 March and 17 April 2007). After 2007, the LPC became known as the Local Committee on Contracts (“LCC”). For the sake of clarity, this Report will uniformly use the term LPC.

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over US\$30,000 to be submitted to an LPC, at ESARO, any operational procurement over US\$2,500 was required to be reviewed by the LPC.⁴⁸

60. According to Staff Member 11, Chair of the LPC at ESARO, in 2004 ESARO held a planning week and decided upon a US\$2,500 threshold amount for a contract to go to the LPC.⁴⁹ A number of workshops were subsequently held between 2004 and July 2006 to train staff on this new policy. Staff Member 6 confirmed Staff Member 11's testimony, and explained to the Task Force that, in light of these training sessions, he had no doubt that all ESARO staff members were aware that bids over US\$2,500 must be submitted to the LPC for approval.⁵⁰ Therefore, as a staff member at ESARO, Subject 1 should have been aware of ESARO requirements regarding procurement contracts over US\$2,500. Indeed, as described above, Subject 1 did attend various UNOPS/ESARO training sessions.

2. Supervision of Procurement Files

61. Subject 1 was responsible for maintaining ESARO's procurement files. The Task Force found these to be in very poor condition. Some files were missing important documents, whereas others contained purchase orders or bid abstracts that were faulty and fraught with incorrect company and contact information. In some cases, the Task Force had to work with unsigned drafts of documents recovered forensically from UNOPS computers—including the laptop used by Subject 1—in order to obtain material information.⁵¹

E. SUBJECT 2

62. Throughout the period discussed in this Report, Subject 2 was Subject 1's husband by law.⁵² Although Subject 2 was not a UNOPS staff member, it is well established that he nevertheless frequently visited his wife at the office and spent a great deal of time there.⁵³

63. Subject 2 presents himself as the Country Director of Aero Logistics, a company involved in logistics, freight forwarding, and customs clearing and based at Jomo Kenyatta Airport in Nairobi.⁵⁴ The close ties between Aero Logistics and Depasse are discussed at length in the Interim Report.

⁴⁸ Staff Member 10 interview (13 April 2007); Staff Member 11 interviews (2 March and 17 April 2007). ESARO distinguishes between procurements for Operations and Projects. Operations Procurements are goods and services to be used by the office for internal operations, for example computers procured for staff use. Project Procurements, on the other hand, are used by projects run by UNOPS Portfolio Managers, such as materials for the construction of a bridge.

⁴⁹ Staff Member 11 interviews (20 and 26 February 2007).

⁵⁰ Staff Member 10 interview (13 April 2007).

⁵¹ Staff Member 2 email to the Task Force (5 March 2007) (attaching UNOPS internal review).

⁵² Subject 1 Personal History Form (19 June 2006).

⁵³ Staff Member 12 interview (1 March 2007).

⁵⁴ Subject 2 business card (undated).

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64. Since 1996, Aero Logistics has been a privately registered Kenyan company. According to business records, the company is owned by Subject 2.⁵⁵ According to the Kenyan Registry of Companies, Aero Logistics has two directors, Subject 2 and his teenage daughter.⁵⁶ Aero Logistics has never officially been awarded any contract with UNOPS.

65. Aero Logistics employed at least two individuals, Mr. Joshua Musyoka and Company Representative 1.⁵⁷ Mr. Musyoka was an Operations Manager. At times, he used the alias Mr. Joshua Nzei.⁵⁸

66. Subject 2 is the owner of two ESARO vendors, Depasse Logistics and MicroSun and Solutions (Kenya) Ltd. As will be detailed below, he is also associated with several additional companies or their owners—namely, Company 1, Compfit Systems, Joy-Mart Enterprises, Kenelec Supplies Ltd., Zambezi Investments, and Joe’s Freighters.

67. As detailed below, Subject 2’s Aero Logistics employees’ Company Representative 1 and Joshua Musyoka are also linked to many of the other companies listed in this Report, and with which Subject 2 is also associated. Company Representative 1 is variously listed as owner of Company 1 as well as a Director of Depasse. Further, Company Representative 1 submitted an invoice on behalf of Joe’s Freighters. Mr. Joshua Musyoka (under the surname “Nzei”) is also listed as General Manager of Company 1 and a Depasse Director. Likewise, Mr. Musyoka signed documents and collected payments for Joe’s Freighters. He often utilized the surname “Nzei” when he represented these companies, possibly as an attempt to conceal his identity.⁵⁹

IX. INVESTIGATION

68. The full text of the Task Force’s Interim Report is incorporated by reference as if fully set forth herein.

69. After a thorough and independent review of all relevant evidence identified through the investigative process, the Task Force has determined that a number of contract awards to companies owned by Subject 2, namely Depasse Logistics and

⁵⁵ The Task Force note-to-file (26 January 2007) (concerning the search of the Kenyan Registry of Companies); Subject 1 interview (7 December 2006).

⁵⁶ The Task Force note-to-file (26 January 2007) (concerning the search of the Kenyan Registry of Companies); Subject 1 interview (7 December 2006).

⁵⁷ Joshua Musyoka business card (undated) (obtained from ESARO Operations); Joshua Musyoka letter to Robert Livingston (2 May 2006) (signed by “Joshua Nzei”); Robert Livingston email to Aero Logistics, Staff Member 7, Staff Member 13, and Subject 1 (14 June 2006); Aero Logistics Local Purchase Order for Techbiz Ltd. (27 June 2006); Company Representative 1 email to Robert Livingston (15 June 2006); Handwritten draft of Company Representative 1 email to Robert Livingston (undated); Company Representative 1 letter to Robert Livingston (15 June 2006); Joseph Claudio interview (22 February 2007); Joseph Claudio email to the Task Force (16 March 2007).

⁵⁸ Company Representative 1 interview (24 February 2007); Joshua Musyoka letter to Robert Livingston (2 May 2006) (signed by “Joshua Nzei”); Joseph Claudio letter to the Task Force (26 March 2006).

⁵⁹ Company Representative 1 interview (24 February 2007); Joshua Musyoka letter to Robert Livingston (2 May 2006) (signed by “Joshua Nzei”); Joseph Claudio letter to the Task Force (26 March 2006).

MicroSun & Solutions (Kenya), were the result of a fraudulent scheme executed by Subject 2 and Subject 1, as well as others. Similarly, as a result of a corrupted procurement process, the ESARO office awarded a number of other contracts to companies that were associated in some way with Subject 2. To this end, Subject 2 conspired with the owners and employees of these companies to ensure that contracts were steered to a particular company from which Subject 2 could reap a financial benefit.

70. Further, the Task Force identified evidence that Subject 2 materially altered Joe's Freighters' invoices submitted to ESARO for payment in order to personally benefit from the award of the UNOPS contract to this company at the expense of the Organisation. Likewise, Subject 2 received payments from ESARO vendors Kenelec Supplies and Zambezi Investments in connection with UNOPS contracts.

A. DEPASSE LOGISTICS

71. As discussed in this Section, Depasse Logistics ("Depasse"), a company owned by Subject 2 was awarded four contracts totaling US\$15,441 as a result of the execution of this scheme. Subject 1 played a key role instructing Subject 3, her subordinate in the ESARO Operations Section, to pass these contracts to Depasse.

1. Background

72. Depasse is a Kenyan company, although there is no indication that the company was ever registered with the Kenyan tax authorities.⁶⁰

73. While the management structure of Depasse is uncertain, the Task Force has identified the following individuals as connected to the company:

Subject 2, owner of the company.⁶¹

Company Representative 1, a representative of Aero Logistics, who served simultaneously as Director for Depasse.⁶²

Mr. Denis Odipo, who served as a Director of the company.⁶³

Mr. Joshua Musyoka, a representative of Aero Logistics, who was identified both as a contact person⁶⁴ and a supply officer for Depasse.⁶⁵ Mr. Musyoka often used a different

⁶⁰ The Task Force note-to-file (19 January 2007) (concerning company searches at Kenya Revenue Authority).

⁶¹ Joseph Claudio letter to the Task Force (26 March 2007).

⁶² Company Representative 1 letter to ESARO/ISDR (7 June 2006).

⁶³ United Nations Global Marketplace Registry emails to Denis Odipo (28 and 29 September 2006).

⁶⁴ Local purchase order no. 2006-058 (9 March 2006) (for Depasse Logistics) (attaching undated Analysis for Quotations and Contract Award Recommendation for the Supply of Stationery to Country); Local purchase order no. 2006-073 (28 March 2006) (for Depasse Logistics); Local purchase order no. 2006-077 (12 April 2006) (for Depasse Logistics); Local purchase order no. 2006-097 (9 May 2006) (for Depasse Logistics); Joseph Claudio letter to the Task Force (26 March 2007).

⁶⁵ Depasse Logistics quotation for office equipment (28 February 2006); Local purchase order no. 2006-058 (6 March 2006).

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version of his name—Mr. Joshua Nzei—when he served in the capacity of Director of Depasse.⁶⁶

74. When the Task Force attempted to interview Mr. Musyoka over the telephone, he denied having any knowledge of the company. When the Task Force investigators then requested a meeting with Mr. Musyoka, he became agitated, accusing investigators of “harassing” and “blackmailing” him, and refused to consent to an interview.⁶⁷

75. The Task Force also requested Mr. Denis Odipo, Director of Depasse, to make himself available for an interview.⁶⁸ However, Mr. Odipo did not respond to these requests.

76. By contrast, Company Representative 1 cooperated with the Task Force’s requests and provided documents and information, including about Subject 2’s corrupt practices, and connections to vendors in other bidding exercises.⁶⁹ Indeed, the materials provided by Company Representative 1 confirm Subject 2’s improper participation in and corrupting of UNOPS procurement exercises and contracts.

77. As set forth in the Interim Report, Depasse conducted business with ESARO through Subject 1’s personal post office box, the very same post office box number listed as her personal address in her employment application with the United Nations.⁷⁰ Depasse also shared both an email address and telephone number with Subject 2’s other business, Aero Logistics.

2. Depasse Contracts Obtained through Fraud

78. For ease of reference, the Task Force findings from the Interim Report are herein summarized.

79. In its Interim Report on the procurement operations at ESARO, the Task Force found that Subject 1, UNOPS Operations Assistant, Subject 3, UNOPS Procurement Assistant, Subject 2, Subject 1’s husband, and others known and unknown, participated in this scheme to steer UNOPS contracts, including four separate contracts for office and IT equipment, to Depasse Logistics, a Kenyan company owned by Subject 2.⁷¹

80. The scheme was accomplished through the submission of purportedly independent bids from companies which appeared to be legitimate competitors, but, in

⁶⁶ Depasse Logistics quotation for office equipment (30 June 2006) (listing Joshua Nzei as Director); Depasse Logistics Notification of Intention to Bid (undated) (received at UNOPS 27 June 2006) (listing Joshua Musyoka as the contact person); Company Representative 1 interview (24 February 2007); Joseph Claudio letter to the Task Force (26 March 2006).

⁶⁷ The Task Force note-to-file (9 March 2007) (regarding the telephone call with Mr. Musyoka).

⁶⁸ The Task Force emails to Denis Odipo (2 and 10 April 2007).

⁶⁹ These materials include a cheque stub and a deposit slip showing payments to Subject 2 and Depasse Logistics in connection with a subsequent fraudulent bid. Cheque Stub no. 000005 (25 July 2006); Aero Logistics local purchase order to Techbiz (27 June 2006); Techbiz invoice (30 June 2006) (signed by Subject 2); Company 1 cheque to Depasse Logistics (28 July 2006); Equatorial Commercial Bank Ltd. deposit slip (28 July 2006) (showing payment to Depasse Logistics).

⁷⁰ Interim Report, pp. 29-31.

⁷¹ *Id.*

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fact, were connected to one another. In actuality, it was Subject 2 himself who submitted fictitious proposals on behalf of purportedly independent vendors. Thus, in the bidding process for UNOPS contracts, the competing proposals were not legitimate as they were fabricated by Subject 2 and his associates. Subject 2 was able to accomplish these feats through the participation of his wife, Subject 1. To this end, Subject 1 vouched for Subject 2's companies, failed to disclose her relationship with Subject 2—and, thus, her conflict of interest—as well as engaged in acts designed to further Subject 2's efforts to achieve the contracts and obtain payment from the Organisation. As his superior, Subject 1 instructed Subject 3 to assist Subject 2 in the scheme.⁷² Thereafter, the scheme was further perpetuated by the efforts of Subject 3, who directed Subject 2 to submit competing bids from purportedly independent companies, and accepted submissions that he (Subject 3) knew were fictitious and illegitimate and intentionally designed to create an appearance of legitimate competition.⁷³

81. For example, as described in the Interim Report, on one purportedly independent bid, the same individual who signed one of the submissions, (Dancan Okeyo), also sent correspondence on behalf of one of his supposed competitors. Moreover, this individual delivered goods to ESARO on behalf of another supposed competitor, Depasse, within three months of his improper activities in the bidding exercises.⁷⁴

82. Subject 1 facilitated this scheme by processing Depasse documents, including at least one invoice, after the award of the contracts to the company. This invoice included Depasse's letterhead, which listed as its address Subject 1's own postal box address.⁷⁵ Failing to disclose her husband's or her own connection to Depasse, Subject 1 also pressured finance staff to expedite payment to the company.⁷⁶

83. The scheme was further accomplished with the participation of other vendors and individuals, including Company Representative 1, Mr. Joshua Musyoka (also known as Mr. Joshua Nzei), and Mr. Denis Odipo. Another individual, Mr. Dancan Okeyo, was linked to all three purported bidders—Depasse, Lanctrac, and MackPhilisa. In addition, he was involved in the bidding exercises on at least two contracts, one involving LCD projectors for SACB and the other laptops for SACB.

84. As a result of this scheme, the integrity of the procurement process in these bidding exercises was severely compromised. Goods and services were procured for the Organisation without the use of a fair, transparent, objective, and truly competitive

⁷² In her Response to the Interim Report, Subject 1 argues she was not Subject 3's superior, but rather his subordinate. Subject 1 Response to the Interim Report, p. 9. However, as stated in the Task Force's Reply to Subject 1's Response to the Interim Report, the Task Force based its claim that Subject 1 was Subject 3's superior on Subject 1's *own* testimony to the Task Force during her first interview. See Reply to UN Staff Member Subject 1's Response to the Procurement Task Force's Interim Report PTF R003/07, p. 12 ("Reply to Subject 1").

⁷³ Subject 3 email to the Task Force (24 April 2007).

⁷⁴ Interim Report, pp. 20-23.

⁷⁵ *Id.*, p. 20 (citing to Depasse Logistics response to RFQ-UNOPS-2006-03-007 dated 6 April 2006).

⁷⁶ *Id.*, p. 33.

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process, as expressly required by United Nations Financial Rules and Regulations.⁷⁷ As a result, the Organisation also incurred a substantial financial loss. Specifically, through the execution of this scheme, Depasse, and, in turn, Subject 2, as owner of the company, improperly received US\$15,441 in UNOPS contracts.⁷⁸

85. As will be discussed below in greater detail, the award of the four contracts to Depasse was merely one part of a much larger scheme carried out by Subject 2 and Subject 1 to systematically defraud ESARO and UN Agencies.

B. MICROSUN AND SOLUTIONS (KENYA)

86. The ESARO office of UNOPS awarded MicroSun and Solutions (Kenya) (“MSS Kenya”) a company owned by Subject 1’s husband, Subject 2, a contract to provide a sea container and IT equipment to the Kenyan Diplomatic Police Unit. The award of the contract to MSS Kenya was achieved only through the corrupt efforts of UNOPS Operations Assistant Subject 1 and Subject 2, as well as other relevant actors. The investigation reveals that Subject 2, along with his associates James Ochola, the brother of Subject 1 and Denis Odipo (who also serves as a director of Depasse, Subject 2’s other company), created and controlled MSS Kenya in order to exploit an ESARO contract for excessive personal gain. Cogent and persuasive evidence identified by the Task Force demonstrates that Subject 1 was not only clearly aware of her husband’s involvement with MSS Kenya, but also inappropriately used her role as a UNOPS staff member to facilitate this scheme.

1. Background

87. MicroSun and Solutions Kenya (“MSS Kenya”) is a subsidiary of MicroSun and Solutions Plc., based in Dubai. The owner and Chief Executive Officer (“CEO”) of MicroSun and Solutions Plc. is Bluye Haddis.⁷⁹

88. MSS Kenya was established by Subject 2 and Mr. Denis Odipo in May 2006 in conjunction with Mr. Haddis. Mr. Haddis owns 51 percent of MSS Kenya, and Subject 2 owns part or all of the remaining 49 percent of the company.⁸⁰

⁷⁷ Financial Regulation 5.12 states that “[t]he following general principles shall be given due consideration when exercising the procurement functions of the United Nations: (a) Best value for money; (b) Fairness, integrity and transparency; [and] (c) Effective international competition.” ST/SGB/2003/07, reg. 5.12 (9 May 2003). See also ST/SGB/Financial Rules/1/Rev. 3, rule 110.21 (March 1985).

⁷⁸ Interim Report, p. 33.

⁷⁹ Bluye Haddis interview (3, 16, and 17 April 2007).

⁸⁰ Mr. Haddis is not certain as to whether Subject 2 has divided his shares with Mr. Odipo. It was intended that Subject 2 would find opportunities in Kenya and Mr. Haddis would use his business network to perform the contracts. As late as November 2006, Subject 2 had an ongoing relationship with MSS Kenya and was forwarding UNDP projects to MSS Dubai. See Bluye Haddis interviews (3, 16, and 17 April 2007). See also, Bluye Haddis email to the Task Force (17 April 2007) (forwarding Subject 2’s email to MSS Dubai dated 11 November 2006).

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89. The connection between MSS Kenya and Subject 2 was confirmed by Mr. Haddis.⁸¹ The Task Force identified further evidence of Subject 2's links to MSS Kenya in emails recovered from Subject 1's United Nations laptop.⁸²

90. Mr. James Ochola, a Nairobi businessman whose company, Zambezi Investments, was assisted by Subject 2 on a separate ESARO contract, was also involved in the creation of MSS Kenya.⁸³

91. Another person associated with MSS Kenya was Subject 1's own brother.⁸⁴ He refused Task Force requests to discuss his involvement with the company.⁸⁵

92. At the time when Subject 1 requested MSS Kenya to bid on contracts the company was operating through the PO Box number Subject 1 listed as her own in employment forms with the United Nations, as well as the telephone number of the mobile phone issued to her by ESARO.⁸⁶ The fact that the PO Box and telephone numbers issued by MSS Kenya were the same as those issued by Depasse renders highly suspect the legitimacy of MSS Kenya as a company independent from Depasse.

93. The suspect legitimacy of MSS Kenya is also reflected by the fact that this company submitted bids to ESARO under two entirely different letterheads. In one letterhead the company represented its name as "MicroSun and Solution Kenya," in another letterhead, the company gave its name as "MicroSan And Solutions Ltd."⁸⁷ In

⁸¹ After the Task Force initially contacted Mr. Haddis and questioned him about UNOPS contracts, he telephoned Subject 2 to find out what UNOPS business MSS Kenya had been doing. Subject 2 informed him that the company had been involved with supplying a container to the United Nations. Bluye Haddis interviews (3, 16, and 17 April 2007); Bluye Haddis emails to the Task Force (5 and 28 February 2007).

⁸² Subject 2 received an email from the Depasse company email account regarding subject of "MSS QUOTATION" giving a breakdown of costs for setting up a business. Subject 2 also emailed MSS Kenya in October 2006. Further examination revealed emails to Subject 2 from the MSS parent company in Dubai regarding the shipment of bitumen to the Seychelles. See Depasse Logistics email to Subject 2 (21 September 2006) (recovered from Subject 1's laptop) (sent from depasse@fastmail.net). Subject 2 email to MSS Kenya (24 October 2006). Emails from gg@mssmea.ae to Subject 2 (6 and 13 July 2006) (recovered from Subject 1's laptop).

⁸³ James Ochola interview (26 February 2007); James Ochola email to Subject 2 (18 September 2006) (as noted in image of Subject 2's inbox that was recovered from Subject 1's laptop).

⁸⁴ See, for example, James Ochola email to Subject 1's brother (18 August 2006) (reviewed during Mr. Ochola's interview on 26 February 2007).

⁸⁵ Subject 1's brother's email to the Task Force (2 April 2007).

⁸⁶ Depasse Logistics response to RFQ-UNOPS-2006-03-007 (6 April 2006); Subject 2 business card for Aero Logistics (undated); Subject 1 Personal History Form (19 June 2006).

⁸⁷ Subject 1 email to MSS Kenya (21 September 2006); Dottie Wanjiru letter to Subject 1 (25 August 2006); Joseph Karanja quotations for MSS Kenya sent to Subject 1 (12 and 14 September 2006). Subject 1 emails to MSS Kenya resulted in replies from "Microsan And Solutions Ltd," confirming that they are the same company. See Subject 1 email to Victoria Furniture, Selassie Waigwa and MSS Kenya and Hutchings (30 October 2006); Analysis for Quotations and Contract Award Recommendation for the supply of furniture for new staff-P. Kande (undated) (unsigned) (recovered from Subject 1 desktop computer).

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addition, MSS Kenya, much like Depasse, is not registered with the Kenyan tax authorities.⁸⁸

94. In September and October 2006, Subject 1 invited MSS Kenya to participate in numerous procurement exercises. MSS Kenya accepted the invitation to bid on several ESARO contracts, but was awarded only one contract.⁸⁹

95. Correspondence between Mr. Ochola and Subject 1's brother, demonstrate Subject 1's central role in corrupting the procurement process in order to favor MSS Kenya. In an August 2006 email regarding tenders for Global Positioning Systems ("GPS"), Mr. Ochola wrote to Subject 1's brother about his sister:

"Ref mail from [Subject 1] that approx a 3000 tender, we can use MSS Kenya for that one. Ask Subject 1 to bring the big dogs the 30 million [sic] deals! When do you get back?"⁹⁰

96. Additional documentary evidence located by the Task Force further highlights Subject 1's involvement with MSS Kenya. In particular, a document called "MicroSun bank letter" was accessed from Subject 1's laptop in November 2006.⁹¹ Two weeks later, the same laptop was used to access a Microsoft Excel spreadsheet entitled "MSS Worksheet."⁹² This laptop was kept in Subject 2's office in the home he shared with Subject 1.⁹³

⁸⁸ The Task Force note-to-file (19 January 2007) (concerning company searches at Kenya Revenue Authority).

⁸⁹ Subject 1 email to MSS Kenya *et al.* (4 September 2006) (attaching amended RFQ-2006-09-01); Subject 1 email to MSS Kenya (31 October 2006) (attaching "RFQ – Office Furniture-IFAD"); Subject 1 email to MSS Kenya (12 September 2006) (attaching RFQ-2006-09-02-Motorola for Motorola radios) (MSS Kenya email inbox recovered from Subject 1's laptop computer). See also MSS Kenya email to Subject 1 (14 September 2006); Subject 1 email to Kerstine Kageni (14 September 2006).

⁹⁰ James Ochola email to Subject 1's brother (18 August 2006) (reviewed by Mr. Ochola during his interview with the Task Force on 26 February 2007). In his testimony to Task Force investigators, Mr. Ochola declined to print the relevant emails, but promised to forward them to the Task Force at a later date. James Ochola interview (26 February 2007). As of the publication date of this report, Mr. Ochola had failed to fulfill this promise and has not responded to further attempts by the Task Force to contact him. James Ochola interview (26 February 2007); MSS Ethiopia (salesmss@ethionet.et) email to James Ochola (18 July 2006) (reviewed during Mr. Ochola's interview on 26 February 2007).

⁹¹ Removable disk document access log entry (21 November 2006) (showing access time of 7:11 a.m.) (recovered from Subject 1's laptop computer).

⁹² Removable disk document access log entry (6 November 2006) (showing access time of 6:52 a.m.) (recovered from Subject 1's laptop computer).

⁹³ *Id.* In her Response, Subject 1 contended that her computer was "not given to me for my exclusive use," but rather "it was for the whole operations section." Subject 1 Response to the Interim Report, p. 13. However, testimony from other UNOPS staff makes clear that this contention is plainly false. One of Subject 1's colleagues who worked with her in the UNOPS office in Nairobi informed the Task Force investigators that she was "given a laptop for her to do work at home on. It was unusual for a laptop to be given to a staff member." Staff Member 4 interview (1 March 2007).

2. MSS Kenya obtained a UNOPS Contract through Fraud

97. Prior to MSS Kenya's contract with UNOPS, ESARO had been funding a capacity building project to modernize the Kenyan Diplomatic Police Unit ("DPU").⁹⁴ The contract ultimately awarded to MSS was to supply the DPU with information technology equipment and a sea container. However, after a thorough and independent investigation, the Task Force has determined that the award of this contract to MSS Kenya was a direct result of fraud.⁹⁵ Moreover, Subject 1 participated in this fraudulent scheme by using her position at ESARO to steer the DPU contract to MSS Kenya.

98. Having received a requisition form from Jack Klassen, Project Manager at ESARO, for various technical equipment and a shipping container for a training centre at DPU, Subject 1 issued a RFQ for these items in September 2006.⁹⁶ The technical equipment ordered included a digital camera, overhead projector, 27-inch TV, DVD player, laptop and bag, flat-bed scanner, laser printer, and an all-in-one printer/scanner/fax/copier. She sent this RFQ to the email addresses corresponding to four inter-connected individuals representing MSS Kenya—namely, (i) James Ochola; (ii) Thomas Ochola, James Ochola's brother; (iii) Cecilia Mailu, an associate or employee of James Ochola; and (iv) David Ochanda, who is linked socially to all the other listed persons.⁹⁷

99. A subsequent email inviting Mr. Ochanda to bid on the DPU contract was sent by Subject 1 and copied to Subject 1's superiors and the Project Manager at ESARO. In addition, the email was blind copied to three other email addresses: that of MSS Kenya (mss_kenya@yahoo.co.uk), Thomas Ochola, and Cecilia Mailu.⁹⁸ Responses to this email were henceforth received from MSS Kenya (signed by "James Otieno"), Thomas Ochola, and David Ochanda.⁹⁹

100. The Task Force has located several versions of a bid analysis indicating that bids were received from four companies: MSS Kenya, Metro Group, CC Ltd. and Read Technologies. However, only bids from three companies—MSS Kenya, Metro Group, and Read Technologies—were actually in the files located by investigators.¹⁰⁰

⁹⁴ Staff Member 15 interviews (28 February and 1 March 2007).

⁹⁵ PO Number ESARO 0000050153 (22 September 2006).

⁹⁶ Subject 1 email to MSS Kenya *et al.* (4 September 2006) (attaching amended RFQ-2006-09-01). The order had been expanded from the original requisition form to include an overhead projector, three printers, and a scanner.

⁹⁷ Cecilia Mailu had previously sent Subject 1 a vendor profile on behalf of James Ochola. Subject 1 and she were on friendly terms, Subject 1 referring to her as "C." David Ochanda was also known to Subject 1 socially. Subject 1, Mr. Ochanda, James Ochola, and Ms. Mailu were all linked socially, attending a party together. Subject 1 email correspondence with Cecilia Mailu (7 and 8 June 2006); Subject 1 email to James Ochola *et al.* (18 November 2006).

⁹⁸ Subject 1 email to David Ochanda (4 September 2006) (attaching RFQ-2006-09-01).

⁹⁹ David Ochanda email to Subject 1 (6 September 2006); Tom Onyango email to Subject 1 (7 September 2006); MSS Kenya email to Subject 1 (7 September 2006) (signed "OJ," i.e., James Otieno).

¹⁰⁰ MSS Kenya email from Otieno J to Subject 1 (6 September 2006) (attaching response to RFQ-2006-09-02); James Otieno letter to Subject 1 (6 September 2006); Thomas Ochola email to Subject 1 (6 September 2006) (attaching quotation); Tom Onyango email to Subject 1 (7 September 2006) (with Metro Group

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101. MSS Kenya and Metro Trading submitted bids to ESARO as two purportedly independent entities. The MSS Kenya response was sent from the email address mss_kenya@yahoo.co.uk, and signed “OJ.” The attached quote was signed by James Otieno, an alias used by James Ochola.¹⁰¹ The Metro Trading bid submission was sent in an email from Thomas Ochola.¹⁰² However, it is important to note that Thomas and James Ochola are brothers. Mr. Ochola was, therefore, bidding on the contract against his own brother.

102. In addition to the bid submission, an itemized quotation on Metro Trading letterhead was submitted to Subject 1 via an email sent by a “Tom Onyango” on 7 September 2006.¹⁰³ This email had the subject heading of “Quote.” On this same day, Mr. Onyango also sent an email to Mr. James Ochola of MSS Kenya with the identical subject heading of “Quote.”¹⁰⁴ From this information, the Task Force surmises that Mr. Onyango was sending Metro Trading’s bid for the UNOPS contract to Mr. Ochola, who was representing MSS Kenya—i.e., the two vendors were sharing bid information with each other.

103. The Task Force’s belief that the vendors MSS Kenya and Metro Trading were colluding with one another with respect to bid prices is further supported by the fact that the responses to the original bid request form provided by MSS Kenya and by Metro Trading were both sent only to Subject 1, and not copied to her superiors. When Mr. Ochanda, one of the other invitees, replied to the original bid submission (declining to bid), he sent his reply not only to Subject 1, but also copied her superiors. The fact that MSS Kenya and Metro Trading both failed to copy Subject 1’s superiors in their responses suggests that Subject 1 and the vendors conspired to delude her superiors into believing a proper bidding exercise was underway.¹⁰⁵

quotation); “Analysis for Quotations and Contract Award Recommendation for the IT, Digital Camera and container – DPU” (undated); Read Technologies quotation for ICT equipment (6 September 2006); Summary of bid evaluation for MicroSun and Solutions and Read Technologies (undated). There is another version of the bid analysis dated 7 September 2006 which recommends Compfit Systems for the bid and contains some additional figures—this is presumably an unfinished version copied from the analysis for RFQ-NTEAP-2006-08-02. ITB-2006-09-01 (7 September 2006) (“For the Purchase of Computer and IT equipment [sic], Digital Camera and supply of Container for DPU Project”).

¹⁰¹ MicroSun Solutions quote sent to Subject 1 (6 September 2006) (signed “James Otieno, Sales Manager”).

¹⁰² Thomas Ochola’s email address was also listed as the Metro Trading contact on the completed RFQ. Mr. Ochola confirmed to the Task Force that emails to him from tochola@optonline.net were from his brother. See Thomas Ochola email to Subject 1 (6 September 2006) (attaching Metro Trading Ltd response to RFQ-DPU-2006-09-001 dated 4 September 2006). The front page notes the number as RFQ-DPU-2006-09-002, which appears to be an amended version of RFQ-DPU-2006-09-001; James Ochola interview (26 February 2007).

¹⁰³ Tom Onyango email to Subject 1 (7 September 2006) (attaching Metro Trading itemised quotation).

¹⁰⁴ Tom Onyango email to James Ochola (7 September 2006) (as noted in image of Mr. Ochola’s email inbox dated 12 September 2006, recovered from Subject 1’s laptop computer).

¹⁰⁵ Subject 1 emails to David Ochanda (4 September 2006) (attaching RFQ-2006-09-01); David Ochanda email to Subject 1 (6 September 2006).

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104. Efforts by the Task Force to contact Metro Trading were unsuccessful. The email address for the company was no longer valid.¹⁰⁶ Subject 1 said she did not know Thomas Ochola and could not recall any knowledge of a Metro Trading Ltd.¹⁰⁷

105. The final version of the bid analysis was prepared by Subject 1 and signed by Staff Member 7, her superior. The bid analysis shows the prices quoted by one bidder, Read Technologies, as approximately half of those quoted by the other bidders, including MSS Kenya, for four of the seven items to be procured. Despite Read Technologies' lower quotes, Subject 1 recommended that MSS Kenya be awarded the entire contract citing as her rationale the fact that MSS Kenya was the only company to bid for all seven requested items.¹⁰⁸

106. Despite Subject 1's recommendation that ESARO award the entire contract to MSS Kenya, the Portfolio Manager decided to split the order between MSS Kenya and another company. In light of this decision, Subject 1 then prepared a summary detailing which items should go to which company. This summary indicated that the television, DVD player, three printers and the container were to be awarded to MSS Kenya. Read Technologies was awarded the digital camera, overhead projector, laptop, and scanner.¹⁰⁹ On 14 September 2006, Subject 1 sent this summary to James Ochola of MSS Kenya.¹¹⁰

107. On 14 September 2006, Subject 1 also sent MSS Kenya an Atlas vendor profile form.¹¹¹ As soon as MSS Kenya responded, Subject 1 pushed that very same day for speedy approval of the company's form. Only after it was approved could UNOPS issue a local purchase order to MSS Kenya for the container and IT equipment.¹¹²

108. Task Force investigators were unable to locate a copy of the original local purchase order ("LPO") that was issued in UNOPS' files. Likewise, investigators were unable to locate in UNOPS files any evidence that the award of the contract to MSS Kenya was presented to the LPC as required by ESARO protocol since the initial total value of the contract awarded in Kenyan shillings ("KES")—KES 603,704 (approximately US\$8,261)—was substantially over the US\$2,500 threshold.¹¹³

¹⁰⁶ Task Force email to Metro Trading (24 April 2007).

¹⁰⁷ Subject 1 interview (23 February 2007).

¹⁰⁸ Subject 1 email communications with Staff Member 5 (7 September 2006); "Analysis for Quotations and Contract Award Recommendation for the IT, Digital Camera and container - DPU" (undated); ITB-2006-09-01 (7 September 2006) ("For the Purchase of Computer and IT equipment [sic], Digital Camera and supply of Container for DPU Project"); Subject 3 confirmed to the Task Force that the order of the signatures on a bid analysis confirmed the roles of each staff member, with the initial drafter being the first to sign. Subject 3 interview (23 May 2007).

¹⁰⁹ Subject 1 email communications with Staff Member 5 (7 September 2006); Summary of bid evaluation signed by Subject 1 (undated); UNOPS Purchase Order no. 0000050209 (24 September 2006).

¹¹⁰ Subject 1 email to James Ochola (14 September 2006) (attaching bid evaluation).

¹¹¹ Subject 1 email to MSS Kenya (14 September 2006).

¹¹² MSS Kenya email to Subject 1 (14 September 2006); Subject 1 email to Kerstine Kageni (14 September 2006).

¹¹³ PO Number ESARO 0000050153 (22 September 2006). The exchange rate for September 2006 was KES 73.08 to the United States dollar. United Nations Rates of Exchange for September 2006.

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109. The printers, DVD player and a 21-inch television were delivered by MSS Kenya on 12 October 2006. A replacement 29-inch television was delivered the next day and a second delivery note issued. Subject 1 signed both delivery notes. Each of these delivery notes that she signed clearly lists as the contact information for MSS Kenya the PO Box number Subject 1 indicated as her own on UN employment forms and the telephone number of the mobile phone issued to her by UNOPS. In addition, the MSS Kenya quotation for the 29-inch television bears Subject 1's signature, indicating that she processed this document. Again, the letterhead on this quotation sent by MSS Kenya lists Subject 1's PO Box and telephone number as the contact information for the company. A revised LPO was issued and signed by Subject 1 along with her supervisor, Staff Member 7, subsequent to the delivery of the goods.¹¹⁴

110. The delivery of the shipping container proved to be highly problematic: A man identifying himself as "Martin," a representative of MSS Kenya, told the Project Manager that it would cost an additional KES 90,000 (approximately US\$1,251) more than the original price quoted. The Project Manager felt this additional cost was unreasonable. For this reason, he then looked to other companies for comparable estimates, which were approximately one quarter of the price asked by MSS Kenya.¹¹⁵

111. On arrival, the container sent by MSS Kenya was found to be of poor quality and unfit for its intended purpose.¹¹⁶ There were also other problems with MSS Kenya's execution of the order for the container, including the delivery to the right location. In addition, the person who delivered the container informed UNOPS staff that it had been had been "pulled out of the mud at Wilson airport" and purchased for approximately US\$2,000.¹¹⁷

112. The Project Manager noted that at a cost of KES 370,904 (US\$5,155), MSS Kenya's quote for the container was three times as expensive as comparable containers. Given MSS Kenya's massive inflation of the price of the container the Portfolio Manager suggested that ESARO blacklist the company.¹¹⁸ Indeed, the Project Manager and Portfolio Manager raised concerns to Subject 1 about poor performance by the company. Further, they questioned Subject 1 as to how she had come to be in contact with MSS Kenya since the only information on the company in ESARO files was a PO Box

¹¹⁴ MSS Kenya delivery note no. 0110 (12 October 2006); MSS Kenya delivery note no. 0113 (13 October 2007); MSS Kenya quotation (16 October 2006); Revised LPO (26 October 2006). The undated bid analysis signed by Subject 1 and Staff Member 7 reflects the larger television size and therefore appears to have been created subsequent to the delivery of the goods. There is no explanation in the files for this. "Analysis for Quotations and Contract Award Recommendation for the IT, Digital Camera and container - DPU" (undated).

¹¹⁵ Staff Member 15 interviews (28 February and 1 March 2007). The exchange rate for November 2006 was KES 71.95 to the United States dollar. United Nations Rates of Exchange for November 2006.

¹¹⁶ Staff Member 5 email to MSS Kenya (28 November 2006); Staff Member 15 interviews (28 February and 1 March 2007).

¹¹⁷ Staff Member 15 interviews (28 February and 1 March 2007); Staff Member 16 interview (2 March 2007).

¹¹⁸ Staff Member 5 email to Jack Klassen *et al.* (23 November 2006); United Nations Rates of Exchange for November 2006.

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number.¹¹⁹ In response to this inquiry, Subject 1 referred them to the website of MicroSun and Solutions Plc., the Dubai parent company.¹²⁰ However, after reviewing that website, the Portfolio Manager expressed to Subject 1 his disbelief that the two companies—namely, MSS Kenya and MicroSun and Solutions Plc. —were the same. In particular, he questioned why ESARO was asking MicroSun and Solutions Plc. in Dubai to provide a shipping container given that it was an IT company according to the company’s website.¹²¹ In light of these concerns, ESARO management then ordered the container’s removal and the cancellation of MSS Kenya’s bid.¹²²

113. Subject 1, however, raised concerns over the decision to cancel the order, claiming both that it was unfair to expect MSS Kenya to bear the cost of removing the container and that there might be legal consequences.¹²³ In addition, she contacted the Procurement Specialist at UNOPS procurement headquarters in Copenhagen for his opinion on whether ESARO should cancel its contract with MSS Kenya for the container.¹²⁴ UNOPS staff in Copenhagen replied to Subject 1’s inquiry by recommending that the ESARO office negotiate with the vendor. However, in response to this recommendation, the Portfolio Manager at ESARO noted that he had “tried dealing with the vendor [MSS Kenya] but it seems to be a one man show that is operated from his house and cell phone.”¹²⁵

114. Ultimately, the Portfolio Manager and Project Manager agreed to accept the container from MSS Kenya, but at a lower price than the company had originally quoted.¹²⁶ However, in the end, ESARO organized a re-bid and procured a container for US\$2,100 from a vendor other than MSS Kenya.¹²⁷

115. With respect to the IT equipment, a MSS Kenya invoice dated 25 October 2006 was submitted to UNOPS’ finance section for payment. This document again lists Subject 1’s PO Box and phone number as the contact information for MSS Kenya. On 7 November 2006, UNOPS paid MSS Kenya KES 232,800 (approximately US\$3,236) for the delivery of the IT equipment.

The scheme was run from Subject 1’s laptop

116. As stated above, MSS Kenya operated a portion of its activities, including correspondence regarding its contract with ESARO, from the laptop issued to Subject 1

¹¹⁹ Staff Member 5, Staff Member 7, and Jack Klassen email correspondence (24 November 2006).

¹²⁰ Subject 1 emails to Staff Member 5 (29 and 30 November 2006).

¹²¹ Staff Member 5 email to Subject 1 (30 November 2006).

¹²² Jack Klassen email to Staff Member 5, Subject 1 *et al.* (23 November 2006); Staff Member 5 email to Staff Member 7 (23 October 2006); Subject 1 email to MSS Kenya (29 November 2006); Staff Member 5 email to MSS Kenya (28 November 2006) (recovered from Subject 1’s laptop computer); Jack Klassen email to Subject 1 *et al.* (30 November 2006).

¹²³ Subject 1 email to Staff Member 5 (28 November 2006); See also Staff Member 5 interviews (20 and 26 February 2007).

¹²⁴ Subject 1 email to Eric Dupont (28 November 2006).

¹²⁵ Staff Member 5 email to Subject 1 (28 November 2006).

¹²⁶ Staff Member 5 email to Subject 1 (24 November 2006).

¹²⁷ Staff Member 15 interviews (28 February and 1 March 2007).

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by the Organisation. This laptop was kept in Subject 1's home and was used to log into the MSS Kenya email account on at least six occasions.¹²⁸

117. In her Response to a similar finding by the Task Force in the Interim Report—namely, that her UN issued laptop had been used to conduct official business of the Depasse company— Subject 1 argued that this computer was “not given to me for my exclusive use . . . [but rather] it was for the whole operations section.”¹²⁹ However, as set forth in the Task Force's Reply to Subject 1's Response to the Interim Report, testimony from other UNOPS staff makes clear that Subject 1's contention is plainly false. One of Subject 1's colleagues at ESARO explained that Subject 1 was given a laptop for her to do work at home and that “[i]t was unusual for a laptop to be given to a staff ember.”¹³⁰

James Ochola's denial of any involvement

118. The Task Force finds that a number of Mr. James Ochola's statements to the Task Force were false. Specifically, Mr. Ochola denied any connection either to MSS Kenya or Subject 2. He also denied having ever participated in business deals involving MSS Kenya.¹³¹ In addition, Mr. Ochola stated that he was uncertain as to who was the owner of MSS Kenya. Rather, he stated that he only knew of MSS Kenya by reputation, and, therefore, he had no knowledge as to when the company was set up in Kenya or as to the identity of a Kenya representative of the company.¹³²

119. However, the evidence demonstrates that Mr. Ochola's assertions are highly suspect. The Atlas Vendor profile for MSS Kenya lists “Staff Member 14” as the company's Director.¹³³ In turn, the Task Force found documentary evidence that suggests that James Ochola is, in fact, “Staff Member 14.”¹³⁴ Additionally, a representative of MSS Kenya is listed in correspondence with ESARO as James Otieno. Subject 1 told the Task Force that she believed that James Otieno and James Ochola were the same person.¹³⁵ Indeed, an email, signed “Otienoj,” from MSS Kenya to Subject 1 regarding RFQ 2006-09-01 was copied to James Ochola's personal email.¹³⁶

¹²⁸ MSS Kenya Yahoo log-in pages. Some of the images recovered from Subject 1's laptop are undated but can be identified as separate log in events by the changing news titles. Staff Member 5 email to MSS Kenya at mss_kenya@yahoo.co.uk (28 November 2006) (recovered from Subject 1's laptop computer).

¹²⁹ Interim Report, p. 31; Subject 1 Response to the Interim Report, p. 13.

¹³⁰ Staff Member 4 interview (1 March 2007).

¹³¹ James Ochola interview (26 February 2007).

¹³² *Id.*

¹³³ Atlas Vendor Profile for MSS Kenya (undated) (attached to MSS Kenya email to Subject 1 dated 14 September 2006 and forwarded for registration by Subject 1); Atlas Vendor Profile for MSS Kenya (19 September 2006).

¹³⁴ Mr. Ochola's medical insurance card gives his full name as James Ochola *Ochieng*. During the subsequent inspection of his email he stated that his nickname was “*Kaka*.” See James Ochola email to Subject 2 (30 November 2006) (signed “Regards kaka”) (reviewed during Mr. Ochola's interview on 26 February 2007).

¹³⁵ Subject 1 interview (23 February 2007).

¹³⁶ MSS Kenya email to Subject 1 (6 September 2006) (reviewed during Mr. Ochola's interview on 26 February 2007).

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120. Moreover, a forensic examination of Subject 1's laptop revealed correspondence in Subject 2's Yahoo email inbox from Mr. Ochola relating to the start up costs for MSS Kenya.¹³⁷ When Task Force investigators presented Mr. Ochola with these recovered images, including an email from him (Mr. Ochola) to Subject 2 referring to "MSS Kenya[s] start up costs," Mr. Ochola's responded only that they were "very interesting" and that he had "no comment" on the email.¹³⁸ Instead, Mr. Ochola reiterated that he had no business links to Subject 2 and, as he had no idea as to what the email was about and he would "have to check [his] records."¹³⁹

121. When Task Force investigators then showed Mr. Ochola images of his own email inbox recovered from Subject 1's same laptop he suggested that the Task Force had somehow accessed his private email. Further, Mr. Ochola denied having ever used Subject 1's laptop; instead, he suggested that Subject 1 had cracked his password and opened his email account on her computer.¹⁴⁰ These assertions are implausible.

122. Mr. Ochola also misrepresented his relationship to Subject 2 in his testimony to the Task Force: He asserted that the two had only met once at ESARO, that they never socialized together, and that he had "zero business links" with Subject 2.¹⁴¹ However, in contrast to Mr. Ochola's testimony, his mobile phone in fact contained numbers for Subject 2 and Subject 1.¹⁴² In response to the revelation of this fact, Mr. Ochola then admitted that he had received calls "persistently" from Subject 2 the week prior to his (Mr. Ochola's) interview with the Task Force. In these calls, Subject 2 questioned Mr. Ochola as to whether the Task Force had contacted him.¹⁴³

123. From a review of Mr. Ochola's email account, the Task Force discovered that he had corresponded with Subject 1's brother, on issues relating to MSS Kenya.¹⁴⁴ In June 2006, Mr. Ochola sent an email to Subject 1 to request help in passing information to MSS headquarters in Dubai.¹⁴⁵ Subsequent to this communication, Mr. Ochola contacted Subject 1 regarding "Estimated MSS set up cost," stating that "this will allow me [Mr. Ochola] to start pushing MSS full time."¹⁴⁶ When confronted with this email, Mr. Ochola claimed that it was in response to a request from Subject 1's brother who had informed Mr. Ochola that he (Subject 1's brother) was involved in setting up MSS Kenya.¹⁴⁷

¹³⁷ James Ochola email to Subject 2 (18 September 2006) (as noted in image of Subject 2's inbox dated 27 September 2006, recovered from Subject 1's laptop computer).

¹³⁸ James Ochola interview (26 February 2007).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ James Ochola email to Subject 1's brother (5 June 2006) (reviewed during Mr. Ochola's interview on 26 February 2007).

¹⁴⁶ James Ochola email to Subject 1's brother (18 September 2006) (reviewed during Mr. Ochola's interview on 26 February 2007).

¹⁴⁷ James Ochola interview (26 February 2007).

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124. Nevertheless, a further email from Mr. Ochola to Subject 1's brother in August 2006 provides evidence that Mr. Ochola was, indeed, intimately involved with the operations of MSS Kenya: Mr. Ochola wrote, "We can use MSS Kenya for that one."¹⁴⁸ Further, the Task Force located a RFQ, which Subject 1 had originally sent to MSS Kenya, but then had been forwarded by MSS Kenya to Mr. Ochola's Yahoo email address with regards to a different project.¹⁴⁹ Likewise, Subject 1's brother involvement with MSS Kenya was confirmed by the owner of MicroSun & Solutions Plc. in Dubai, who himself had copied email correspondence on the issue of MSS Kenya to Subject 1's brother.¹⁵⁰

125. Mr. Ochola further denied that he was related to Mr. Thomas Ochola, the representative of Metro Trading and one of the other bidders in the ESARO contract ultimately obtained by MSS Kenya.¹⁵¹ However, when Task Force investigators examined Mr. Ochola's telephone, they found a listing for "Tom." When investigators questioned Mr. Ochola about this listing, he stated that the "Tom" listed on his telephone was "Tom" Ochola, his brother, but stated that he did not know a "Thomas" Ochola.¹⁵² However, as noted above, an email, identified by Mr. Ochola as written by his brother "Tom," is, in fact, from a Mr. "Thomas" Ochola, the representative of Metro Trading, a purportedly independent competitor in the ESARO bidding process with MSS Kenya.¹⁵³

Subject 1's statements to the Task Force

126. Although Subject 1 told the Task Force that she did not know of any links between her husband and MSS Kenya,¹⁵⁴ evidence located by the Task Force reveals that, in fact, Subject 1 was well aware of her husband's connections to this company. Specifically, when the Project Manager authorized Subject 1 to procure a container from MSS Kenya, he asked for a contact number for that company. In response to his request, Subject 1 gave him two telephone numbers, one of which corresponded to the number given for the Depasse company, owned by Subject 2.¹⁵⁵

¹⁴⁸ James Ochola email to Subject 1's brother (18 August 2006) (reviewed during Mr. Ochola's interview on 26 February 2007). Mr. Ochola declined to print the emails but said he would forward them to the Task Force. He has not done so and has not responded to further attempts to contact him. James Ochola interview (26 February 2007).

¹⁴⁹ RFQ-2006-09-01 (6 September 2006) (forwarded from MSS Kenya to james_ochola@yahoo.co.uk).

¹⁵⁰ Bluye Haddis interview (3 April 2007); MSS Ethiopia (salesmss@ethionet.et) email to James Ochola (18 July 2006) (reviewed during Mr. Ochola's interview on 26 February 2007).

¹⁵¹ James Ochola interview (26 February 2007).

¹⁵² *Id.*

¹⁵³ *Id.*; Thomas Ochola email to Subject 1 6 September 2006) (attaching Metro Trading Ltd response to RFQ-DPU-2006-09-001, dated 4 September 2006). The front page notes the number as RFQ-DPU-2006-09-002, which appears to be an amended version of RFQ-DPU-2006-09-001.

¹⁵⁴ Subject 1 interview (23 February 2007).

¹⁵⁵ Joseph Claudio letter to the Task Force (26 March 2007). Although Subject 1 in her Response to the Interim Report asserted that her husband maintained no association with Depasse, in light of testimonial and documentary evidence which clearly demonstrate that Subject 2 controlled Depasse's employees and its finances, discussed at length in the Interim Report, the Task Force maintains its position that Subject 2 owns Depasse. See Interim Report, pp. 27-31.

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127. That same day, the Project Manager at ESARO informed Subject 1 that he had spoken with a MSS Kenya representative named “Martin,” who gave as his contact information a phone number that corresponded with that of a UNOPS issued mobile phone.¹⁵⁶ Indeed, this phone had been issued by UNOPS to Subject 1, and was often used by her husband, Subject 2.¹⁵⁷

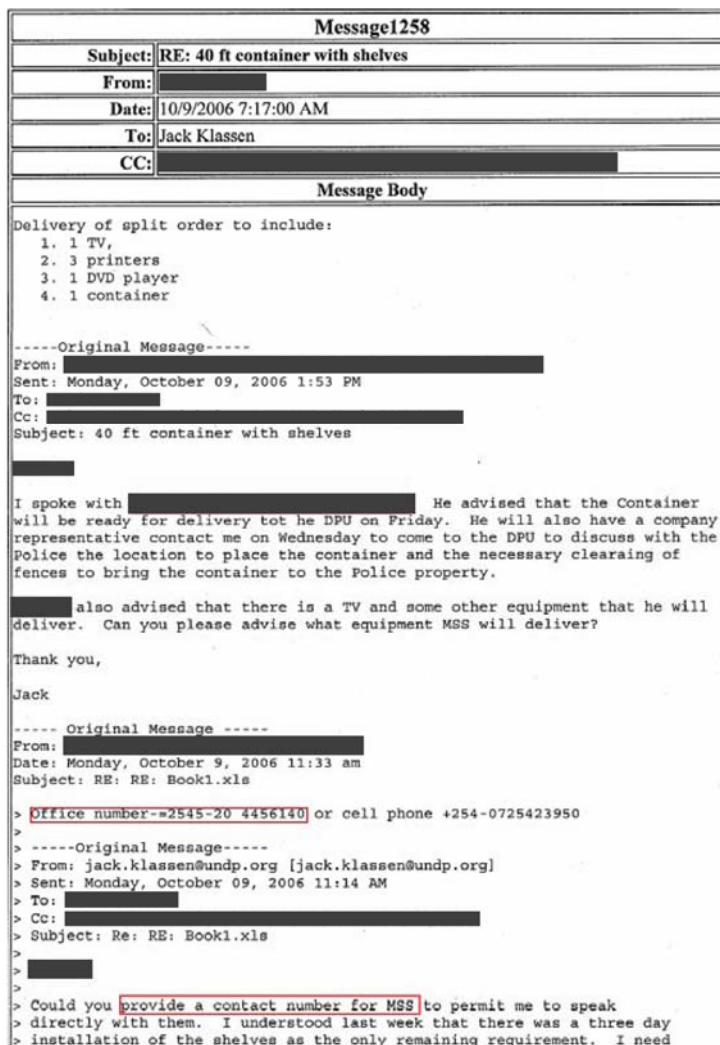


Figure: Email exchange between Subject 1 email and Jack Klassen et al. (9 October 2006)

128. When presented with this evidence by Task Force investigators, Subject 1 accepted that the person who identified himself as “Martin” to the ESARO Project Manager was, in reality, her husband. Further, she acknowledged that she had given her

¹⁵⁶ Email exchange between Subject 1 and Jack Klassen (9 October 2006). The telephone number was 0724257057.

¹⁵⁷ Subject 1 interview (23 February 2007).

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mobile phone to her husband for him to use. However, Subject 1 claimed that she had paid for the phone.¹⁵⁸

129. Subject 1 initially denied that she had read the email in question presented in the figure above. However, she later stated that she had read only part of the email and not the part with her husband's name on it. When the Task Force noted that the reference to her husband was at the top of the email and therefore unavoidable, she then conceded that she was aware that he had been involved in the deal.¹⁵⁹

130. Subject 1's knowledge of her husband's involvement with MSS Kenya is further evidenced through MSS Kenya correspondence sent to her. Two of the quotations given by MSS Kenya to ESARO, and which Subject 1 forwarded to her superiors, list the company's address as PO Box 5660-00200. Likewise, delivery notes from MSS Kenya, signed by Subject 1, list this same PO Box address.¹⁶⁰ As noted above, as well as in the Interim Report, this PO Box was identified by Subject 1 herself as her own.¹⁶¹ In addition, the telephone number provided on a MSS Kenya invoice in October 2006 is the same as that listed by Subject 1 as her home telephone number on her UN application form.¹⁶² Further, the number listed as MSS Kenya's "Telfax" is, in fact, the same number listed in Mr. Ochola's telephone for Depasse, Subject 2's other company.¹⁶³

¹⁵⁸ *Id.*

¹⁵⁹ Subject 1 interview (25 February 2007).

¹⁶⁰ MSS Kenya quotations (16 and 23 October 2006); MSS Kenya delivery note (12 and 13 October 2006).

¹⁶¹ Subject 1 Personal History Form (19 June 2006).

¹⁶² MSS Kenya invoice (25 October 2006) (area code is not listed); Subject 1 Personal History Form (19 June 2006).

¹⁶³ James Ochola interview (26 February 2007).

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Micro Sun Solutions (K) Ltd
Rhapta Road, Westlands
P.O. Box 5660
NAIROBI

Telfax: 4456140
Telephone: 3002487
E-mail: M.S.K@msk.co.ke

QUOTATION

Name: UNOPS
Address: P.O. Box 783 Nbi
Description of Work:

Qty	Remarks	Shs.	Cts
1	29"	68,000	-
TOTAL		68,000	

UNOPS ESA
Regional Office
Date: 25/10/06
Reg. No:
ACTION BY: [Signature]
ACTION TAKEN: [Signature]

INSTRUCTIONS

Please answer each question clearly and completely. TYPE OR PRINT LEGIBLY. Read carefully and follow all directions.

UNITED NATIONS

PERSONAL HISTORY

1. Family name: [Redacted] First name: [Redacted] Middle name: [Redacted]

2. Date of (day/month/yr) Birth: [Redacted] 3. Place of birth: KISUMU 4. Nationality(ies) at birth: KENYA 5. Present Nationality: KENYAN

7. Height: 8.60Inch 8. Weight: 100kg 9. Marital Status: Single Married Separated Widowed

10. Entry into United Nations service might require assignment to any area of the world in which the United Nations is engaged in (a) Are there any limitations on your ability to perform in your prospective field of work? YES NO (b) Are there any limitations on your ability to engage in all travel? YES NO

11. Permanent address: P. O. Box 5660-00200 Telephone No. (+254) 20-3002487

12. Present address: P. O. Box 5660-00200 Telephone/Fax No. (+254) 20-7621139

13. Do you have any dependent children? YES NO If the answer is "yes", give the following information:

Name of Children	Date of Birth (day/mo/year)	Place of Birth
[Redacted]	[Redacted]	NAIROBI
[Redacted]	[Redacted]	NAIROBI

14. (a) Name of Spouse: [Redacted] NAIROBI

16. Have you taken up legal permanent residence status in any country other than that of your nationality? YES

Figure: Micro Sun Solutions quote received by UNOPS (25 October 2006) and Subject 1 United Nations Personal History Form (June 2006)

131. When questioned by UNOPS management about the legitimacy of MSS Kenya, Subject 1 responded that she had provided documents reflecting its *bona fides* to the Operations Manager. However, the Operations Manager had no such documents.¹⁶⁴

132. Despite her acknowledgement to Task Force investigators that her husband was, in fact, "Subject 2," Subject 1 never informed the Project Manager of "Subject 2's" true identity.¹⁶⁵ More generally, Subject 1 never disclosed the connection between MSS Kenya and her husband to any of the ESARO staff involved the project.¹⁶⁶ At no time either during the bidding process or the subsequent performance of the contract, or when she intervened to dissuade ESARO from cancelling the contract with MSS Kenya, did Subject 1 disclose the fact that her husband was closely linked to MSS Kenya. Rather, she made efforts to conceal her husband's connection to the company.¹⁶⁷

¹⁶⁴ Staff Member 5 interviews (20 and 26 February 2007).

¹⁶⁵ Staff Member 15 interviews (28 February and 1 March 2007).

¹⁶⁶ *Id.*

¹⁶⁷ See, e.g., Staff Member 5 interviews (20 and 26 February 2007).

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133. In light of the evidence presented above, it is evident that Subject 1's husband, Subject 2, is closely tied to MSS Kenya and is likely its principal owner. The evidence to support this conclusion is multi-pronged: First, the company shares the same post office box as both the Depasse company, owned by Subject 2, and as Subject 1 herself.¹⁶⁸ Second, in its correspondence with ESARO, MSS Kenya identifies Subject 2's and Subject 1's home telephone number as its own.¹⁶⁹ Third, the company's operations were, at least in part, run from Subject 1's UN issued laptop, located in the private home she shared with her husband.

134. This conclusion is also supported by Subject 1's material omissions and false statements about this subject. Not only did Subject 1 fail to disclose to ESARO staff her husband's close ties with MSS Kenya, but she also took advantage of her position at the Organisation to steer UNOPS contracts to this company. Indeed, there is evidence to suggest that Mr. Ochola and Subject 1's brother, were relying on Subject 1 to provide them with UNOPS contracts. For example, an email from Mr. Ochola to Subject 1's brother in August 2006 regarding GPS indicates that Subject 1 was passing information regarding ESARO contracts to Mr. Ochola. The fact that Mr. Ochola was involved with MSS Kenya's activities is highlighted in an email that he sent to Subject 1's brother: "[W]e can use MSS Kenya for that one [another project]."¹⁷⁰ Mr. Ochola's use of "we" in relation to "us[ing] MSS Kenya" suggests that he and Subject 1's brother are both associated with the company.

135. The bidding process for the contract awarded to MSS Kenya was further compromised when Subject 1 issued the RFQ to four individuals who were all in some way connected socially to her as well as to each other. One of the companies included in the bidding process, MSS Kenya, was controlled by Subject 2 and James Ochola. Another company, Metro Trading, included in the bidding process, was represented by Thomas Ochola, James Ochola's brother.¹⁷¹

136. The totality of the circumstances, including the family connection between at least two of the bidders for the ESARO contract, along with Subject 1's husband's involvement with MSS Kenya, another bidder, as well as the excessive price quoted and the poor performance rendered by that company, all portray a deeply compromised and tainted bidding process.

¹⁶⁸ MSS Kenya's PO Box as used in quotations, invoices and as listed in the Atlas Vendor database is the same as that given by Subject 1 on her Personal History Form, namely PO Box 5660-00200. Atlas Vendor Profile for MSS Kenya (undated) (attached to MSS Kenya email to Subject 1 and forwarded for registration by Subject 1 on 14 September 2006); Atlas Vendor Profile for MSS Kenya (19 September 2006).

¹⁶⁹ Subject 1 email to Jack Klassen (9 October 2006).

¹⁷⁰ James Ochola email to Subject 1's brother (18 August 2006) (reviewed during Mr. Ochola's interview on 26 February 2007). Mr. Ochola declined to print the emails but said he would forward them to the Task Force. He has not done so and has not responded to further attempts to contact him. James Ochola interview (26 February 2007).

¹⁷¹ "Tom Onyango" email to Subject 1 (7 September 2006) (attaching an itemised quotation with the letterhead "Metro Group").

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137. Subject 1 actively facilitated the corruption of the bidding process and was well aware that her husband's company, MSS Kenya, was involved. In addition to initially recommending the company to ESARO, Subject 1 processed documents that listed her own personal PO Box as the address for MSS Kenya, as did the additional quotation from MSS Kenya for a larger television.¹⁷²

138. As a result of Subject 1's manipulation of the bidding process, as well as her failure to disclose her husband's ties to MSS Kenya, the Organisation was supplied with poor quality, overpriced goods by a disreputable supplier with direct links to her.

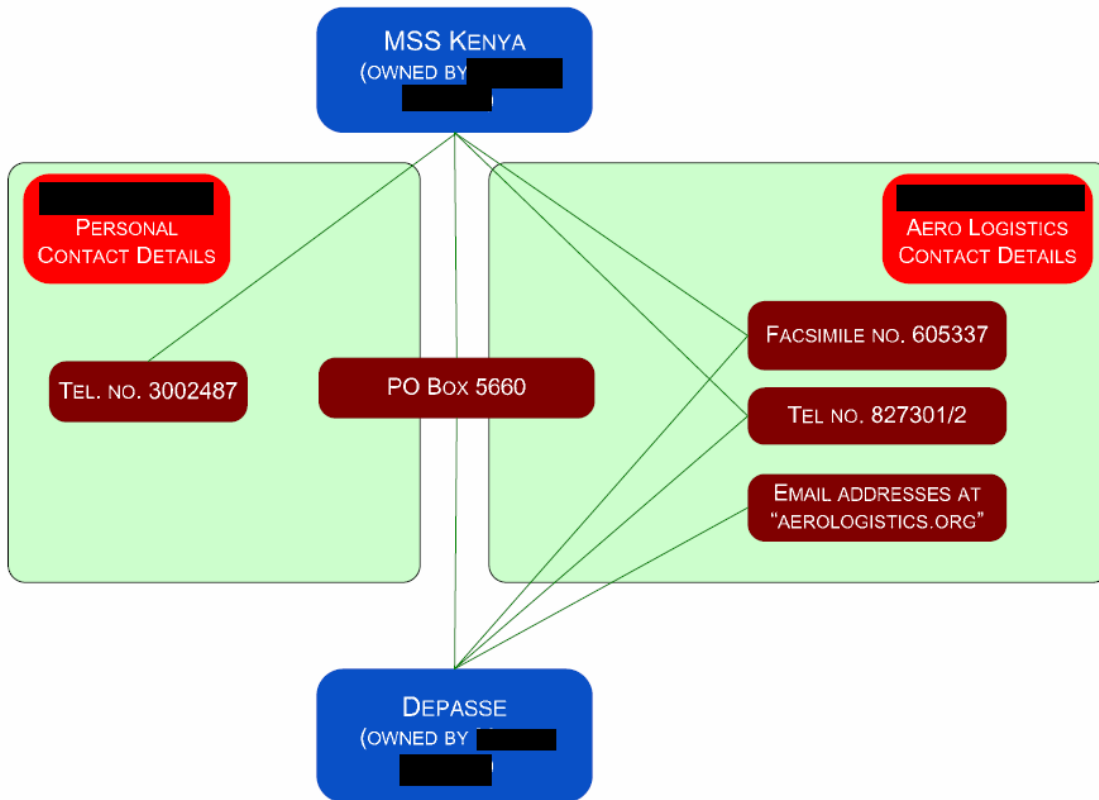
**C. SUMMARY OF SUBJECT 2 AND SUBJECT 1 LINKS TO DEPASSE
AND MSS KENYA**

139. Both Depasse Logistics and MicroSun Solutions (Kenya) are companies intrinsically linked with Subject 2, Subject 1's husband. At no time did Subject 1 ever disclose her husband's ties to either company to other ESARO staff.

140. Chart A below demonstrates the links between Subject 1's contact information and that of her husband, as well as for his company Aero Logistics, to the contact information for the other two companies, Depasse Logistics and MSS Kenya, discussed above.

¹⁷² MSS Kenya delivery note no. 0110 (12 October 2006); ESARO Receiving & Inspection Report prepared by and signed by Subject 1 (12 October 2006); MSS Kenya delivery note no. 0113 (13 October 2006); ESARO Receiving & Inspection Report prepared by and signed by Subject 1 (13 October 2006); MSS Kenya quotation (16 October 2006) for 29-inch television.


Chart A: Subject 1 and Subject 2 Connections to MSS Kenya and Depasse Logistics



141. As demonstrated by Chart A above, the multiple connections between Subject 1’s personal contact information and Subject 2’s company, Aero Logistics, with Depasse and MSS Kenya, demonstrate that Subject 2 and Subject 1 are closely associated with these two companies.

142. The two images presented below—Depasse’s letterhead and Subject 2’s Aero Logistics business card—provide further evidence of the links between Depasse and Subject 2’s company, Aero Logistics:

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AERO LOGISTICS LIMITED
The Total Supply Chain
Country Director (Africa)
[REDACTED]

Jomo Kenyatta Int. Airport
Cargo Village
Ken House.
P.O. Box 5660
00200, City Square
NAIROBI, KENYA

Tel: +254-2-8273023004083
Cell: +254-724-257057
Fax: +254-2-30027104083
Email: mail@aerologistics.org
[REDACTED]
Website: www.aerologistics.org

AVIATION • SHIPPING • LOGISTICS • TRADE



Dealers in Stationeries, Printing, Office Equipment and Supplies

P.O. Box 5660 - 00200
NAIROBI
Tel: 82730172
Fax: 605337
E-mail: dpl@aerologistics.org

INVOICE

TO: Procurement Officer
UNOPS – ESARO
GIGIRI
NAIROBI

Date: March 9, 2006

Delivery Note No: 0080 LPO No: 2006-058

QUANTITY	PARTICULARS	@	KShs.	Cts
6	FLASH DISCS 512MB ZAHARA	5,500.00	33,000	00
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>9/03/06</p> <p>51 N/A</p> <p>FILED: OPS</p> </div>				
E.& O.E. No. 0059		TOTAL	33,000	00

ACCOUNTS ARE DUE ON DEMAND

Office Supplies Solutions

Figure: Subject 2 Aero Logistics Business Card (found by OIOS on Subject 1’s desk) and Depasse Invoice (9 March 2006) (processed by Subject 1)

143. At no time, either during the bidding process or the subsequent performance of the contracts discussed above, did Subject 1 disclose to any ESARO staff member the fact that both Depasse and MSS Kenya are owned by her husband.

D. OTHER CONTRACTS OBTAINED THROUGH FRAUD

144. As discussed below, apart from Subject 2’s ties to the Depasse and MSS Kenya companies he also maintained associations with a number of other ESARO vendors. These companies are also linked to one another through common owners, employees, and contact information. The owners and employees of these companies, together with Subject 2 and Subject 1, conspired to defraud the Organisation and, thereby, corrupt several ESARO procurement exercises.

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145. The Task Force has identified a number of contract awards to companies in addition to those contracts awarded to Depasse and MSS Kenya that were achieved through a scheme formed and executed by Subject 2 and Subject 1, as well as others, known and unknown. These contracts primarily concern ESARO procurement exercises for both the Nairobi office of the United Nations International Strategy for Disaster Reduction as well as the UNOPS capacity building project for the Kenyan Diplomatic Police Unit.

146. In June 2006, the Nairobi office of ISDR contacted Subject 1 with the request that she identify suitable vendors for various supplies needed by the office. The ISDR's initial request of 5 June 2006 for stationery and office furniture was, over time, split into multiple separate procurement exercises.¹⁷³ Each of those exercises, outlined below, was tainted by fraud.

147. Specifically, the companies that submitted bids for the contracts detailed below were invariably linked to Subject 2 and one or two other key individuals. One key individual is Mr. Joseph Claudio. Mr. Claudio is the owner of Kenelec Supplies and Joe's Freighters. Mr. Claudio's wife owns Joy-Mart Enterprises. Further, Mr. Claudio's relative, Selassie Waigwa, owns Compfit Systems—another company awarded UNOPS-ESARO contracts.

148. In the various procurement exercises described below, the companies MSS Kenya, Depasse Logistics, Kenelec Supplies, Joy-Mart Enterprises, and Compfit Systems bid against one another in several instances.

149. Finally, UNOPS-ESARO contracts were also awarded to Lins Consult ("Lins") and El Paso Interiors ("El Paso"), both owned by Mr. Mallison and Mrs. Beverley Koech (see below). The procurement processes that led to the award of these contracts to Lins and El Paso lacked integrity. For each contract awarded to one of these companies, both companies bid against one another. In addition, the other companies that submitted bids also had links to both Lins Consult and El Paso.

1. Initial Bids for Supply of Office Equipment and Stationery to ISDR Offices

150. Following an initial email request from ISDR for the supply of office equipment, two strikingly similar bids were prepared by Company 1 and Depasse. Depasse is owned by Subject 1's husband, Subject 2 (as demonstrated above), and Company 1 is owned by a longtime friend of her husband, Company Representative 1.

Background

151. On 5 June 2006, the Senior Regional Officer of ISDR emailed Subject 1 with the request that she identify a suitable supplier for stationery and office furniture.¹⁷⁴ In

¹⁷³ Martin Owor email to Subject 1 (5 June 2006).

¹⁷⁴ Martin Owor email to Subject 1 (5 June 2006); ESARO Requisition form for furniture for "Mr. Owor's Office," "Ms. Noro Office," and "Other Offices" (9 June 2006).

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response, a standard ESARO requisition form was completed and signed by both Subject 1 and Staff Member 7 on 6 June 2006. There is no evidence in the files that a RFQ corresponding to this requisition form was either drafted or sent out.

152. Despite the fact that a RFQ was never drafted for this order, Depasse, together with another company, Company 1, provided quotes to ESARO for the requested stationary and furniture. In addition, ESARO failed to issue a LPO based on the 6 June 2006 requisition. Nevertheless, further items were requested by ISDR and the requisition was split into separate procurement exercises.

153. Company 1, one of the vendors bidding on these contracts, is owned by Company Representative 1.¹⁷⁵ Company Representative 1 registered the company with the Kenyan Authorities in the 1990s. As stated above, Company Representative 1 was also employed by Aero Logistics and served as a Director of Depasse—both companies owned by Subject 1's husband, Subject 2. Thus, Company Representative 1 and Subject 2 are business associates.¹⁷⁶ According to Subject 1, Subject 2 and Company Representative 1 have also been personal friends for some time.¹⁷⁷

154. Mr. Joshua Musyoka, also known as “Joshua Nzei,” is listed as the General Manager of Company 1 in certain correspondence with ESARO.¹⁷⁸ As explained earlier, Mr. Musyoka was also an employee for two of Subject 2's companies—namely, Aero Logistics and Depasse.

155. Subject 1 instructed her husband, Subject 2, to obtain a price assessment for stationery requested by ISDR. In turn, Subject 2 requested that Company Representative 1 provide this information to Subject 1.¹⁷⁹

156. The bids of Company 1 and Depasse bear striking similarities to one another. It is clear that the two bids had been produced using the same template. Even more striking, the signature of Company Representative 1, the owner of Company 1, appears on the bid submitted by Depasse. The signature of a Mr. “Joshua Nzei”—a known alias for Mr. Joshua Musyoka, an associate of Subject 2—appears on the bid submitted by Company 1 (see figure below).

¹⁷⁵ Company Representative 1 interview (7 December 2006); Subject 1 interview (7 December 2006).

¹⁷⁶ Company 1 emails to Subject 2 (27 June 2006) (as noted in Subject 2's Yahoo inbox on 2 August 2006).

¹⁷⁷ Subject 1 interview (7 December 2006).

¹⁷⁸ See, e.g., UNOPS Purchase Order no. 2006-123 (19 June 2006).

¹⁷⁹ The initial request from Mr. Martin Owor of ISDR for the supply of stationary and office equipment was made on 5 June 2006. On 8 June 2006, Subject 1 received the assessment of stationary needs from Company Representative 1 in an email titled “Depasse.xls.” She passed Company Representative 1's assessment to Mr. Owor on 8 June 2006.

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June 6, 2006

UNOPS
United Nations International Strategy
For Disaster Reduction Secretariate
United Nations Complex.
P.O. Box 47074
Gigiri, Nairobi.

Dear Sir /Madam,

**REF: RECOMMENDED OFFICE FURNITURE, FIXTURE & FITTINGS
REQUIREMENTS / QUOTATION.**

A. CONSULTANTS OFFICE - 1ST FLOOR

1. Office Desk	97,500
2. Office Chair (Fabric)	19,250
3. Visitors Chair X 4	58,800
4. File cabinet Set 4D	24,000
5. Trash Can	450
6. White Board Standard Size	15,000
7. Printer HP2250 L	140,000
8. Plastic Tray 2 tier X 2	1,500
9. Coffee set – Glass to with 4 pcs	96,800

B. CONFERENCE ROOM.

1. Conference Table with 8 Seats	164,000
2. File Cabinet Set	24,000
3. Trash Can	450
4. White Board Standard Size 4 X 3 Feet	15,000
5. Copy Machine – Nashuatech DSM 745 x 2	1,220,000
6. Shredder	374,000
7. Flip Chart Board	9,800
8. Plastic Tray	540
9. Office Desk X 4	220,800

C. STORE.

1. Office Desk	55,200
2. Office Chair (Fabric)	19,250
3. File Cabinet Set X2	46,000
4. Trash Can	450
5. Visitors Chairs X 2	29,300
6. Printer HP 2550 L	122,000
7. Stationery Cup Board	23,500

Please do not hesitate to contact the undersigned for any further consultation or clarification.

Thank you,



JOSHUA NZEI
GENERAL MANAGER





P.O. Box 5660 - 00200
NAIROBI
Tel: 827301/2
Fax: 605337
E-mail: dp@depasselogistics.org

7TH JUNE, 2006

UNOPS/ ISDR
United Nations Complex.
P.O. Box 47074
Gigiri, Nairobi.

Dear Madam/Sir

REF: RECOMMENDED OFFICE FURNITURE.

A. CONSULTANT OFFICE

1. Office Desk	99,000
2. Office Chair (Fabric)	21,000
3. Visitors Chair X 4	62,600
4. File cabinet Set 4D	26,000
5. Trash Can	550
6. White Board Standard Size	16,000
10. Printer HP2250 L	152,000
11. Scanner	18,000
12. Plastic Tray 2 tier X 2	2,080
13. Coffee set – Glass to with 4 pcs	98,500

B. CONFERENCE CENTRE.

1. Conference Table with 8 Seats	167,000
2. File Cabinet Set	27,000
3. Trash Can	550
4. White Board Standard Size 4 X 3 Feet	17,000
5. Copy Machine X 2 – Kyocera 786	1,340,000
6. Shredder	378,000
7. Flip Chart Board	12,000
8. Plastic Tray	540
9. Office Desk X 4	240,000

C. STORE ROOM.

1. Office Desk	57,000
2. Office Chair (Fabric)	21,000
3. File Cabinet Set X2	48,000
4. Trash Can	550
5. Visitors Chairs X 2	32,600
6. Printers HP 2550 L	146,000
7. Stationery Cup Board	26,000

Thank you for your consideration.



**DIRECTOR
DE PASSE LOGISTICS**

Figure: Company 1 bid for Furniture, Fixture, and Fittings (6 June 2006) and Depasse Logistics bid for office furniture (7 June 2007)

157. These documents were provided to the Task Force by Company Representative 1. No copies were found in the UNOPS files. However, Subject 1 sent an email to Mr. Owor of ISDR on 9 June 2006 which included as an attachment (in a Word document) the text of the Company 1 bid.¹⁸⁰

¹⁸⁰ Subject 1 email to Martin Owor (9 June 2006); Martin Owor email to Subject 1 (9 June 2006); Subject 1 email to Staff Member 5 (5 September 2006).

158. Company Representative 1 also provided to the Task Force the original requisition form dated 6 June 2006 and the email dated 5 June 2006 from Mr. Martin Owor of ISDR to Subject 1.

159. There is no evidence of a RFQ being sent out by Subject 1.

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160. The striking similarities in the bids indicate that Subject 2 and Company Representative 1, together with the assistance of Mr. Musyoka, prepared two fictitious bids in the names of Depasse and Company 1. Moreover, these documents show there was an intention by these two companies and their respective owners, Subject 2 and Company Representative 1, to engage in bid collusion.

161. While Subject 1 did have a draft of the Company 1 bid, the Task Force found no evidence that she received the bids in final form. However, the impetus for the fact of these two bids was quite possibly a result of Subject 1 having inappropriately passed information to Subject 2 regarding ISDR's needs. Indeed, Company Representative 1 was in possession of original UNOPS documentation concerning the requisition, as well as a UNOPS email. Subject 1 inappropriately passed these UNOPS documents to persons unconnected to the Organisation. For an unknown reason, the two final versions of the bids appear not to have been considered.

2. Company 1 Stationary Supply to ISDR

162. ESARO awarded Company 1 a contract to supply the ISDR office, host to a staff of less than 10 people, with six months' worth of stationery supplies. This contract, valued at over US\$20,000 was obtained through fraudulent and corrupt acts. Moreover, as a reward for securing this contract for Company 1, Subject 2 demanded from and was paid by Company 1 a kickback of KES 450,000, equivalent to approximately US\$6,500.

Background

163. As noted above, Company Representative 1 is not only the owner of Company 1 but also a personal friend of Subject 2, and was associated with both Depasse and Aero Logistics, Subject 2's companies.¹⁸¹ Mr. Joshua Musyoka, also known as Joshua Nzei, represented himself as Company 1's General Manager. As explained earlier, Mr. Musyoka was also an employee for two of Subject 2's companies: Aero Logistics and Depasse.

¹⁸¹ See, for example, Disbursement Voucher no. D-211-2006-05-0074 (31 May 2006). Depasse receipt no. 3297 (31 May 2006); Depasse Logistics quotation (7 June 2006). As a comparison, see Company Representative 1's signature on documents pertaining to his own company, Company 1: Company 1 receipt no. 1165 (7 July 2006); Company 1 invoice (10 July 2006). Company Representative 1 interview (7 December 2006); Company Representative 1 email to Robert Livingston (15 June 2006); Handwritten draft of Company Representative 1 email to Robert Livingston (15 June 2006) (as reportedly drafted by Subject 2—the notation "our Company Representative 1" confirms this was not drafted by Company Representative 1); Company Representative 1 letter to Robert Livingston (15 June 2006).

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164. On 5 June 2006, the Senior Regional Officer of ISDR emailed Subject 1 with the request that she identify a suitable supplier for stationery.¹⁸² Three companies bid for the contract. In addition to Company 1, the two other companies were Joy-Mart Enterprises and Rison & Grace Investments (“Rison & Grace”).¹⁸³ Subject 1 prepared the bid analysis for this contract, recommending Company 1 for the award.¹⁸⁴

165. On 19 June 2006, Subject 1 created a LPO for Company 1 in the amount of KES 1,624,620 (US\$22,113). Although the LPO was approved by the Regional Director, there is no record of the award being submitted to the LPC as required by ESARO policy since the contract’s value was in excess of US\$2,500.¹⁸⁵

166. In July 2006, ESARO paid Company 1 KES 1,624,620 (US\$22,113) by cheque which was collected by Company Representative 1 himself.¹⁸⁶

167. Upon receiving the 5 June 2006 request for a stationary supplier from the Senior Regional Officer at ISDR, Subject 1 asked her husband, Subject 2, to find someone to make an assessment of what was needed. In response, Subject 2 contacted Company Representative 1, owner of Company 1, about the procurement and requested that Company 1 supply the order. The original requisition form was subsequently given to Company Representative 1.¹⁸⁷

168. An assessment entitled “DE PASSE XL.doc” was then sent to Subject 1 from Company 1’s official email address.¹⁸⁸ Common sense would dictate that the “DE PASSE” referred to in the title of this email is, in fact, a reference to Depasse Logistics, owned and operated by Subject 1’s husband, Subject 2.

169. Two days later, Subject 1 forwarded Company Representative 1’s assessment to ISDR attaching a blank requisition form to the email message. In this email, Subject 1 wrote, “We now send out to three companies for quotes and then proceed from there to evaluate.”¹⁸⁹

170. Despite this instruction by Subject 1, the Task Force found no evidence that a RFQ was ever sent out. Instead, three bids were received from companies that either were illegitimate or were linked to her husband, Subject 2, and his associates.

¹⁸² ESARO Requisition Form (8 June 2006); Martin Owor email to Subject 1 (5 June 2006).

¹⁸³ Joy-Mart Enterprises response to RFQ-UNOPS-2006-6-001 (undated); Company 1 response to RFQ-UNOPS-2006-6-001 (undated); Rison & Grace Investments response to RFQ-UNOPS-2006-6-001 (undated); Analysis for quotations and contract award recommendation for the supply of stationery to ISDR project (undated).

¹⁸⁴ Analysis for quotations and contract award recommendation for the supply of stationery to ISDR project (undated).

¹⁸⁵ LPO 2006-123 (19 June 2006); ESARO Bank of Africa Kenya Ltd. cheque (11 July 2006); Company 1 receipt (7 July 2006); Task Force summary of UNOPS payments to vendors (May 2007) (data provided by UNOPS Finance Section).

¹⁸⁶ ESARO Disbursement Voucher D-211-2006-07-0010 (11 July 2006); ESARO cheque to Company 1 (11 July 2006); Company 1 receipt no. 1165 for KES 1,624,620 (7 July 2006).

¹⁸⁷ Company Representative 1 provided this original requisition form to the Task Force. ESARO requisition form (6 June 2006); Company Representative 1 interview (7 December 2006).

¹⁸⁸ Company 1 email to Subject 1 (8 June 2006).

¹⁸⁹ Subject 1 email to Martin Owor (8 June 2006).

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171. For example, Subject 2 asked Company Representative 1, his close friend and business associate, to submit a bid for the ISDR contract through the latter's company, Company 1.¹⁹⁰ Company Representative 1 complied, and submitted to ESARO a price quote on Company 1 letterhead and signed by "Joshua Nzei." As discussed above, Joshua Nzei is a known alias for Joshua Musyoka, an employee and associate of Subject 2.¹⁹¹

172. Prior to submitting a quote Company Representative 1 was instructed by Subject 2 that the latter would set the prices for each company bidding for the ISDR contract—i.e., Subject 2 was controlling the collusion and, thereby, in effect, personally determining what amount ESARO would pay for the materials. Prior to bidding, Company Representative 1 checked stationery prices in the local market, then, at Subject 2's suggestion, added a mark-up of 55 percent to the bid. Later, Subject 2 informed Company Representative 1 that the profit made on the 55 percent mark-up on the stationery was to be split between the two of them as well as distributed to staff at both ISDR and ESARO.¹⁹²

173. Initially, Company Representative 1 believed that Subject 2 would be bidding through his own companies. However, in fact, Subject 2 did not use either of his known companies, Depasse and Aero Logistics, for the bid. Rather, Subject 2 told Company Representative 1 that Joseph Claudio of the Kenelec Supplies company was funding the deal and that neither Company Representative 1 nor Subject 2 had the money to make the initial purchase of the supplies for resale to ISDR.¹⁹³ Therefore, Mr. Claudio's wife's company, Joy-Mart Enterprises, also submitted a bid on the ISDR contract.

174. As noted above and below, Mr. Claudio has numerous connections to Subject 2, including hiring Subject 2 on an ESARO project for bitumen (see below), providing Subject 2 with the use of his fax number for business deals for Depasse (see below) and seemingly bidding alongside Subject 2 on another fraudulent ESARO contract for the supply of GPS (see below). In his statements to the Task Force Mr. Claudio was untruthful about his wife's ownership of Joy-Mart Enterprises. In addition, he told the Task Force that he had never heard of Company 1.¹⁹⁴

175. The links between the vendors and Subject 2, Mr. Claudio and Company Representative 1 are depicted below in Chart B.

¹⁹⁰ Company Representative 1 interview (7 December 2006).

¹⁹¹ Company 1 quotation (6 June 2006).

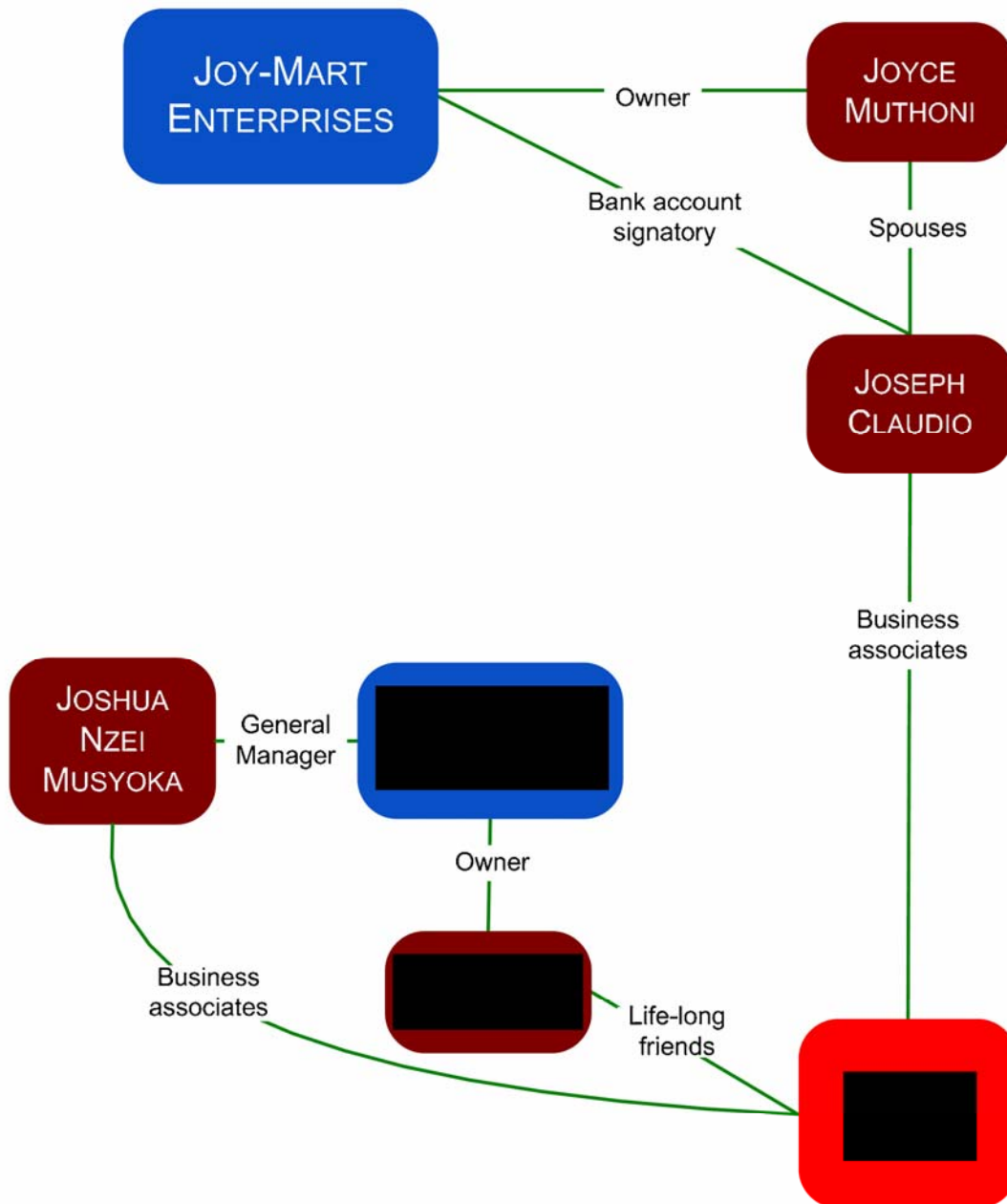
¹⁹² Company Representative 1 interview (7 December 2006). The ESARO and ISDR staff members Subject 2 referred to were Subject 1, Martin Owor, Noroarissa Rakotondrandria, Joseph Otieno, Pamela Mubuta, "Agnes" and Staff Member 9.

¹⁹³ Company Representative 1 interview (7 December 2006).

¹⁹⁴ Additionally, Mr. Claudio's brother-in-law, Selassie Waigwa, bid fraudulently alongside Subject 2 on other ESARO contracts. Joseph Claudio interview (22 February 2007); Joseph Claudio letter to the Task Force (26 March 2007).

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Chart B: Connections between Company 1, Joy-Mart Enterprises, Subject 2, Company Representative 1, and Joshua “Nzei” Musyoka, Joseph Claudio, and Joyce Muthoni



176. The third bidder for the ISDR contract, Rison & Grace, was never registered with the Kenyan tax authorities.¹⁹⁵ Although the Task Force sent emails to the listed contact

¹⁹⁵ The Task Force note-to-file (29 January 2007) (concerning company searches at Kenya Revenue Authority).

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address for Rison & Grace, these emails were promptly returned as the email address was not valid. Likewise, after several attempts, the Task Force was unable to get a response from the telephone number listed by Rison & Grace in its contact information. Further, the Task Force identified evidence that the PO Box listed by Rison & Grace, in fact, belongs to another company.¹⁹⁶ The inability of the Task Force to contact Rison & Grace through any means of communication strongly suggests that the company is illegitimate or does not actually exist.

177. Moreover, the Task Force suggests that the handwriting on the Rison & Grace bid matches that on the Company 1 bid.¹⁹⁷ After reviewing other Company 1 documents submitted to ESARO by Company Representative 1, the Task Force found that the handwriting on both the Rison & Grace and Company 1 bids belonged to Company Representative 1. Thus, the Task Force is of the view that Company Representative 1 prepared both bids.¹⁹⁸

Company Information Form (Left Panel):

Company Name: [Redacted]
 Postal Address: P.O. Box 5120, Nairobi
 Tel and Fax Numbers: 247437/5
 Email Address: [Redacted]
 Authorized Signature: [Handwritten Signature]
 Name of Author Signatory: JOSHUA NZEI
 Functional Title of Signatory: GENERAL MANAGER

Bid Table (Middle Panel):

DESCRIPTION	UNIT	QUANTITY REQUIRED	UNIT COST	TOTAL COST
Photocopying paper white A4	ream	200 reams	35.0	7,000
Paid telephone message (sheets)	each	10 pcs	40.0	400
Box files (Alba roads)	each	200 pcs	29.5	5,900
White envelopes with UN/ISDR-Africa Logo, postal & telephone numbers A6	each	3000 pcs	14.5	43,500
White envelopes with UN/ISDR-Africa Logo, postal & telephone numbers A5	each	1000 pcs	19.5	19,500
White envelopes with UN/ISDR-Africa Logo, postal & telephone numbers A4	each	1000 pcs	32.5	32,500
White envelopes with UN/ISDR-Africa Logo, postal & telephone numbers A3	each	1000 pcs	34.5	34,500
White complimentary slips with UN/ISDR-Africa logo, postal & telephone contacts	each	1000 pcs	12.5	12,500
Signature books	each	2 pcs	350	700
Ledger books Zquire	each	2 pcs	340	680
Transparent file folders (LEITZ), blue and green	each	1000 pcs	110	110,000
Postit pads (large)	each	100 pcs	9.5	9,500
Postit pads (medium)	each	100 pcs	9.0	9,000
Postit pads (small)	each	100 pcs	6.5	6,500

Company Information Form (Right Panel):

Company Name: Rison & Grace Investments
 Postal Address: P.O. Box 5444 - 001 00 Nairobi
 Tel and Fax Numbers: 247477
 Email Address: Rison@ke.net
 Authorized Signature: [Handwritten Signature]
 Name of Author Signatory: Kevin Oluoch
 Functional Title of Signatory: Director - Sales & Marketing

Invoice (Far Right Panel):

INVOICE
 TO: P.O. Box 750-0021, Village Market, Nairobi
 VENDOR: [Redacted]
 Description of Goods/Services: [Detailed list of items and costs]

Figure: Company 1 response to RFQ UNOPS 2006-06-001, Rison & Grace Investments response to RFQ UNOPS 2006-06-001, and Company 1 Invoice (10 July 2006)

178. Company Representative 1 told Task Force investigators that he was surprised to learn that Company 1 had been awarded the ISDR contract, particularly because he did not have the financing necessary to fund the project at that time. Indeed, Company Representative 1 did not want the contract, and had expected instead to receive some

¹⁹⁶ The Task Force notes-to-file (29 January and 2 and 8 May 2007).

¹⁹⁷ Company 1 response to RFQ-UNOPS-2006-6-001 (undated); Rison & Grace Investments response to RFQ-UNOPS-2006-6-001 (undated).

¹⁹⁸ Company 1 invoice (19 June 2006); Company 1 delivery note (19 June 2006).

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small payment from Subject 2 for allowing the latter to use Company Representative 1's company, Company 1, to submit a bid to ESARO as part of a bid rigging scheme.¹⁹⁹

179. As a consequence of ESARO awarding the contract to Company 1, and, therefore, having to supply the stationery requested by ISDR, Company Representative 1 was forced to borrow money from friends and family in order to fulfill the contract.²⁰⁰ In turn, Company Representative 1's lack of readily available funds caused delays in Company 1's delivery of the stationery to ISDR. These delays led to several complaints to the ESARO office by ISDR.²⁰¹

180. Subject 2 was involved both in sourcing the stationery supply and lending Company Representative 1 the funds to perform Company 1's contract with ESARO. Subject 2 purchased some of the stationery he supplied to Company Representative 1 from a company named Techbiz. A purchase order issued to Techbiz lists the company purchasing the stationery as Aero Logistics (this is Aero Logistics Purchase Order 0678, signed by Joshua Nzei). The corresponding Techbiz delivery note was signed by Subject 2. Company Representative 1 then repaid Subject 2 KES 80,000 for the stationery purchased on Company 1's behalf. Company Representative 1 provided the Task Force with the cheque made out to Subject 2's company Depasse as well as a deposit slip, signed by Joshua Nzei indicating that the latter had deposited the KES 80,000 into an account in the name of Depasse.²⁰²

181. Company Representative 1 later admitted to ISDR staff that his participation in the bidding exercise was only in response to a request by Subject 2.²⁰³ Additional evidence corroborates Company Representative 1's statements: Namely, (i) there is no record of a RFQ having been issued; (ii) no evidence exists that would demonstrate that the bids were properly submitted to ESARO by fax or email in accordance with that office's guidelines; and (iii) the bids do not contain the usual stamp from ESARO signifying official receipt.²⁰⁴ Moreover, it is important to note that in response to the ISDR request for stationery Subject 1 did not solicit bids from established UNOPS suppliers, such as Advatech, that had previously supplied stationery to ESARO.

¹⁹⁹ Company Representative 1 interview (7 December 2006)

²⁰⁰ Company Representative 1 interview (7 December 2006); Aero Logistics Local Purchase Order for Techbiz Ltd (27 June 2006).

²⁰¹ Staff Member 19 interview (8 May 2007).

²⁰² Equatorial Commercial Bank deposit advice for Depasse Logistics account no. 1010100742 (28 July 2006); Company 1 cheque (28 July 2006); Company 1 bank statement (28 July 2006); Company Representative 1 interview (7 December 2006); Aero Logistics Local Purchase Order for Techbiz Ltd (27 June 2006); Techbiz Ltd delivery note (30 June 2006).

²⁰³ Minutes of meeting between ISDR staff and Company Representative 1 (5 October 2006).

²⁰⁴ There is no RFQ in the files. There are no fax headers on the bids in the files, or evidence from emails to show that the bids were actually separately submitted by the companies. Company Representative 1 told the Task Force he did not believe a RFQ had been issued, but instead just handed to Subject 2 by Subject 1. Company Representative 1 interview (7 December 2006).

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182. Moreover, Subject 2 continued to be involved in the procurement process even after Company 1 had supplied the stationery to ISDR. For example, he contacted ESARO Finance staff to coordinate payment of Company 1 invoices.²⁰⁵

183. In fact, Company Representative 1 paid Subject 2 KES 450,000 which Subject 2 explained would be paid as kickbacks to the ISDR staff members including his wife, Subject 1, as well as Mr. Martin Owor, the Senior Regional officer of ISDR.²⁰⁶ As proof of this transaction Company Representative 1 gave the Task Force a copy of the stub from the cheque on which he had written the name “Subject 2,” as well as the names of the aforementioned ISDR staff members. Company Representative 1 cashed this cheque in order to withdraw money to pay for the kickbacks demanded by Subject 2.²⁰⁷

184. According to Company Representative 1, Subject 2 told him that Mr. Owor of ISDR was exerting pressure on Subject 2 for his “cut.” Although Company Representative 1 paid Subject 2, he told the Task Force that he believed that Subject 2 was lying with regards to distributing the money to ISDR staff members.²⁰⁸

Subject 1 Participation in the Scheme

185. Subject 1 confirmed to the Task Force that she had never disclosed her husband’s personal or business relationship with Company Representative 1 to ESARO staff despite the fact that Company Representative 1, as owner of Company 1, bid for and ultimately was awarded a contract with ESARO. During her interview with Task Force investigators Subject 1 explained that, in her view, there was no reason to disclose this relationship to the Organisation.²⁰⁹

186. Although Subject 1 admitted to the Task Force that her husband was a personal friend of Company Representative 1, she claimed that she did not know if they were also business colleagues. Subject 1 did, however, concede that “it was possible” that her husband was involved with Company Representative 1’s business activities. Nevertheless, Subject 1 asserted that she had no knowledge of any involvement of her husband, Subject 2, in the Company 1 stationary contract with ESARO.²¹⁰

187. When Task Force investigators presented Subject 1 with the Techbiz delivery note with her husband’s signature—thereby confirming that Subject 2 had indeed purchased stationery for Company 1 to supply to ISDR—she stated that she could not recognize whether or not this was her husband’s signature on the note. The Task Force investigator then asked Subject 1 how long she had been married to Subject 2. She replied that they had been married for two years. In the view of the Task Force, in light of both the duration of her marriage to Subject 2, and of Subject 1’s multiple misrepresentations to investigators in the past as detailed extensively in the Interim

²⁰⁵ Staff Member 14 interviews (27 February and 1 March 2007).

²⁰⁶ Company Representative 1 interview (7 December 2006).

²⁰⁷ Cheque stub 000005 (25 July 2006).

²⁰⁸ Company Representative 1 interview (7 December 2006).

²⁰⁹ Subject 1 interview (7 December 2006).

²¹⁰ *Id.*

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Report and herein, Subject 1's statement that she would not recognize her husband's signature after two years of marriage is not credible.²¹¹

The Task Force Evaluation

188. After a thorough and independent review of the evidence presented the Task Force finds that Company Representative 1's description of events with respect to the award and performance of the Company 1 stationary supply is credible, and corroborated by independent evidence. Several pieces of evidence discussed above corroborate Company Representative 1's testimony that (i) Subject 2 set the bid prices; (ii) Subject 2 was involved in the performance of the contract; and (iii) that Subject 2 collected a KES 450,000 (approximately US\$6,500) kickback from the deal. Further, in stark contrast to Subject 1's contention that she had no knowledge either of her husband's business connection with Company Representative 1 and Company 1 or of a scheme to defraud the Organisation, the evidence located by Task Force investigators also supports the conclusion that Subject 1 was both aware of and an active participant in her husband's scheme in connection with the Company 1 contract.

189. The evidence which supports Company Representative 1's description of events and Subject 1 and Subject 2's involvement in corrupting the bid process includes several documents that Company Representative 1 provided to the Task Force. These documents record the involvement of (i) Depasse and Aero Logistics in the supply of the stationary; (ii) the involvement of Subject 2 and Joshua Musyoka/Nzei in the bidding process; (iii) the payment of the kickback to Subject 2; (iv) the fact that Subject 1 distributed UNOPS documents to her husband, and his associates; (v) the striking similarities in the handwriting of the bids of Company 1 and Rison & Grace; and (vi) the fact that Rison & Grace does not appear to be a real company. Further, the fact that no evidence exists of a RFQ having been sent out to any other companies suggests that no other independent companies were invited to bid on the contract. Rather, Subject 1 instructed her husband to obtain a stationery needs assessment. This assessment, purportedly from Company 1, was sent to Subject 1 in an email entitled "De Passe.xls." This is noteworthy since the name of her husband's company is Depasse. For this reason, the Task Force draws the inference that Company 1's bid was connected to Subject 2.

190. Moreover, Subject 1's violated ESARO policy both by signing a LPO for more than US\$2,500 without holding a LPC and by failing to ever alert anyone at ESARO of her husband's business association with either Company Representative 1 or Mr. Musyoka.

191. The Task Force was unable to locate any evidence that the staff members mentioned by Subject 2 to Company Representative 1 personally received a benefit from this contract—that is, with the exception of Subject 2's wife, Subject 1. She indirectly benefited as a result of the approximately US\$6,500 kickback paid to her husband.

²¹¹ *Id.*

3. Joy-Mart Supply of IT Equipment to ISDR Offices

192. Joy-Mart Enterprises (“Joy-Mart”) was awarded a contract to supply IT equipment to ISDR. As was the case with respect to ESARO contracts awarded to other companies detailed above (Depasse, MSS Kenya, and Company 1) striking similarities in the bids submitted by the other purportedly independent vendors in competition with Joy-Mart, coupled with Subject 2’s close links to these vendors, demonstrate that this contract was achieved through collusion.

Background

193. Mr. Martin Owor, Senior Regional Officer for ISDR, sent Subject 1 a requisition form for the supply of IT equipment on 9 June 2006.²¹² On 27 June 2006, Subject 1 issued a RFQ for office equipment to be supplied to the ISDR offices.²¹³ Three days later, bids arrived from three purportedly independent companies: Joy-Mart, Depasse, and Company 1.²¹⁴ A fourth company, Mackphilisa Systems and Copy Cat Ltd., submitted a bid at a later date.²¹⁵

194. In the bid analysis prepared by Subject 1 she recommended splitting the contract between Joy-Mart and Copy Cat Ltd. Subject 3 and Staff Member 7, along with Subject 1, signed this document.²¹⁶

195. Subsequently, Joy-Mart received a contract to supply the IT equipment to ISDR. In return, Joy-Mart was to receive payment from ESARO in the amount of KES 1,348,300 (US\$18,350).²¹⁷

196. An examination of the striking similarities in the formatting of the bids received by ESARO from Company 1, Depasse, and Joy-Mart suggests that they were drafted from the same template.

²¹² Martin Owor email to Subject 1 (9 June 2006) (attaching requisition form).

²¹³ RFQ-ISDR-2006-06-002 (26 June 2006) (issued on 27 June 2006); Subject 1 email to “Subject 1” (27 June 2006); Subject 1 email to CopyCat Ltd (28 June 2006); Subject 1 email to “Subject 1” (27 June 2006) (attaching RFQ); Subject 1 note-to-file (12 October 2006); Subject 1 email to Dancan Okeyo (29 June 2006). While ostensibly, Mr. Okeyo is connected to MackPhilisa Systems, he also acted as the contact for Lanctrac Systems in bids where MackPhilisa Systems was a bidder.

²¹⁴ Depasse Logistics response to RFQ-ISDR-2006-06-002 (30 June 2006) (signed by Joshua Nzei); Joy-Mart Enterprises response to RFQ-ISDR-2006-06-002 (30 June 2006); Company 1 response to RFQ-ISDR-2006-06-002 (29 June 2006) (signed by Company Representative 1).

²¹⁵ CopyCat response to RFQ-ISDR-2006-06-002 (29 June 2006); MackPhilisa Systems response to RFQ-ISDR-2006-06-002 (28 June 2006); Analysis for Quotations and Contract Award Recommendation for the Supply of Office Equipments [sic] (6 July 2006). This bid analysis includes prices for USB drives which were not included in the bids, and a white board which did not even feature in the RFQ.

²¹⁶ Analysis for quotations and contract award recommendation for the supply of Office Equipments (6 July 2006).

²¹⁷ Task Force summary of UNOPS payments to vendors, data provided by UNOPS Finance Section (May 2007).

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depassé Logistics
Dealers in Stationeries, Printing, Office Equipment and Supplies

PO Box 26601 00200
NAIROBI
Tel: 8227261/2
Fax: 6053337
E-mail: info@depasselogistics.com

June 30, 2006

ATTN: UNOPS-ESARO
NAIROBI, KENYA

REF: RFQ-ISDR-2006-06-002

Your above-mentioned RFQ refers:

ITEM NO.	DESCRIPTION	UNIT PRICE
1	Printer HP	Ksh. 342,000 ✓
2	Scanner HP	Ksh. 84,000 ✓
3	Desktop Computer HP	Ksh. 146,000 ✓
4	Photocopy Machine-Ricoh	Ksh. 1,450,000 ✓
5	LCD Projector Screen (England)	Ksh. 128,000 ✓
6	Binding Machine	Ksh. 62,500 ✓
7	Digital Camera - Sony	Ksh. 78,000 ✓
8	Laptop Computer (Toshiba)	Ksh. 196,000 ✓
9	Telephone Head (Panasonic)	Ksh. 12,500 ✓
10	Fax Machine (Panasonic)	Ksh. 62,000 ✓
TOTAL		Ksh. 2,481,500

Prices valid for 90 days.

Waiting for the confirmation order.

Best Regards,
JOSHUA M. NZEI
DIRECTOR

ATTN: UNOPS-ESARO
NAIROBI, KENYA

REF: RFQ-ISDR-2006-06-002

We have received your above-mentioned RFQ. Kindly find our quote below as follows:

ITEM NO.	DESCRIPTION	UNIT PRICE
1	Printer HP	Ksh. 312,000 ✓
2	Scanner HP	Ksh. 84,000 ✓
3	Desktop Computer HP	Ksh. 146,000 ✓
4	Photocopy Machine-Ricoh	Ksh. 1,250,000 ✓
5	LCD Projector Screen (England)	Ksh. 110,000 ✓
6	Binding Machine	Ksh. 62,000 ✓
7	Digital Camera - Sony	Ksh. 69,000 ✓
8	Laptop Computer (Toshiba)	Ksh. 196,000 ✓
9	Telephone Head (Panasonic)	Ksh. 19,500 ✓
10	Fax Machine (Panasonic)	Ksh. 42,000 ✓
TOTAL		Ksh. 2,290,500

Assuring you of our professional services at all times.

Best regards,
EXECUTIVE DIRECTOR

JOYMART ENTERPRISES
P.O. BOX 28655, NAIROBI. TEL. 605388 FAX. 605337

Friday June 30, 2006

ATTN: UNOPS-ESARO
NAIROBI, KENYA

REF: RFQ-ISDR-2006-06-002

Thank you for your above-mentioned RFQ. Our offers are quoted:

ITEM NO.	DESCRIPTION	UNIT PRICE
1	Printer HP	Ksh. 302,000 ✓
2	Scanner HP	Ksh. 74,400 ✓
3	Desktop Computer HP	Ksh. 136,400 ✓
4	Photocopy Machine-Ricoh	Ksh. 1,050,900 ✓
5	LCD Projector Screen (England)	Ksh. 98,000 ✓
6	Binding Machine	Ksh. 42,500 ✓
7	Digital Camera - Sony	Ksh. 59,000 ✓
8	Laptop Computer (Toshiba)	Ksh. 186,000 ✓
9	Telephone Head (Panasonic)	Ksh. 9,500 ✓
10	Fax Machine (Panasonic)	Ksh. 32,000 ✓
TOTAL		Ksh. 1,990,700

Validity of offer - 90 Days

Looking forward to your esteemed confirmed order.

Thank you,
RONNIE KIMANI
SUPPLIES DIRECTOR

Figure: Depasse Logistics, Company 1, and Joy-Mart Enterprises responses to RFQ-ISDR-2006-06-002 (30 June 2006)

While the prices and specifications on these three bids are different, the format and layout of the bids is identical, even with respect to minor details such as the capitalization of letters, the spacing between lines, abbreviations, and the use of bold type. Thus, it appears that the same template was used for all three bids, with small changes being made to each bid before the document was reprinted on different letterhead. In addition, two of the bids are both dated 30 June 2006.

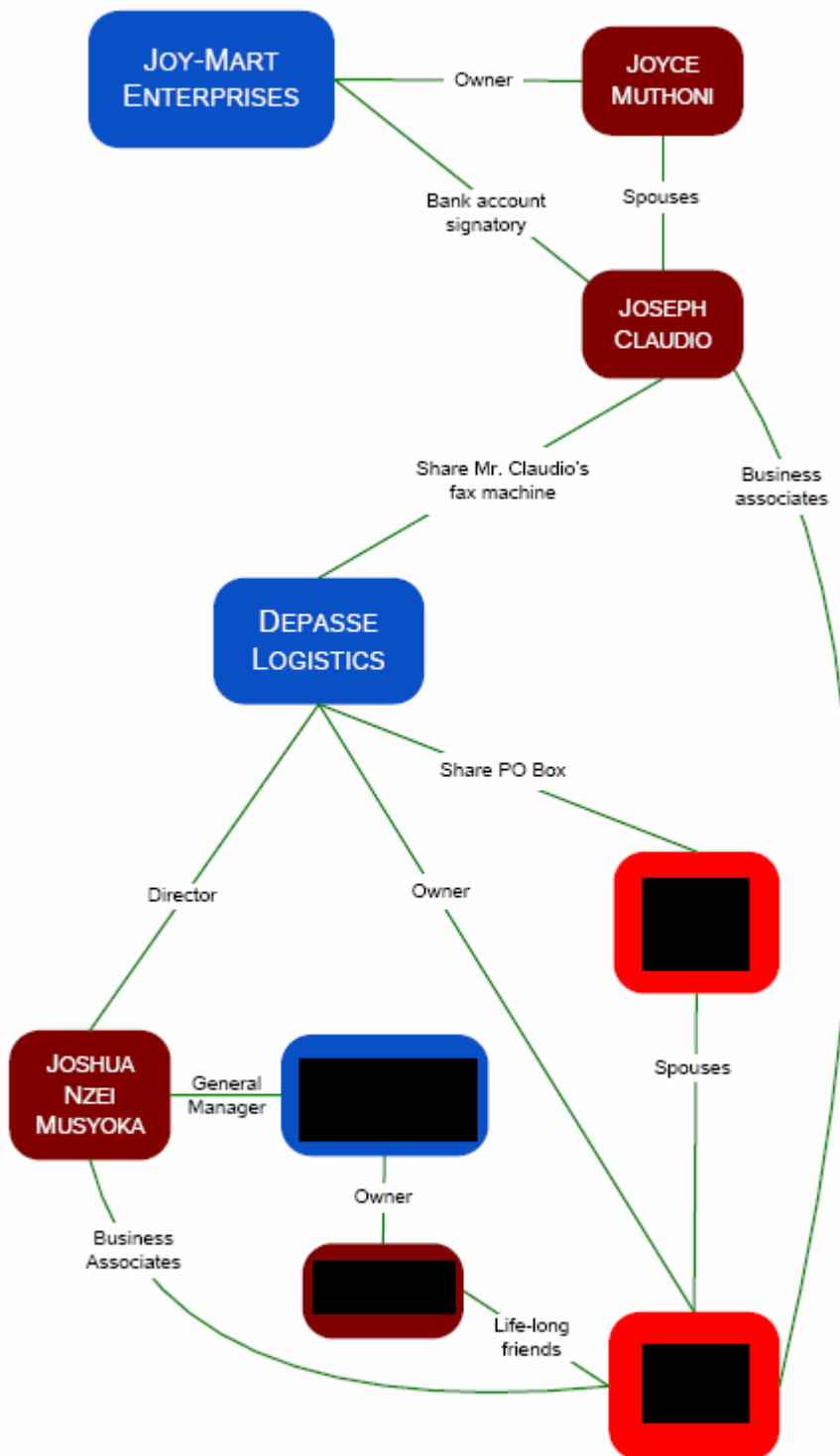
197. Moreover, clear links between two of the bidders, Depasse and Joy-Mart, are included on the bid documents themselves. The bid submitted by the two companies each lists the same fax number. In fact, this number corresponds to the fax in the private office of Mr. Joseph Claudio.²¹⁸

198. Chart C below demonstrates the links between Joy-Mart, Depasse, and Company 1, including their links to Subject 2.

²¹⁸ The fax number is 605337. Joseph Claudio interview (22 February 2007).

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Chart C: Connections between Joy-Mart, Depasse, Company 1, and Subject 2



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199. The close links between the companies is demonstrated in Chart C above. The Task Force has no reason to question the legitimacy of the bids from Copy Cat and MackPhilisa Ltd.

200. Indeed, the fact that Subject 2 is associated with Joy-Mart is confirmed by Joseph Claudio, whose wife, Ms. Joyce K. Muthoni, is the owner of Joy-Mart.²¹⁹ As explained below, Mr. Claudio owns a number of companies—namely, Kenelec Supplies, Diesel Care Ltd., and Joe's Freighters—that have employed or maintained ties with Subject 2.²²⁰ Joy-Mart, incorporated in Nairobi in 1999, shares the same PO Box address and facsimile number with all three companies owned by Mr. Claudio.²²¹

201. Although Mr. Claudio initially denied that Ms. Muthoni was his wife, claiming instead that she was his sister-in-law,²²² he later admitted that she was his wife and the owner of Joy-Mart. He tried to blame his initial misrepresentation on his having misunderstood that his sister-in-law was the person who operated Joy-Mart.²²³

The Task Force Evaluation

202. After a thorough review of the evidence presented above, the Task Force finds that Joy-Mart secured a contract with ESARO through a corrupt scheme carried out by Subject 2 and his associates. Further, Subject 1 was fully aware of this scheme, as she facilitated the bid collusion that occurred.

203. Three of the bidders—Joy-Mart, Depasse, and Company 1—were all linked to Subject 2. Moreover, similarities in the bids submitted by these three companies suggest that they were all drafted by the same individual(s).

204. There are significant overlaps between Depasse and Company 1. Depasse is owned by Subject 2. Likewise, Mr. Joshua Nzei, who signed the Depasse bid, represented himself as an employee of Company 1 on a previous bid. In turn, Company 1 is owned by Subject 2's friend Company Representative 1, who previously signed a Depasse bid under the title of Director. Further, these companies are tied to Joy-Mart by Subject 2 who is associated with three of Joseph Claudio's companies (Kenelec Supplies, Diesel Care Ltd., and Joe's Freighters) that share a PO Box and facsimile number with Joy-Mart, owned by Mr. Claudio's wife.

205. Just as in the case of the ESARO contract awards to the Depasse and Company 1 companies (as detailed above), Subject 1 actively facilitated the collusion of the bidding

²¹⁹ Joy-Mart Enterprises Certificate of Registration (28 September 1999); Atlas Vendor Profile for Joy-Mart Enterprises (20 July 2006) (attaching Joy-Mart Company Profile); Joseph Claudio letter to the Task Force (26 March 2006); Atlas Vendor Profile for Joy-Mart Enterprises (20 July 2006) (attaching Joy-Mart Company Profile).

²²⁰ ESARO Supplier Profile Form for Joe's Freighters (undated); Joseph Claudio letter to the Task Force (26 March 2006).

²²¹ Joy-Mart Enterprises Certificate of Registration (28 September 1999); Suppliers list (30 March 2006) (signed by Staff Member 10); Customs Agent's License for Joe's Freighters (15 March 2006); Kenelec Supplies business card for Subject 2 (undated); LPO 2006-095 (8 May 2006) (for Kenelec Supplies).

²²² Joseph Claudio interview (22 February 2007).

²²³ Joseph Claudio letter to the Task Force (26 March 2007).

process in favor of awarding the ISDR contract to Joy-Mart. First, she sent out the RFQ and drafted the bid analysis for this contract. Second, although she was aware that Depasse was one of the bidders Subject 1 failed to disclose to anyone at ESARO her connection with Depasse (owned by her husband). Third, as set forth above, she failed to alert anyone at ESARO that Company Representative 1 of Company 1 was, in fact, her husband's friend and business associate.

4. El Paso Interiors and Lins Consult Contracts

206. ESARO awarded several contracts to El Paso Interiors ("El Paso") and its sister company Lins Consult ("Lins") for the supply of furniture and curtaining for the ISDR and ESARO offices. The Task Force has identified evidence that suggests that Subject 1 and Subject 2 received kickbacks in return for the award of these contracts to these companies.²²⁴

207. El Paso and Lins are closely linked through their joint owners, who are husband and wife.

208. El Paso has been a registered company in Nairobi since 2001. Mrs. Beverley Koech and her husband, Mr. Malinson Koech, serve as its directors and owners.²²⁵

209. Lins Consult is primarily an architecture agency and also owned by Mr. Koech. His wife serves as the firm's interior designer.²²⁶

a. Curtains for the ESARO Office

210. As discussed below, El Paso secured two contracts to supply curtains for the ESARO offices at greatly inflated prices. The contracts to supply curtains for the ESARO offices were awarded to El Paso in May and July 2006. The first of these contracts with El Paso was for around KES 1 million.²²⁷

Background

211. The ESARO offices required custom-made curtains in order to protect staff from shattered windows in the event of a bomb blast.²²⁸ During discussions with Mrs. Koech regarding curtains for her private home, Subject 1 asked Mrs. Koech to submit an offer to supply curtains for the ESARO offices.²²⁹

212. At the time when the LPO was created, ESARO Finance staff members recalled that Subject 1 presented them with only one bid—that of Mr. Koech's company, El Paso.

²²⁴ In addition, El Paso and Lins Consult also bid on the construction of a partition for the ISDR Warwick Centre office. This procurement process is not discussed below in detail; the Task Force reserves its position on whether the Koechs colluded with Subject 2 and Subject 1 during this particular procurement exercise.

²²⁵ Beverley Koech interview (24 February 2007).

²²⁶ *Id.*; Subject 1 interview (7 December 2006).

²²⁷ LPO 2006-112 (31 May 2006).

²²⁸ Staff Member 13 interview (27 February 2007); Staff Member 10 interview (13 April 2007).

²²⁹ Beverley Koech interview (24 February 2007).

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However, these staff members told Subject 1 that the submission of three bids was required in order to process the budget request. In response, Subject 1 claimed to Finance staff members that the other bidders had been more expensive. Still, the Finance staff insisted on seeing actual quotes from these purportedly more expensive alternative bidders. Later, prior to the issue of the LPO, Subject 1 brought two further bids to the Finance staff for inspection.²³⁰

213. Although Subject 1 brought two additional bids to Finance staff members for review, there is no evidence to indicate that she engaged in a proper solicitation process for these bids. Only one bid, that of Parshotam Vasram Tailor (“Parshotam”) was found in the relevant file for this contract. However, the bid analysis, contained in this same file and signed by Subject 1, lists three bidders—namely, Parshotam Vasram Tailor, El Paso, and Mrs. Koech’s husband’s company, Lins Consult. Significantly, Mr. and Mrs. Koech controlled Lins Consult and El Paso—two of the three vendors. The bid analysis records Lins Consult’s bid as KES 1,210,000, El Paso’s bid as KES 1,036,400, and Parshotam’s bid as KES 1,816,175.²³¹

214. On 31 May 2006, a purchase order was issued to El Paso in the amount of KES 1,036,400 (approximately US\$14,473).²³² There is no record of the bid having been submitted to the LPC, as was required under ESARO policy since it was in excess of US \$2,500.²³³

215. In June 2006, additional curtains were sought for a new block in the ESARO offices. A requisition form was signed by Subject 1 and authorized by her supervisor, Staff Member 7, as well as the Regional Director. A note on the requisition form in Subject 1’s handwriting states, “For standardization and continuation purposes - use El Paso [sic].”²³⁴ After the form had been signed by her supervisors, Subject 1 subsequently added to the form the following: “As per analysis dated 31st May/2006 and Request dated 9th August 2006 Herein attached.”²³⁵

216. The following month, El Paso submitted a second quote for curtains to be supplied to the ESARO offices. The quote was signed by Subject 1 in June 2006.²³⁶ The Task Force did not find any evidence in the relevant file to suggest that a competitive bidding exercise had been conducted for this contract.

217. In her statements to Task Force investigators Subject 1 repeatedly stated that the second curtains contract had been awarded through a waiver of the competitive bidding process. However, Subject 1 failed to provide any evidence of the required written justification for such a waiver. Likewise, the Task Force was unable to locate any

²³⁰ Staff Member 17 interview (1 March 2007).

²³¹ Parshotam Vasram Tailor quotation (23 May 2006); Analysis for Quotations and Contract Award Recommendation for the Supply of Blinds and Security Fittings for UNOPS (31 May 2006).

²³² LPO 2006-112 (31 May 2006); Atlas Finance Approval (undated). The exchange rate for May 2006 was KES 71.61 to the United States dollar. United Nations Rates of Exchange for May 2006.

²³³ ESARO LPC minutes (2006); Staff Member 11 interview (2 March 2007).

²³⁴ ESARO requisition form (10 July 2007); Eric-Olivier Benoliel email to the Task Force (18 May 2007).

²³⁵ ESARO Requisition Form (10 July 2007) (two versions).

²³⁶ El Paso quotation for curtains (30 June 2006); ESARO requisition form (10 July 2006).

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documentation that would justify such a waiver. Moreover, given that the amount involved in the contract was in excess of US\$2,500, the bid should have been presented to the LPC irrespective of whether a waiver was granted. However, the contract never was given to the LPC for review. Further, according to ESARO policy, the LPO should not have been authorized without LPC minutes and a document recording the approval of a waiver of competitive bidding.²³⁷

218. In July 2006, Subject 1 (and the Officer-in-Charge at that time) authorized a second purchase order to El Paso in the amount of KES 725,480 (approximately US\$9,875).²³⁸

219. As noted above, both the El Paso and Lins Consult companies are owned by Mr. and Mrs. Koech. Mrs. Koech told the Task Force that when bidding for furniture for ISDR she told Subject 1 that she and her husband operated both the El Paso and Lins Consult companies (see below). The bid for furniture took place in late June, a month after the bidding exercise for the curtains. Therefore, if Mrs. Koech is to be believed, at the time of the curtains contract ESARO staff members were unaware of the links between the two bidders on this contract.

220. Mrs. Koech acknowledged that she prepared the subsequent bids for furniture on behalf of both El Paso and Lins Consult.²³⁹ As Mr. Koech said, “How can the right hand not know what the left hand is doing?”²⁴⁰ Mr. and Mrs. Koech’s statements regarding shared knowledge with respect to the contract for furniture are equally relevant to the contract for curtains. Both Mr. and Mrs. Koech’s failure to disclose the links between the two companies presented a false image of competition and compromised the bidding process for both contracts.

221. Given the flaws in the procurement process, the Task Force requested that Mrs. Koech provide details of the curtains supplied to Subject 1 in a personal capacity. The Task Force requested information, including that relating to the cost, profit margins, and proof of payment, in order to establish whether Subject 1 paid market price or received a benefit in return for connecting Mrs. Koech with ESARO. However, Mrs. Koech failed not only to provide the requested information to investigators but also to inform the Task Force of other upholstery work she had done for Subject 1 in the past. Subject 1’s misrepresentations went even further—for instance, Subject 1 denied outright that Mrs. Koech had ever supplied her with curtains.²⁴¹

²³⁷ UNOPS manual, ch. 2, p. 17 (undated).

²³⁸ LPO 2006-156 (27 July 2006); El Paso receipt for payment (16 October 2006). The exchange rate for July 2006 was KES 73.47 to the United States dollar. United Nations Rates of Exchange for July 2006.

²³⁹ Beverley Koech interview (24 February 2007); Lins Consult quotation for ISDR furniture (30 June 2006); Rook Consulting quotations (26 and 30 June 2006); El Paso quotation (30 June 2006).

²⁴⁰ Mallinson Koech interview (1 March 2007).

²⁴¹ Beverley Koech interview (24 February 2007); Document supplied to the Task Force by Mrs. Koech; Aero Logistics LPO 1165 (22 March 2006); El Paso Interiors invoice (15 December 2006); Subject 1 email to the Task Force (22 March 2007).

The Task Force Evaluation

222. The evidence set forth above demonstrates that the bids for the curtains were engineered by Mr. and Mrs. Koech, and that Subject 1 was an active participant in steering the ESARO contracts to El Paso. Subject 1's participation in this scheme is apparent from the fact that, originally, Subject 1 presented only the El Paso bid for the curtains contract to the budget officer. Only later, at the specific request of the Finance Staff, did she provide two further bids. Further, there is no evidence that would suggest that Subject 1 held a proper bid solicitation exercise or that either contract award was presented to the LPC (since each contract's value was in excess of US\$2,500).

223. El Paso and the other bidder for the contract, Lins Consult, are both owned and operated by Mr. and Mrs. Koech, who admit to have submitted parallel bids for other ESARO contracts.

224. Although Subject 1 denies having ever received furnishings from Mrs. Koech, there is evidence (presented below) that she received a material benefit from this contract in the form of curtains or other fittings for her own home either free of charge or at a below market rate.

b. ISDR Contracts for Furniture*Background*

225. In the summer of 2006, ISDR rented office space in Nairobi to coordinate its response to the tsunami of December 2004 and other natural disasters. It based itself in two places—the UNON compound and the Warwick Centre in Nairobi. Consequently, ISDR needed to procure office furniture and construction work for both offices.²⁴²

226. As discussed above, on 5 June 2006, Martin Owor, the Senior Regional Officer for ISDR, sent a requisition form to Subject 1 for stationery, furniture, and certain electrical equipment for the Warwick Centre offices.²⁴³ The order was subsequently divided: Company 1 received the stationery order; Joy-Mart was awarded the IT equipment order; and Lins Consult was awarded the furniture order, as will be discussed below.²⁴⁴

Improper Conduct/Fraud on UN

227. On 9 June 2006, Martin Owor, the Senior Regional Officer for ISDR sent to Subject 1 an amended requisition form for furniture to be provided to the Warwick Centre offices.²⁴⁵ Subject 1 requested approval from the Senior Regional Officer at ISDR

²⁴² Staff Member 20 interview (8 May 2007).

²⁴³ Martin Owor email to Subject 1 (5 June 2006) attaching amended requirements; ESARO Requisition form for furniture for "Mr. Owor's Office," "Ms. Noro Office," and "Other Offices" (9 June 2006).

²⁴⁴ In addition, there was a procurement process undertaken for a conference table and chairs for the ISDR offices that resulted in a LPO being issued to Threfam. This procurement exercise is not discussed in this Report.

²⁴⁵ Martin Owor email to Subject 1 (9 June 2006) (attaching amended requirements); ESARO Requisition form for furniture for "Mr. Owor's Office," "Ms. Noro Office," and "Other Offices" (9 June 2006).

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to purchase the furniture from Victoria Furnitures (“Victoria”), an established supplier in Nairobi.²⁴⁶ According to Subject 1, this plan was then dropped after ISDR staff failed to approve the Victoria quotes.²⁴⁷ The Senior Regional Officer responded with an amended request, since ISDR staff had reportedly requested that suppliers other than Victoria be asked to submit quotes for the furniture order.²⁴⁸

228. A RFQ was subsequently issued for the office furniture to be provided to the Warwick Centre as well as the main ISDR office which is split into three separate lots.²⁴⁹

229. Mr. and Mrs. Koech’s companies, El Paso and Lins, sent two separate bids that initially appeared to be from two separate companies. In addition, three other vendors responded: Centurion Engineering and Builders Limited (“Centurion”), Rook Consulting Engineers (“Rook”), and Victoria Furnitures.²⁵⁰ Subject 1 drafted and signed the ensuing bid analysis dated 8 August 2006. It was then checked by Subject 3 and signed by Staff Member 7.²⁵¹

230. The bid analysis, drafted by Subject 1 herself, notes that four, rather than three, companies submitted bids, but fails to reflect the bid from Victoria of KES 363,960. The other bids are listed as the following: from Lins, KES 1,428,000; from El Paso KES 1,773,775; from Centurion KES 1,911,000; and from Rook KES 1,869,300. There is no reason given as to why Subject 1 did not include Victoria, an established supplier, in the bid analysis.²⁵²

231. As can be seen in the figures below, the bids for Lins, Rook, and Centurion were prepared by the same person. Not only do all three bids use a template based on the format of the El Paso bid—altered slightly and then printed off onto three different letterheads—but all three bids are dated the same day, 30 June 2006. Moreover, the three bids include the same wording and format, as well as the same font. Most tellingly, the Rook and Lins bids both show the same typing error: “For SIDR,” instead of “For ISDR.”

²⁴⁶ Subject 1 email to Martin Owor (9 June 2006); ESARO Requisition form (9 June 2006).

²⁴⁷ Subject 1 note-to-file (12 October 2006).

²⁴⁸ Martin Owor email to Subject 1 (9 June 2006); Subject 1 email to Martin Owor (12 October 2006).


²⁴⁹ RFQ-ISDR-2006-06-003 (22 or 26 June 2006). Two different dates of issue are noted on the RFQ. However, it was actually issued on 27 June 2006. Subject 1 note-to-file (24 November 2006).

²⁵⁰ Lins Consult quotation for ISDR furniture (30 June 2006); Rook Consulting quotations (26 and 30 June 2006); El Paso quotation (30 June 2006); Centurion Engineers and Builders Ltd. quotations (27 and 30 June 2006); Victoria Furnitures quotation (29 June 2006).

²⁵¹ Bid analysis (8 August 2006).

²⁵² *Id.*

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El~Paso Interiors
Interior Designers & Furnishers

Lungata Shopping Centre
Lungata Road
Shop 52
P.O. Box 1555
00100-Nairobi, Kenya
Tel: 02-660135
Fax: 02-603021
Call: 072 709259

QUOTATION

164

Date: 30/6/06

To: UNOPS
FOR ISDR
Attn: [REDACTED]

We wish to submit our quotation for the supply of the following items as per your enquiry.

Qty.	Particulars	@	Shs.	Cts.
------	-------------	---	------	------

lins consult

ARCHITECTS, INTERIOR DESIGNERS & PROJECT MANAGERS

K.P. Flats Suite 19, Milimani Rd.
 P.O. Box 1555 - 00100 Nairobi GPO, Kenya Tel. 2726541/83 Fax 2714187 E-mail: lins@connect.co.ke

30th June 2006

UNOPS FOR SIDR

OFFICES AT UN HEADQUARTERS

Below is our quotation for the supply of the following items as per your enquiry.

Qty.	Particulars	Per unit	Amount Kshs.
Item 1			

Rook Consulting Engineers
Civil and Structural engineers

Milimani Rd Suite No 16
P.O. BOX 8687-00100
NAIROBI

Tel./ (020) 2738085/98


30th June 2006


UNOPS FOR SIDR

OFFICES AT UN HEADQUARTERS

Below is our quotation for the supply of the following items as per your enquiry.

Qty.	Particulars	Per unit	Amount Kshs.
Item 1			





CENTURION ENGINEERS & BUILDERS LTD.

• P.O. Box 69968, Nairobi Kenya
Tel: 340857, 226902, 225054
Fax: 251029

30th June 2006

UNOPS FOR ISDR

OFFICES AT UN HEADQUARTERS

Listed below is our quotation for the supply of the following items:

Qty	Particulars	Per Unit	Amount Kshs.
Item 1			

Figure: El Paso Interiors, Lins Consult, Rook Consulting Engineers, and Centurion Engineers & Builders quotations for curtains for ESARO (30 June 2006)

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232. As can be seen in the above image of the El Paso bid, it is striking that the email lins@iconnect.co.ke, normally used by El Paso on quotations, was crossed out completely on the company’s furniture bid (Quotation No. 164) and replaced by Mrs. Koech’s private email. However, an El Paso quotation for curtains (see image below of Quotation No. 163) dated the same day as the bid shown above does list as its email address lins@iconnect.co.ke. Given that the word “lins”—as in Lins Consult—is included in the El Paso quote, the Lins Consult and El Paso companies appear to be intrinsically linked.²⁵³

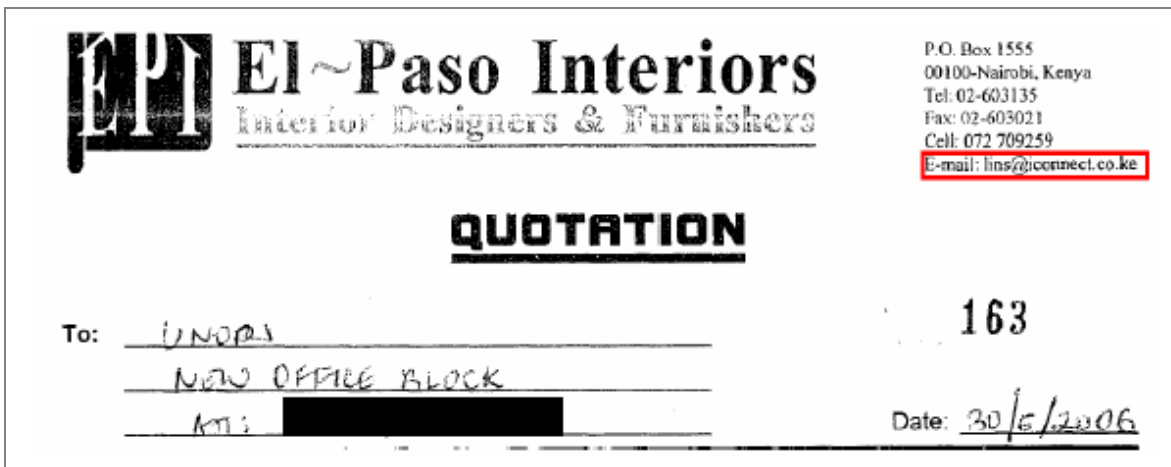


Figure: El Paso quotation No. 163 for curtains for ESARO (30 June 2006)

233. The bid analysis, dated 8 August 2006, recommends Lins as the cheapest bid for the contract.²⁵⁴ The fact that Subject 1 both drafted and signed this analysis is evidence that she had seen all the bids submitted and would have noticed their obvious similarities. Her failure to raise any concerns to other ESARO staff about the strikingly similar appearance of the bids suggests that she was aware of the bid collusion on the part of the bidders.

234. On 17 August 2006, Staff Member 6 signed LPO 2006-180 for a total value of KES 1,428,000. However, there were patent errors in the LPO. For example, it included the phrase “for Nile Basin project” and listed the name of the vendor as Read Technologies. Therefore, a second version of LPO 2006-180, again dated 17 August 2006, but signed on 21 August 2006, was created. This second version erroneously included the phrase for the “Nile Basin project,” but this version correctly listed the vendor as Lins Consult. It was signed by an ESARO official (unknown to the Task Force), who was Officer-in-Charge at that time.²⁵⁵

²⁵³ El Paso quotation no. 163 for curtains for ESARO (30 June 2006).

²⁵⁴ Analysis for Quotations and Contract Award Recommendation for the Supply of Office Furniture (8 August 2006) (signed by Subject 1).

²⁵⁵ LPO 2006-180 (17 August 2006) (signed on 17 August 2006 by Staff Member 10); LPO 2006-180 (21 August 2007) (signed on 21 August 2006 by the Officer-in-Charge).

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235. After this amended LPO was signed on 21 August 2006, ESARO awarded an initial contract to Lins Consult for KES 1,428,000 (approximately US\$19,318).²⁵⁶ However, then a second amendment to the LPO was made. It appears that the ISDR offices altered their initial request to ESARO halfway through the process requesting an alternative line of furniture.²⁵⁷ The new LPO 2006-180, dated 28 August 2006, and signed by Staff Member 6, is entitled “ISDR project” and indicates a total value of KES 2,006,000 (approximately US\$27,137) as the new price requested for the contract.²⁵⁸

236. Although this was a material alteration of the initial terms of the contract—i.e., this second amendment to the LPO increased the cost to the Organisation by almost US\$8,000—UNOPS appears to have not conducted a re-bidding exercise.²⁵⁹ The UNOPS Procurement Handbook sets forth the following protocol to be followed in the case that a contract is amended: “When amending a contract, procurement staff must justify the reasonableness of cost (i.e., unit prices shall not exceed those in the original contract). Deviations from the original unit prices must be explained and justified.”²⁶⁰ Specifically, it is UNOPS policy that “[a]mendments must be approved by the requisitioner and relevant PA” and that “[r]equests for amendments shall be submitted for review . . . to the relevant *contract committee* and/or PA [Procurement Authority] according to the established financial thresholds.”²⁶¹ In this case, the requisitioner did approve the amendment—indeed, it was they who instigated the amendment by rejecting the first furniture range in favor of a better quality range. The Procurement Authority (“PA”) for UNOPS Nairobi, Staff Member 6, the Regional Director, signed the new LPO. Therefore, the LPO was approved by the PA.²⁶² However, the Task Force was unable to identify any evidence that the amendment to the contract was submitted for review to the Committee, as required by UNOPS policy. Thus, Subject 1 and her superior, Staff Member 6, violated UNOPS protocol by approving the amendment to the Lins contract without first submitting it to the Committee for review.

237. A payment voucher for Lins Consult was created, after which the company collected the cheque from ESARO on 12 September 2006.

²⁵⁶ Analysis for Quotations and Contract Award Recommendation for the Supply of Office Furniture (8 August 2006) (signed by Subject 1). The exchange rate for August 2006 was KES 73.92 to the United States dollar. United Nations Rates of Exchange for August 2006; Subject 1 note-to-file (24 November 2006).

²⁵⁷ ESARO requisition form (24 August 2006).

²⁵⁸ Lins amended bid (23 August 2006). The exchange rate for June 2006 was KES 71.87 to the United States dollar. United Nations Rates of Exchange for June 2006; LPO 2006-180 (21 and 28 August 2006); UNOPS Disbursement Voucher D-211-2006-09-0001 (11 September 2006); Lins receipt for KES 2,006,000 (12 September 2006).

²⁵⁹ On 23 August 2006, a revised quotation was issued by Lins Consult for “ISDR Office at Warwick Center,” on which is handwritten “Amended Requisition.” On 24 August 2006 another requisition for furniture was issued, with changed specifications. A delivery note of 25 August 2006, headed “UNOPS – FOR ISDR UN HEADQUARTERS” records the goods were delivered, as does a “Receiving and Inspection” report for LPO 2006-180 of the same date.

²⁶⁰ UNOPS Procurement Handbook, “Contract amendments,” Section 2.61.1, ch. 2, p. 57 (undated).

²⁶¹ *Id.* (emphasis added).

²⁶² Order Confirmation for Purchase Order no. 2006-180 (28 August 2006) (signed by Staff Member 10).

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238. Later, ESARO management discovered that Lins Consult had actually purchased the office furniture at a local retail show room, Antarc, which had supplied the material to Lins Consult at approximately twenty five to fifty percent of the cost of what Lins Consult charged the Organisation.²⁶³ Mrs. Koech originally declined to discuss with the Task Force details of where she sourced the furniture or her profit margins. However, at a later point in time, she then confirmed that she had bought the furniture from Antarc. When Task Force investigators asked Mrs. Koech about the huge mark-ups in her bids as compared to the price she had paid at Antarc, she said she knew through her contacts at Antarc that this company was not bidding for the ESARO contract. She then stated, “I was just trying my luck,” since, according to Mrs. Koech, it was well known that a contract with the United Nations can “change your life.” She later said she had increased her mark-up even further when asked to re-bid to reflect the commercial risk of dealing with ISDR staff who were prone to changing their minds.²⁶⁴ Thus, Lins made a huge profit at the expense of the Organisation which could have purchased furniture from the same supplier (Antarc) for vastly less than the price ultimately paid to Lins. Ms. Koech admitted to having greatly profited from the ISDR contract.²⁶⁵

239. Task Force investigators were unable to locate any evidence that Antarc was invited to bid for the ISDR contract. Instead, the four bids from companies other than Antarc included in the bid analysis arrived at ESARO’s doorstep without Subject 1 having engaged in any prior solicitation process. Indeed, all four bidders appear to be linked, and at least three of the bids appear to have been prepared by the same person (see discussion above detailing similarities in the bids). In each case, the bids were not submitted by furniture firms, but rather from brokers all connected in some way to the Koechs. The result of this collusion was that the Organisation paid a huge sum for the same furniture it could have bought directly from a furniture supplier (e.g., Antarc) for a fraction of the cost. Indeed, an official in the UNOPS Finance Office recalled having been concerned that ESARO was receiving bids from companies other than from known furniture suppliers.²⁶⁶ Moreover, as detailed in the following section, there is evidence to suggest that Subject 1 received kickbacks for steering contracts to the Koechs.

240. The bid for Rook Consulting lists the address of their offices as 16, KP Flats, Milimani Road, Nairobi.²⁶⁷ When Task Force investigators visited this location they found that the Rook offices are, in fact, located in the same building as the offices of El Paso and Lins Consult, which are both based at 19 KP Flats, Milimani Road in Nairobi. The owner of Lins Consult confirmed that Rook provides IT assistance to Lins Consult and that the two companies have a “working association” with one another. For example, Lins has introduced Rook to prospective clients and Rook has occasionally worked as a

²⁶³ Staff Member 20 interview (8 May 2007); Staff Member 18 interview (10 May 2007); Antarc price list with comparison prices (5 October 2006) (provided to the Task Force by Staff Member 3, Regional Director, ESARO).

²⁶⁴ Beverley Koech interview (24 February 2007).

²⁶⁵ *Id.*

²⁶⁶ Staff Member 1 interview (1 March 2007).

²⁶⁷ Rook Consulting quotation (30 June 2006).

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subcontractor for Lins.²⁶⁸ Although Mr. Koech admitted to investigators that he had heard that Rook was bidding on United Nations contracts he denied any knowledge or awareness of Rook having submitted a bid to UNOPS on the same furniture deal involving his and his wife's companies. In addition, Mr. Koech denied any knowledge of Rook's prices for furniture.²⁶⁹

241. The owner of Rook stated that his normal business is in IT consulting and the provision of aquariums. He claimed that he sought out Subject 1 in order to inquire whether ESARO had a requirement for an aquarium. According to him, Subject 1 informed him that ESARO had no need of an aquarium but asked him if he would be prepared to bid for furniture. The owner of Rook also stated that he informed Mr. and Mrs. Koech that he was bidding on the furniture contract after having overheard them discussing the furniture deal in their office and comparing suppliers. He told the Koechs that he was bidding out of good manners. He denies collusion with Mr. and Mrs. Koech regarding the pricing of bids.²⁷⁰

242. Mr. Samay Singh, a representative of Centurion Engineering and Builders Limited ("Centurion"), another bidder for the furniture contract, claimed that Centurion was not aware of the identities of the other vendors who bid on the contract. However, Mr. Singh confirmed that Centurion had an existing business relationship with Lins Consult prior to the bidding exercise. Further, Mr. Singh stated that he knows the owner of Lins Consult very well having worked with and for this company in the past.²⁷¹

243. Mrs. Koech claims to have informed Subject 1 of the connection between Lins and El Paso upon submitting those companies' bids for the furniture. Mrs. Koech told the Task Force that she priced both bids herself but offered a different range of furniture in each company's bid.²⁷² Although she tried to explain the different pricing as related to the fact that El Paso carried a more expensive range of furniture than Lins Consult, her statement amounts to an admission that she fixed the bid prices submitted by Lins and El Paso—thereby, corrupting the procurement exercise. When coupled with the other evidence of bid collusion, as well as indirect benefits received by Subject 1 for securing the contract with ESARO, the evidence suggests that both Mrs. Koech and Subject 1 colluded together to steer the contract to Lins.

244. According to Subject 1, Lins Consult was represented in its dealings with ESARO by Ruth Munyiri.²⁷³ In fact, as noted above, the company is owned by Mrs. Koech, the owner of El Paso, who presented herself to the Task Force as having conducted transactions with ESARO on behalf of both El Paso and Lins Consult.²⁷⁴ The contention that the Lins Consult and El Paso are both owned by Mr. and Mrs. Koech is further

²⁶⁸ Malinson Koech interview (1 March 2007).

²⁶⁹ *Id.*

²⁷⁰ John Chepkony interview (1 March 2007).

²⁷¹ Samay Singh interview (7 March 2007).

²⁷² Beverley Koech interview (24 February 2007); Malinson Koech interview (1 March 2007).

²⁷³ LPO 2006-180 (21 August 2006); Subject 1 interview (7 December 2006).

²⁷⁴ Beverley Koech interview (24 February 2007).

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supported by the fact that the two companies are registered at the same address and use the same PO Box.²⁷⁵

The Task Force Evaluation

245. After reviewing the evidence presented above, it is evident that Subject 1 steered the ISDR furniture contract to Lins Consult. Two of the bidders, El Paso and Lins Consult, are both owned by the Koechs. The two other bidders, Centurion Engineering and Rook Consulting, also have links to the Koechs. Particularly compelling is the evidence that three of the four bids submitted with regards to this contract appear to have been drafted by the same individual—most likely, Mrs. Koech, since she told investigators that she had drafted the El Paso and Lins Consult bids. Moreover, Mr. and Mrs. Koech admitted that information was shared between their companies with respect to UNOPS-ESARO bids, including an admission by Mrs. Koech that she dictated the prices for both the El Paso and Lins Consult furniture bids.

246. Subject 1's participation includes: the fact that (i) she was the UNOPS officer who received and processed the ISDR request and handled the procurement; (ii) she drafted the bid analysis and reviewed the strikingly similar bids; and (iii) she failed to submit the bids for LPC review both initially and when the contract price was amended. Further, as will be demonstrated below there is evidence to suggest that Subject 1 received kickbacks from Mrs. Koech for steering contracts to the Lins and El Paso companies.

c. Kickbacks Provided by El Paso and Lins Consult

247. Mrs. Koech did business with Subject 1 in a personal capacity. For example, in 2006, Mrs. Koech supplied Subject 1 with curtains and lamp fittings for the latter's private home.²⁷⁶ Mrs. Koech claims that Subject 1's husband, Subject 2, eventually paid for the curtains (KES 170,000 or approximately US\$2,300) but that he never paid for the lamp fittings. She denied giving Subject 1 a special price on these goods due to the latter's position at ESARO.²⁷⁷ Despite the Task Force's request that Mrs. Koech provide proof that Subject 1 paid a market rate for the curtains and lamp fittings, Mrs. Koech failed to provide the Task Force with either a breakdown of costs or sufficient proof of payment by Subject 1 or Subject 2.²⁷⁸

248. Mrs. Koech's contention that she sold curtains to Subject 1 directly contradicts Subject 1's denial that she had ever bought curtains from Mrs. Koech. This contradiction indicates that one of the two women made a false statement to investigators.

²⁷⁵ Flat 19, KP Flats, Milimani Rd and PO Box 1555. El Paso Interiors Certificate of Registration (18 July 2001); Lins Consult quotation for ISDR furniture (30 June 2006).

²⁷⁶ Beverley Koech interview (24 February 2007); Staff Member 9 interview (12 April 2007).

²⁷⁷ Beverley Koech interview (24 February 2007); Malinson Koech interview (1 March 2007).

²⁷⁸ El Paso billed Subject 2's company, Aero Logistics, for the work but it was for Subject 1's personal home, not the Aero Logistics office. Subject 1 also received some lamps from Mrs. Koech. She claims that Subject 2 and Subject 1 failed to pay her for the lamps. See Beverley Koech email to Task Force (24 April 2007).

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249. According to the testimony of a third source, Mrs. Koech also provided Subject 1 with re-upholstered chairs.²⁷⁹ However, neither Subject 1 nor Ms. Koech mentioned to the Task Force that Mrs. Koech had upholstered Subject 1's chairs.

250. Further, Company Representative 1 informed the Task Force that Subject 1's husband, Subject 2, sent him to pick up from Mrs. Koech KES 20,000, which was allegedly to pay off Subject 2 for Mrs. Koech's receipt of a UNOPS contract.²⁸⁰ However, Mrs. Koech denied paying this money.²⁸¹

251. Mrs. Koech confirmed to the Task Force that Subject 1 was aware of the link between the El Paso and Lins Consult companies.²⁸² The connection between El Paso and Lins Consult had also been brought to Subject 1's attention after the contract award by Staff Member 9, the ESARO Finance Officer. Staff Member 9's staff had informed her that they had noticed a connection in the email addresses used by the two companies.²⁸³ In response, Subject 1 told the Task Force that she was not bothered about this connection since El Paso was providing curtains while Lins Consult was providing furniture. Further, she stated that she then checked the two companies' incorporation documents but failed to note any further links between them.

252. The Task Force requested details from Mrs. Koech regarding the curtain contract as well as a breakdown of costs of the curtaining provided to Subject 1 in order to assess whether Subject 1 paid market rates for these goods or received an indirect benefit from Mrs. Koech as a result of the latter securing a contract with ESARO. Mrs. Koech provided the Task Force with the invoice, purchase order, and a statement which purports to show payment from Subject 1 and Subject 2 of KES 173,500 to Mrs. Koech on 15 May 2006.²⁸⁴ Nothing on the statement ties the payment to Subject 2, other than Mrs. Koech's own statement that he paid KES 170,000. Further, Mrs. Koech failed to provide other information requested by the Task Force, such as documentation of costs incurred for providing Subject 1 with curtaining for the latter's private home. This documentation was requested in order to ascertain whether Subject 1 had received curtaining from Mrs. Koech (Subject 1 claims that she did not), and, if so, whether she had paid a fair market price for the goods provided (i.e., she had received no inappropriate benefit from Mrs. Koech). This failure on the part of Mrs. Koech to produce corroboration to support her claims to the Task Force, taken together with Subject 1's denial of ever having received the curtains as well as the totality of the facts and circumstances of the other matters discussed herein, gives rise to a concern that an inappropriate benefit was provided to Subject 1 by Mrs. Koech, in addition to the KES 20,000 kickback Mrs. Koech likely paid Subject 2 (discussed above).

²⁷⁹ Staff Member 9 interview (12 April 2007).

²⁸⁰ He said he believes this contract was for partitions. Company Representative 1 interview (24 February 2007).

²⁸¹ Beverley Koech interview (24 February 2007).

²⁸² *Id.*

²⁸³ Subject 1 interview (7 December 2006); Staff Member 17 interview.

²⁸⁴ Beverley Koech interview (24 February 2007); Aero Logistics LPO 1165 (22 March 2006); El Paso Interiors invoice (15 December 2006).

253. It should also be noted that when Task Force investigators showed Subject 1 bid documents relating to the furniture purchase for ISDR, she stated that her husband, Subject 2, had no links to the companies—Lins Consult, El Paso, Centurion, or Rook—mentioned therein.²⁸⁵

5. Compfit Systems

254. In mid-2006, Compfit Systems (“Compfit”) bid on three ESARO contracts. The company was awarded two contracts to supply goods to the DPU and was subsequently recommended by ESARO for a third contract to supply GPS systems to Sudan. However, this third contract was never completed.

255. Compfit, a general supplies company, was registered in Nairobi in 2001 and owned by Mr. Selassie Waigwa.²⁸⁶ Compfit shares the same address as Subject 2’s company, Aero Logistics.²⁸⁷

256. Subject 2 was the person who suggested that Mr. Waigwa send a letter of introduction to ESARO.²⁸⁸ Mr. Waigwa had met Subject 2 previously through Mr. Claudio, and saw him weekly at Mr. Claudio’s offices.²⁸⁹ Mr. Claudio is the owner of Kenelec Supplies (“Kenelec”) and a relative of Mr. Waigwa.²⁹⁰

a. Global Positioning Systems for Sudan

257. Subject 1 recommended to her superiors that Compfit be awarded a contract to supply GPS systems to Sudan. The three other bids submitted in competition for this contract were fabricated, thereby enabling Compfit to win the contract. The other bids came from Subject 2’s company, Depasse, as well as from Kenelec, a company belonging to the brother-in-law of Compfit’s owner. Subject 1 was aware of the bid collusion as described below.

Background

258. In August 2006, Compfit was recommended by Subject 1 for the award of a contract to supply GPS systems to Sudan. Her recommendation followed a tainted bidding exercise in which the bidders had colluded to ensure that Compfit was awarded the contract. However, this scheme was stymied, and the award of the contract to Compfit cancelled, when other UN staff complained that Compfit’s prices were exorbitant and exceeded the budget.

²⁸⁵ Subject 1 interview (7 December 2006).

²⁸⁶ Selassie Waigwa interview (26 February 2007); Certificate of registration (24 October 2001).

²⁸⁷ Compfit Systems Certificate of Registration for VAT (22 November 2001); Subject 2 business card for Aero Logistics (undated); Selassie Waigwa interview (26 February 2007).

²⁸⁸ Selassie Waigwa interviews (26 and 28 February 2007).

²⁸⁹ Selassie Waigwa interview (28 February 2007).

²⁹⁰ *Id.*

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259. In August 2006, ESARO issued a RFQ for GPS systems and software for use by a UNOPS project in Sudan. Amongst others, Subject 1 copied the RFQ to her husband's email address.²⁹¹


260. Bids were received from Depasse, Kenelec, and Compfit—none of which appear to have been in the original official list of invitees.²⁹²

261. As demonstrated in the figure below, bids of Depasse and Kenelec were clearly drafted from the same template.

²⁹¹ Subject 1 email to Staff Member 7 *et al.* (15 August 2006); RFQ-NTEAP-2006-08-02 (15 August 2006). Subject 1 maintained to the Task Force that the reason she copied emails and sent documents to her husband's email was so she could work on them at home, as access to the ESARO webmail was slow. Setting aside the confidentiality concerns such a practice would raise, the Task Force does not find this credible. Subject 1 interview (23 February 2007).

²⁹² Kenelec Supplies bid for Gamin [sic] mobile mapper, Arc View 9.1 and Lecia [sic] Erdas image professional version 9 (22 August 2006); Depasse Logistics bid for Thale mobile mapper, Arc View 9.1 and Lecia [sic] Erdas image professional version 9 (22 August 2006); Subject 1 Personal History Form (19 June 2006).

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**de passe
logistics.**
Investors, Importers, Exporters & Suppliers of general Merchandise

East Church Flats, East Church Road, P.O. Box 5660-00200, Westlands, Nairobi

22nd August 2006

UNOPS EASTERN AND SOUTHERN
AFRICA REGIONAL OFFICE
P.O. BOX 783-00621
VILLAGE MARKET
NAIROBI

REF: QUOTATION AS PER YOUR SPECIFICATION

Item	Qty	Description	Unit Price (USD)	Total (USD)
Item 1	8pcs	Thale Mobile Mapper	4,150	33,200
Item 2	1pc	Arc View 9.1	9,350	9,350
Item 3	1pc	LECIA ERDAS image professional version 9	11,050	11,050
TOTAL			53,600.00	


CIF - 550 USD To Khartoum Sudan

Yours Faithfully,

[Signature] 23/8/06

Anthony Mulwa
Director

SY



**Ken
elec
Kenelec Supplies Limited**

Lengata Road
P.O. Box 56653
Nairobi, Kenya
Telephone: 605338, 605347
Fax: 605337

22nd August 2006

UNOPS EASTERN AND SOUTHERN
AFRICA REGIONAL OFFICE
P.O. BOX 783-00621
VILLAGE MARKET
NAIROBI

REF: QUOTATION AS PER YOUR SPECIFICATION

Item	Qty	Description	Unit Price (USD)	Total (USD)
Item 1	8pcs	Gamin Mobile Mapper	4,450	35,600
Item 2	1pc	Arc View 9.1	9,400	9,400
Item 3	1pc	LECIA ERDAS image professional version 9	11,000	11,000
TOTAL			56,000.00	

CIF - 520 USD To Khartoum Sudan

Yours Faithfully,

[Signature] 23/8/06

J.K. Claudio
Director

SY

Figure: Depasse Logistics and Kenelec Supplies Ltd. Quotations (22 August 2006)

262. While the prices and specifications on the Kenelec and Depasse bids (shown above) are slightly different, the format and layout of the bids are identical, even with respect to minor details, such as the capitalization of letters, the spacing between lines, the abbreviations, and the bold type. The near identical format and layout of the two bids make clear that the same template was used for each bid, although with small changes to the template before the document was reprinted on different letterheads. Further, the bids are both dated the same day. In addition, the Depasse bid again notes as its address PO Box 5660-00200, the PO Box Subject 1 identified as her own in her UN employment forms.

263. Apart from the shared template for Depasse’s and Kenelec’s bids, the Task Force investigation revealed other indications of a corrupted bidding process. The Depasse bid lists Anthony Mulwa as the Director of Depasse. However, Mr. Mulwa is actually an employee of Compfit, Depasse’s supposed competitor in the bidding process.²⁹³

²⁹³ Selassie Waigwa interview (26 February 2007).

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Moreover, the owner of Compfit, Selassie Waigwa, who signed Compfit's bid, also dated 22 August 2006, is a close relative of the owner of Kenelec, Joseph Claudio. Although the Task Force identified evidence that these individuals met regularly with Subject 2, Mr. Claudio and Mr. Waigwa both initially misrepresented to the Task Force their connections to Subject 2 and to each other. Finally, as will be discussed in further detail below, the fact that the three bids submitted all quoted exorbitant prices but within the same range suggests that the bidders were aware of each others' quoted prices.²⁹⁴

264. As with every other contract for which the Depasse company submitted a bid, Subject 1 failed to inform ESARO management of her husband's connections to Depasse.

265. Compfit provided the lowest bid at US\$51,819. Subject 1 forwarded the bid analysis to the Associate Portfolio Manager with the recommendation that Compfit should receive the contract since it was the lowest bidder.²⁹⁵

266. The UNOPS Associate Portfolio Manager noted that the bid was expensive—a sentiment echoed by ESARO staff in Sudan. The staff in Sudan subsequently informed the Associate Portfolio Manager that, as opposed to the US\$51,819 quoted by Compfit, they had located similar equipment for US\$16,100 from a US internet company.²⁹⁶

267. In fact, the costs of fulfilling the contract with Compfit were such that the bid was cancelled as the budget for the programme could not cover this great of an expense.²⁹⁷

268. The Associate Portfolio Manager at ESARO, Nairobi agreed to look into the matter as there was a "huge discrepancy" in the price quoted by Compfit and that located by ESARO staff in Sudan. For this reason, the Associate Portfolio Manager felt that "something [wa]s fishy there."²⁹⁸ He did note later, however, that the US internet price identified by staff in Sudan did not reflect the cost of importing goods to Africa, nor did it account for economies of scale. He also referred to a potential sanctions problem with US goods.²⁹⁹

269. Nevertheless, comparative costs for similar equipment purchased and supplied to similar locations confirm that the price quoted by Compfit was excessive. In fact, Task Force investigators found a more straightforward comparison confirming the fact that

²⁹⁴ Kenelec Supplies bid for Gamin [sic] mobile mapper, Arc View 9.1 and Lecia [sic] Erdas image professional version 9 (22 August 2006); Depasse Logistics bid for Thale mobile mapper, Arc View 9.1 and Lecia [sic] Erdas image professional version 9 (22 August 2006); Joseph Claudio letter to the Task Force (26 March 2007); Joseph Claudio interview (22 February 2007); Selassie Waigwa interviews (26 February and 28 February 2007).

²⁹⁵ Subject 1 email to Christian Provencher (7 September 2006) (attaching bid analysis for ITB 2006-09-01 "For the Purchase of Computer and IT quipment [sic], Digital Camera and supply of Container for DPU Project") (recovered from Subject 1's desktop computer). This title is wrong as this bid analysis is actually refers to RFQ-NTEAP-2006-08-02.

²⁹⁶ Selassie Waigwa interview (26 February 2007); Christian Provencher email correspondence with Gideon Asfaw *et al.* (14 and 15 September 2006). The bid analysis sent by Subject 1 to the UNOPS Associate Portfolio Manager notes the Compfit offer as KES 51,394. Subject 1 email to Christian Provencher (7 September 2006).

²⁹⁷ Christian Provencher email correspondence with Gideon Asfaw (15 September 2006).

²⁹⁸ Christian Provencher email correspondence with Gideon Asfaw *et al.* (14 and 15 September 2006).

²⁹⁹ Christian Provencher email to Joel Arumadri (14 September 2006).

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Compfit's and the other bidders' quotes were exorbitant in Subject 1's own email. Her email contains a quote sent in November 2006 from a European supplier for the same GPS which Compfit had offered a few months earlier. Compfit's price for each GPS was US\$2,150. The European supplier offered the same model at 473 Euros (approximately US\$602) each—i.e., less than one third of the price charged by Compfit. In addition, Compfit charged US\$425 for shipping the GPS from Nairobi to neighbouring Sudan. The European supplier charged about half that price—173 Euros, approximately US\$220—to deliver equivalent goods from the Netherlands to Kinshasa.³⁰⁰

Selassie Waigwa Statements to the Task Force

270. Mr. Waigwa initially denied any knowledge or relationship with Subject 2 or Mr. Claudio.

271. However, when investigators reviewed Mr. Waigwa's telephone log they discovered that Mr. Claudio had telephoned Mr. Waigwa the very same day of the latter's interview with Task Force investigators. When confronted with this evidence Mr. Waigwa conceded that he did know Mr. Claudio; he later added that they were actually relatives.³⁰¹ He also admitted that the two had met prior to the Task Force's interview, although he stated that their meeting was unrelated to the interview.³⁰²

272. In his testimony to the Task Force, Mr. Waigwa also denied colluding with Subject 2.³⁰³ Mr. Waigwa admitted that Subject 2 had contacted him to inquire about Mr. Waigwa's prices for the bid. Mr. Waigwa asserted that he did not comply with Subject 2's request and never revealed this information to him. As noted above, Mr. Waigwa would meet Subject 2 weekly at Mr. Claudio's offices, and it was Subject 2 who had initially suggested to Mr. Waigwa that he introduce himself to ESARO.³⁰⁴ In fact, Subject 2 called Mr. Waigwa to tell him that Task Force investigators were coming to visit Nairobi.³⁰⁵

³⁰⁰ The GPS systems offered were Garmin 60CSx. Hans Schaart email to Subject 1 (29 November 2006). The exchange rate for June 2006 was KES 71.87 to the United States dollar. United Nations Rates of Exchange for June 2006. Subject 1 also referred the Task Force to issues regarding sanctions which would have prevented US goods being shipped to Sudan and the cost of importing the items to Kenya. Mr. Waigwa told the Task Force that the comparison in price were unfair as the internet prices did not include VAT or shipping and were for a different, less expensive type of GPS. Subject 1 interview (25 February 2007); Selassie Waigwa interview (28 February 2007).

³⁰¹ Selassie Waigwa interview (26 February 2007).

³⁰² Selassie Waigwa interview (28 February 2007).

³⁰³ Selassie Waigwa interviews (26 and 28 February 2007).

³⁰⁴ *Id.*

³⁰⁵ Selassie Waigwa interview (28 February 2007); Depasse Logistics bid for Thale mobile mapper, Arc View 9.1 and Lecia Erdas image professional version 9 (22 August 2006); Selassie Waigwa interview (26 February 2006).

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273. Mr. Claudio denied to the Task Force that he had submitted a bid to supply GPS. Rather, he claimed that his signature on the Kenelec bid was forged either by Subject 2 or by Mr. Waigwa.³⁰⁶

274. Mr. Claudio consistently made false statements to the Task Force throughout his interview. For example, although he initially denied any knowledge as to the identity of the owner of Compfit he later admitted that Mr. Waigwa was his brother-in-law and that Compfit and Joy-Mart had done business together in the past.³⁰⁷ In addition, Mr. Claudio was evasive about his relationship with Subject 2 and asserted falsely that Subject 2 was not connected to Diesel Care Ltd. (see below). Mr. Claudio also denied any knowledge of individuals who worked both for him and for Subject 2.³⁰⁸

The Task Force Analysis

275. There are clear indications of improper activity in the bidding process for the GPS equipment. Two of the bids (from Depasse and Kenelec) were prepared in collusion to allow the third bid (from Compfit) to win, as demonstrated by the fact that the two alternative bids were clearly drafted from the same template.³⁰⁹ In addition, as detailed above, the prices quoted in the three bids were all excessive, but, notably, within the same range. In turn, this allowed Compfit to win the contract even with an exorbitantly priced bid.

276. Indeed, as demonstrated by Chart D below, there are strong ties between all three companies that submitted bids. First, the owner of Compfit, Mr. Selassie Waigwa, is a close relative of Joseph Claudio, who is, in turn, the owner of the second bidder, Kenelec. Second, both of these individuals met regularly with Subject 2, the owner of the third bidder, Depasse. Third, Mr. Waigwa shares offices with Subject 2's other company, Aero Logistics.

³⁰⁶ Kenelec Supplies bid for Gamin [sic] mobile mapper, Arc View 9.1 and Lecia [sic] Erdas image professional version 9 (22 August 2006). For comparison of Mr. Claudio's signature, see Kenelec Supplies LPO 2006-095 (8 May 2006) (containing Mr. Claudio's signature dated 24 May 2006); Joseph Claudio letter to Subject 1 (24 May 2006); Joseph Claudio interview (22 February 2007); Joseph Claudio letter to the Task Force (26 March 2007); Joseph Claudio's lawyers letter to the Task Force (8 May 2007).

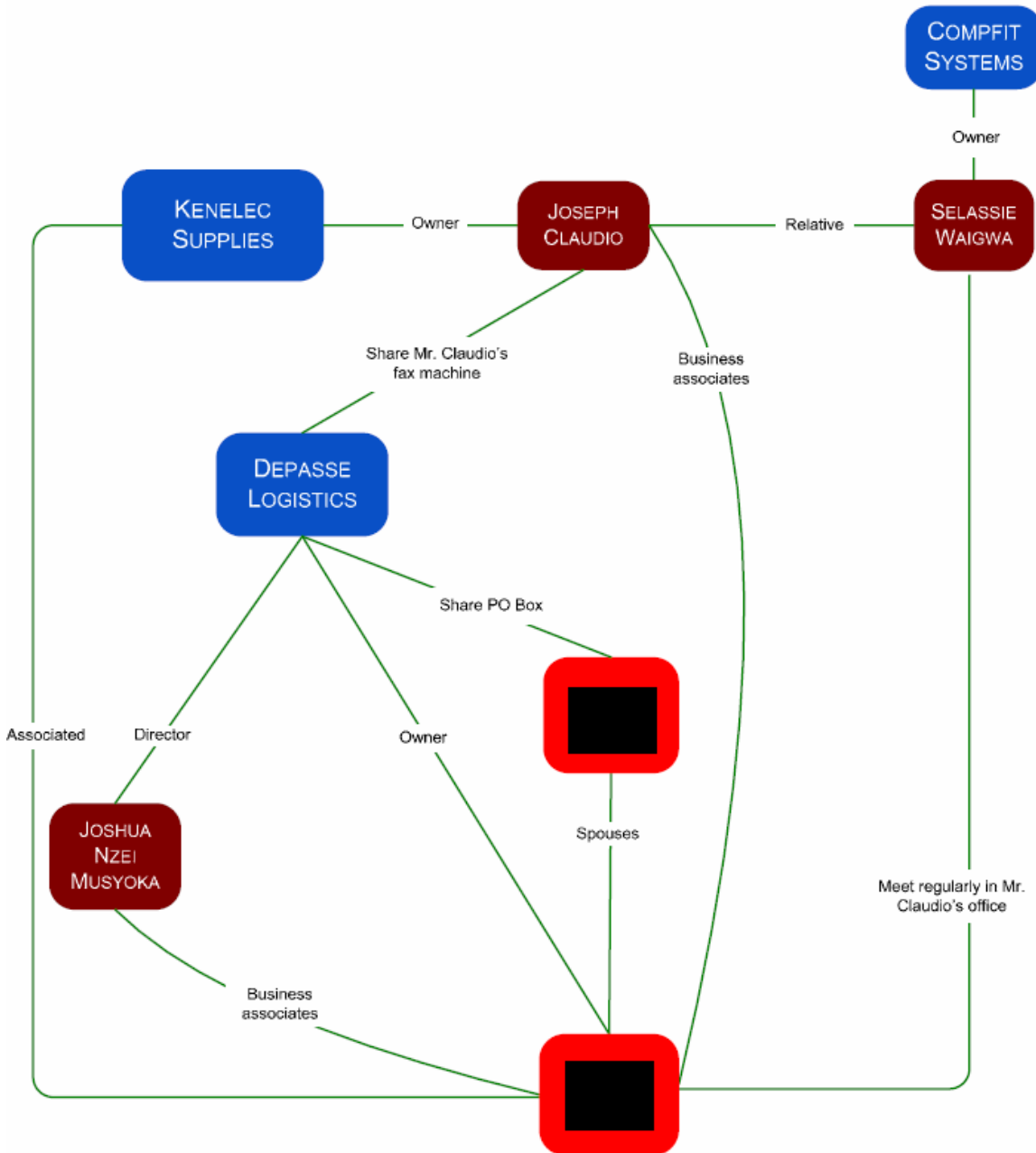
³⁰⁷ Joseph Claudio interview (26 February 2007); Joseph Claudio letter to the Task Force (26 March 2007).

³⁰⁸ Joseph Claudio interview (22 February 2007).

³⁰⁹ Depasse Logistics bid for Thale mobile mapper, Arc View 9.1 and Lecia Erdas image professional version 9 (22 August 2006); Selassie Waigwa interview (26 February 2006).

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Chart D: Connections between Compfit, Kenelec, Depasse, Subject 1, and Subject 2



277. Fourth, Mr. Claudio and Mr. Waigwa made false statements to the Task Force about their connections to Subject 2 and to each other. (Subject 2 repeatedly refused Task

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Force investigators' requests for an interview). Taken together, these four factors lead to a conclusion that the contract award to Compfit was the result of bid collusion.³¹⁰

278. Mr. Claudio claimed that the signature on the Kenelec bid was forged, either by Subject 2 or by Mr. Waigwa, and that he knew nothing about it. Based on Mr. Claudio's previous false statements to the Task Force, the Task Force does not find his denials credible.³¹¹

279. Subject 1 told the Task Force that she was unaware of any links between her husband's companies, Depasse and Aero Logistics, and Compfit.³¹² By contrast, the evidence suggests that not only was Subject 1 aware of the bid collusion concerning the GPS contract for the ESARO office in Sudan, but she was also an active participant in the effort. There are several pieces of evidence to support this claim: (i) Subject 1 copied the RFQ to her husband's email address; (ii) in an email recommending the award to Compfit, Subject 1 attached the bid analysis, which listed the Depasse company, owned by her husband, Subject 2; (iv) she failed to ever disclose to ESARO staff that Depasse was her husband's company; and (v) finally, even a cursory review of the Depasse and Kenelec bids would have revealed them to have been drafted by the same individual(s)—and, therefore, misrepresenting the two companies as fully independent of one another.

b. Motorola Radios for the Kenya Diplomatic Police Unit

280. In addition to the GPS contract, Compfit was also awarded a contract to provide Motorola Radios to the DPU. As in the case of the GPS equipment, Compfit's bid was at an exorbitant price, and its contract with ESARO was obtained through a tainted bidding exercise. This scheme was facilitated by Subject 1 in her role in procurement at ESARO.

Background

281. Compfit won a contract through ESARO to provide Motorola radios to the Diplomatic Police Unit ("DPU").

282. On 12 September 2006, Subject 1 issued a requirement for two-way radios for the DPU.³¹³

283. Subject 1 drafted an email with the RFQ and improperly sent it to a number of email addresses connected to her husband and his associates.³¹⁴ These email addresses

³¹⁰ Kenelec Supplies bid for Gamin [sic] mobile mapper, Arc View 9.1 and Lecia [sic] Erdas image professional version 9 (22 August 2006); Depasse Logistics bid for Thale mobile mapper, Arc View 9.1 and Lecia [sic] Erdas image professional version 9 (22 August 2006); Joseph Claudio letter to the Task Force (26 March 2007); Joseph Claudio interview (22 February 2007); Selassie Waigwa interviews (26 and 28 February 2007).

³¹¹ Mr. Claudio strongly denies that this is his signature and has provided sample signatures for analysis and states he has reported the matter to the Kenyan police. Joseph Claudio letter to the Task Force (26 March 2007); Mutuku Advocates email to the Task Force (8 May 2007) (identifying Mutuku Advocates as Mr. Claudio's counsel).

³¹² Subject 1 interview (23 February 2007).

³¹³ Subject 1 email to MSS Kenya *et al.* (12 September 2006) attaching RFQ-DPU-2006-09-002.

³¹⁴ *Id.*

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included: Subject 2's personal email address; mss_kenya@yahoo.co.uk, the email address of MSS Kenya, Subject 2's company; dochanda@africauniversal.com, the email address of David Ochanda (as noted above Mr. Ochanda was known socially to Subject 1 and also linked to the fraudulent bid exercise that resulted in MSS Kenya being awarded the contract to supply the container and IT equipment to the DPU); and Jackson_musal@colpal.com, the email address of Jackson Musal, who is connected with "Colpal," an alternative name for the CP Intertrade company.

284. Three companies—MSS Kenya, CP Intertrade Co. Ltd. (otherwise known as Colpal Trading), and Compfit—bid on the Motorola radios contract. Two of these three companies are linked to Subject 2.

285. Subject 1 signed off on a bid analysis for the two-way radios and chargers. She recommended Compfit for the award as the lowest and only bidder meeting the technical requirements of the contract.³¹⁵

286. Nonetheless, the Portfolio Manager informed Subject 1 that he did not want to use Compfit for the contract. In response, Subject 1 told the Portfolio Manager that she would rather use a local supplier due to CCK (Communications Commission of Kenya) regulations, which restrict imports of communications equipment.³¹⁶

287. Despite the Portfolio Manager having informed Subject 1 of his resistance to awarding the contract to Compfit, a LPO, signed by Subject 1, was nevertheless issued to this company in the amount of KES 502,894 (approximately US\$6,889).³¹⁷

288. Two of the companies that submitted bids for the contract in question are either associated with or linked to Subject 2, or colluded with him on other ESARO bidding exercises. In turn, these connections suggest that there was also collusion in the bidding exercise for this contract since true competition cannot be achieved when two of the three companies bidding are tied in some way to Subject 1's husband, Subject 2.

289. MSS Kenya is Subject 2's company. The other bidder, CP Intertrade, was represented by John Kamau. Mr. Kamau also represented Jamii Technologies, and, in this, latter, capacity had previously corresponded with James Ochola (who worked for MSS Kenya with Subject 2) on a bid for satellite dishes for UNOPS.³¹⁸ Mr. Kamau also

³¹⁵ A bid from Express Automation was reportedly received after the deadline and therefore disregarded. Analysis for Quotations and Contract Award Recommendation for the Supply of Motorola and Batteris [sic] DPU (18 September 2006); John Kamau email to Subject 1 (16 September 2006) (attaching response to RFQ-2006-09-02 and separate quotation).

³¹⁶ Subject 1 email correspondence with Staff Member 5 (18 and 19 September 2006).

³¹⁷ LPO 2006-233 (4 October 2006). The exchange rate for October 2006 was KES 73 to the United States dollar. United Nations Rates of Exchange for October 2006. The total payment included an additional KES 15,000 for a steel cabinet. UNOPS Disbursement Voucher D-211-2006-10-0082 (30 October 2006); Compfit Systems receipt no. 101 (1 November 2006) (for KES 517,894, attaching invoice no. 0116 for KES 15,000).

³¹⁸ James Ochola emails to Subject 1's brother (20 June 2006) (forwarding correspondence between Mr. Ochola and Mr. John Kamau dated 16 June 2006) (noted in Mr. Ochola's interview on 26 February 2007).

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sent Mr. Ochola an email on the subject of the Motorola radios contract on 16 September 2006.³¹⁹

290. Compfit's links to Subject 2 are described above. Also noted above is the fact that Mr. Waigwa, Compfit's owner, would meet on a weekly basis with Subject 2, who initially suggested that Mr. Waigwa send a letter of introduction to ESARO.³²⁰ Further, Mr. Waigwa copied Subject 2 on email correspondence connected with Compfit's bid for Motorola radios.³²¹ When questioned by Task Force investigators, Mr. Waigwa initially claimed that this email must be a mistake since he was not aware that the email address listed was that of Subject 2. As detailed above, Mr. Waigwa initially denied knowing Subject 2. However, Mr. Waigwa's telephone log revealed that he had, in fact, called Subject 2 shortly before his interview with the Task Force.³²² He further denied that he had ever paid any monies to Subject 2.³²³

291. Chart E below demonstrates the multiple links between vendors and individuals involved with this bidding exercise.

³¹⁹ John Kamau email to James Ochola (16 September 2006) (as noted in image of Mr. Ochola's email inbox dated 5 October 2006) (recovered from Subject 1's laptop computer).

³²⁰ Selassie Waigwa interviews (26 and 28 February 2007).

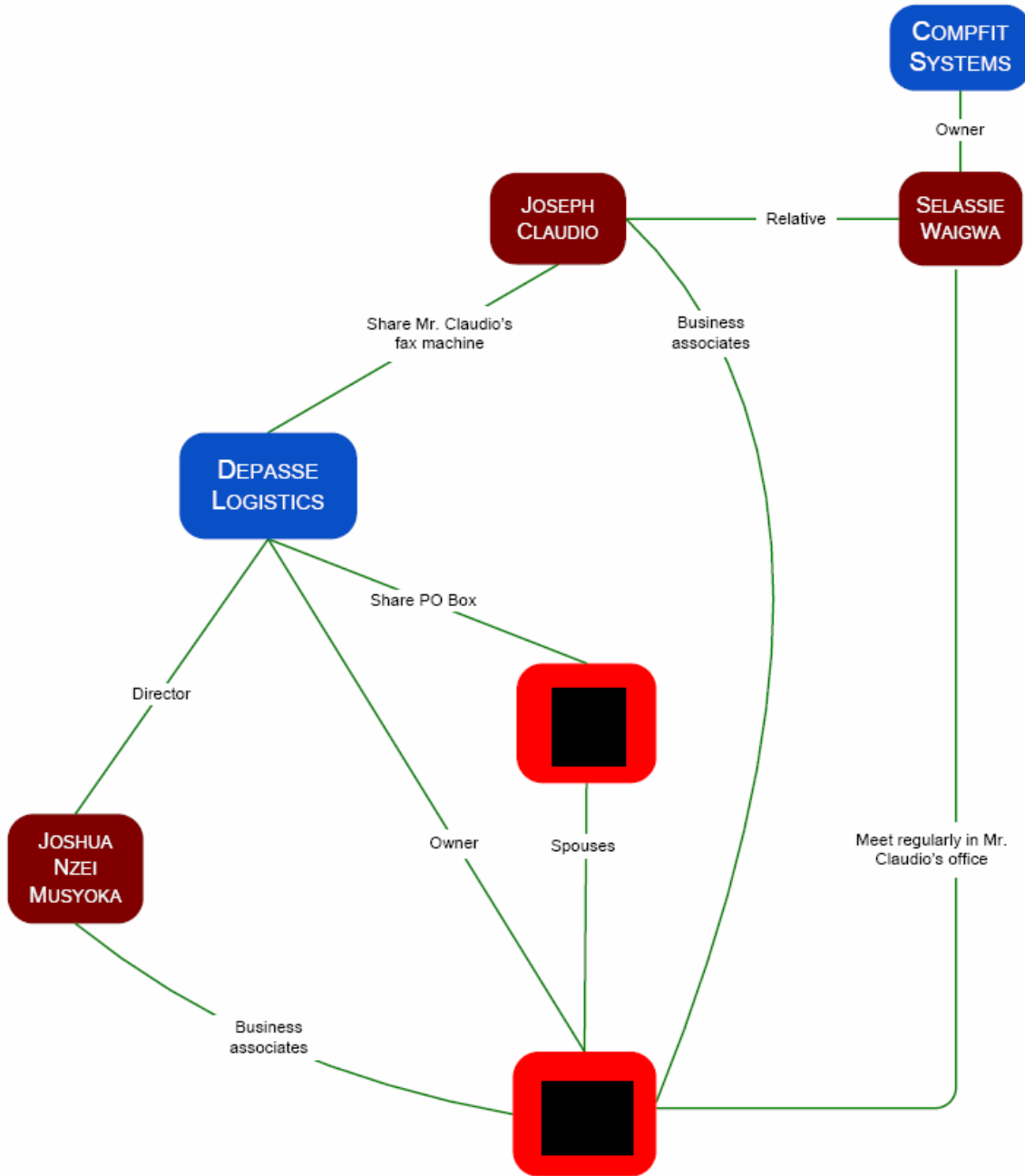
³²¹ Selassie Waigwa email to Subject 2 (20 September 2006) (forwarding his email to Subject 1 dated 19 September 2006).

³²² The interview took place at about 5:00 p.m. Mr. Waigwa had called Subject 2 at 4:06 p.m. Selassie Waigwa interview (26 February 2007).

³²³ Selassie Waigwa interview (26 February 2007).

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Chart E: Connections between Compfit, Joseph Claudio, Selassie Waigwa, Subject 1, Joshua "Nzei" Musyoka, and Subject 2



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292. The Project Manager complained that the Compfit bid was very expensive.³²⁴ He also complained to Subject 1 that he believed Compfit was generally inflating its prices.³²⁵

293. The UNOPS management concerns about an excessive price charged by Compfit were justified. Whereas Mr. Waigwa had purchased the equipment from Amiran Communications (“Amiran”) for KES 394,087 (approximately US\$5,398), he sold this equipment to UNOPS for KES 502,894 (approximately US\$6,889)—over a thousand dollars more than the price that he had paid to Amiran.³²⁶ Representatives from Amiran reported to the Task Force that the company was not invited to bid for any UNOPS contracts after January 2006. Moreover, when representatives from Amiran questioned Subject 3 about submitting a bid for the contract ultimately awarded to Compfit, they were told by Subject 3 that no bidding exercise was taking place.³²⁷ Subject 3 confirmed that he was asked about bidding by Amiran. However, he contended that Subject 1 had failed to inform him of the bid and his response to Amiran was, therefore, truthful with respect to his knowledge at that time.³²⁸

294. Mr. Waigwa denied to the Task Force that he had either colluded with Subject 2 to set the prices of the bids submitted or had passed any benefit to Subject 2 in connection with ESARO awarding the contract to Compfit.³²⁹ Whereas there is evidence that Mr. Waigwa colluded with Subject 2 to rig bid prices, the Task Force was unable to identify evidence that Subject 2 or Subject 1 received a benefit from Mr. Waigwa for this contract.

295. The Task Force found no evidence to suggest that this contract award was ever presented to the LPC, as required by ESARO regulations since the value of the contract was in excess of US\$2,500.

296. The Task Force did, however, identify evidence that Subject 1 pushed for expedited payment of Compfit’s invoices.³³⁰

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297. The award of the Motorola radios contract to Compfit was the result of a compromised bidding process orchestrated by Subject 2. Specifically, Subject 2, as the owner of MSS Kenya, colluded with the owners of the other bidders in order to steer the contract to Mr. Waigwa’s company, Compfit. The evidence to support this conclusion is multi-pronged: (i) Mr. Waigwa’s multiple false statements to the Task Force indicate that

³²⁴ Subject 1 and Jack Klassen email correspondence (25 September 2006).

³²⁵ Subject 1 and Jack Klassen email correspondence (16 and 17 November 2006).

³²⁶ Amiran Communications invoices to Compfit Systems (9 and 11 October 2006); LPO 2006-233 (4 October 2006). The exchange rate for October 2006 was KES 73 to the United States dollar. United Nations Rates of Exchange for October 2006.

³²⁷ Gladys Githaiga emails to the Task Force (5 and 11 April 2007); Gladys Githaiga interview (5 April 2007).

³²⁸ Subject 3 email to the Task Force (13 April 2007).

³²⁹ Selassie Waigwa interview (28 February 2007).

³³⁰ Staff Member 14 interviews (27 February and 1 March 2007).

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he lacks credibility; (ii) Subject 2's and Mr. Waigwa's regular meetings and sharing of information pertaining to this contract; (iii) Compfit's involvement in other rigged bids with Subject 2's company, Depasse (see GPS equipment bid above), which reveals a history of cooperation with Subject 2 to illegal ends; and, (iv) the correspondence between MSS Kenya and CP Intertrade.

298. Evidence identified by the Task Force also supports the conclusion that Subject 1 was aware of, and participated in, the bid collusion regarding this contract. For example, Subject 1 inappropriately emailed the RFQ to her husband's email address, as well as to the email addresses of companies and individuals associated with him. She also included a quote from her husband's company, MSS Kenya, in the bid analysis without disclosing to ESARO staff that she knew that her husband, Subject 2, owned MSS Kenya. The contention that she was aware of her husband's ties to MSS Kenya at this time is supported by the fact that the MSS Kenya quotation for radios is dated 14 September 2006. On the same day, Subject 1 had sent a ATLAS Vendor Profile form listing her own PO Box number as the MSS Kenya contact address to another ESARO staff member.³³¹

c. Office Stationery for the DPU

299. In addition to the two contracts discussed above, Compfit was also awarded a contract to provide stationery to the Diplomatic Police Unit ("DPU"). As discussed below, this contract was steered to Compfit by Subject 1.

Background

300. On 4 and 5 October 2006, Jack Klassen, UNOPS Project Manager noted a requirement for office stationery for the Diplomatic Police Unit ("DPU").³³²

301. On 9 October 2006, Subject 1 forwarded three suppliers—Compfit, Savani's Book Centre Ltd. ("Savani's"), and Text Book Centre ("Text Book")—for consideration to Staff Member 7.³³³ That same day, Subject 1 issued a RFQ for the stationery order to these three companies.³³⁴

302. Savani's Book Centre and Text Book Centre appear to be established suppliers of stationery.³³⁵ Compfit was less reputable than these two other suppliers since it was a general broker rather than an established stationary supplier. As detailed above, Compfit had previously colluded with Depasse on the UNOPS contracts for GPS and Motorola Radios. In addition, the owner of Compfit falsely represented to the Task Force the nature of his relations with Subject 2.³³⁶

³³¹ Subject 1 email to Kerstine Kageni (14 September 2006) (attaching Atlas Vendor profile).

³³² UNOPS requisition forms (4 and 5 October 2006) (signed by Jack Klassen).

³³³ Subject 1 email to Staff Member 7 (9 October 2006).

³³⁴ RFQ-2006-10-01 (9 October 2006); Subject 1 email to Selassie Waigwa, Bajju Savani, and Text Book Centre (tbcsarit@tbc.co.ke) (9 October 2006).

³³⁵ Text Book Center Limited, "About Us," www.textbookcentre.com; www.longhornbooks.co.ke/distributor.

³³⁶ Selassie Waigwa interview (26 February 2007); Selassie Waigwa interview (28 February 2007).

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303. According to the bid analysis, ESARO received bids from all three companies. However, Task Force investigators were only able to locate bids from two companies, Compfit and Savani's, in the files. In addition, the bid analysis was not signed until 8 November 2006.³³⁷

304. On 17 October 2006, Subject 1 noted to the UNOPS Project Manager Jack Klassen, the Portfolio Manager Staff Member 5, and the Operations Manager, Staff Member 7, that Savani's was the cheapest bid. Although Subject 1 recommended Savani's for the award in the initial bid analysis, she added, however, that the company had not bid for all items (Savani's had not bid for an engraver). Nevertheless, she requested that the Portfolio Manager not split the order between two different companies "for logistics purposes," and reminded him that the RFQ required strict technical compliance, which Savani's did not meet.³³⁸

305. Therefore, the bid analysis, prepared by Subject 1, was adjusted to reflect the fact that Savani's had not bid on all items. In particular, the company had not bid on an electronic engraver. With respect to the items for which Savani's had not entered a bid, the company was listed in the bid analysis as having bid a price equal to that of the highest bid submitted by the other bidders. For the remaining items for which all companies had placed a bid, Savani's bid was KES 125,787 (approximately US\$1,795), as compared to Compfit's bid of KES 156,261 (approximately US\$2,230). Thus, Compfit's price was a total of KES 30,474 (approximately US\$435) more expensive than that of Savani's.³³⁹

306. A few days later, Subject 1 requested instructions as to how to proceed with the bids from the Portfolio Manager, Staff Member 5. She also noted that the total value of the contract was below US\$2,500—therefore, there was no need for a LPC review.³⁴⁰ She was instructed by the Portfolio Manager, Staff Member 5 to "proceed following procurement rules."³⁴¹

307. The Task Force notes that the procurement rules as found in the UNOPS Operations Manual do recommend against splitting orders where the cost savings are below US\$2,500. However, the Task Force believes that Subject 1's motivation was to benefit her husband's associate, rather than to save the Organisation money.³⁴²

³³⁷ Analysis for quotations and contract award recommendation for the stationery for DPU [sic] (8 November 2006); Compfit Systems bid for stationery for DPU (8 November 2006); Savani's Book Centre bid for stationery for DPU (17 October 2006).

³³⁸ Subject 1 email to Staff Member 5, Jack Klassen, and Staff Member 7 (23 October 2006).

³³⁹ The items for which Savani failed to bid and for which the price quoted by Compfit, the highest bidder, was substituted were: an electronic engraver (KES 22,500); scotch tape dispensers (KES 1100); and scotch tape (KES 19,500). The other items for which Savani failed to bid were scissors. The Text Book Centre's bid price was assigned to Savani as the highest bidder for that item. Text Book Centre's price for the engraver reflects that bid for Compfit suggesting that they too had not bid for the engraver, leaving Compfit as the only supplier offering that item. Analysis for quotations and contract award recommendation for the stationery for DPU [sic] (8 November 2006).

³⁴⁰ Subject 1 email to Staff Member 5 and Jack Klassen (17 October 2006).

³⁴¹ Staff Member 5 email to Subject 1 (30 October 2006).

³⁴² UNOPS Operations Manual, ch. 2, section 2.29.5 (undated).

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308. In support of this contention is the fact that Subject 1's statement that there was no need for LPC review since the bid was below US\$2,500 was incorrect. At this time, KES 199,962 equated to approximately US\$2,739—over the US\$2,500 threshold for LPC review.³⁴³ Apparently, the decision was made, with the consent of Staff Member 7, the Operations Manager, to award the bid to Compfit “as the next lowest most responsive bidder.”³⁴⁴

309. Compfit was awarded a contract in the amount of KES 199,962.³⁴⁵

310. Other ESARO staff members again raised concerns not only that the prices quoted by Compfit were excessive, but also that the engraver—the item which, more than any other, had led to the award of the entire contract to Compfit—was unsuitable. The item presented by Compfit was, in fact, not an engraver, but a rotary tool. Since this was unsuitable for use as an engraver, Compfit offered a price for a replacement to the Project Manager, Jack Klassen. However, Mr. Klassen complained that Compfit tried to charge the same price for supplying a considerably less sophisticated model than that which the company had originally bid upon. He also questioned whether there might have been bid collusion. Thus, he recommended that ESARO conduct a market price survey to establish fair prices for the requested items.³⁴⁶

311. Subject 1 responded to Mr. Klassen's concerns with the claim that she had approached the three most reliable stationery shops available.³⁴⁷ On the one hand, Text Book Centre and Savani's Book Centre appear to be well-established suppliers of books and stationery. On the other hand, from where Subject 1 derived her confidence in Compfit as a reliable stationery supplier is unknown in light of the fact that, unlike Savani's and Text Book Centre, Compfit was not well-established as a supplier of stationery.

312. Ultimately, the new price offered by Compfit for the engraver was rejected by the Portfolio Manager, Staff Member 5, as “far beyond market prices.”³⁴⁸ The LPO amount

³⁴³ ESARO uses the official United Nations exchange rate in its calculations. For October 2006 (when Subject 1 drafted the bid analysis), the official United Nations rate was KES 73 to the United States dollar. In November 2006 (when the award to Compfit was recommended) the official United Nations rate was KES 71.95 to the United States dollar. At this time the value of this contract in US dollars would be US\$2,779. Even applying commercial rates, Subject 1 could not have believed the value to be below US\$2,500. The commercial exchange rate between 17 October 2006 (when Subject 1 drafted the bid analysis) and 7 November (when the award to Compfit was recommended) averaged KES 72.32 to the United States dollar. The value of this contract in US dollars was US\$2,762 at a minimum and US\$2,930 at a maximum. FXConverter, <http://www.oanda.com/convert/fxhistory> (showing currency exchange rates between 17 October and 7 November 2006); United Nations Rates of Exchange for 2006.

³⁴⁴ Subject 1 email to Staff Member 7 (7 November 2006); Analysis for quotations and contract award recommendation for the stationery for DPU [sic] (8 November 2006).

³⁴⁵ LPO 2006-265 (14 November 2006).

³⁴⁶ Jack Klassen email correspondence with Subject 1 (15, 16, and 21 November 2006).

³⁴⁷ Jack Klassen email to Subject 1 (21 November 2006).

³⁴⁸ Staff Member 5 email to Subject 1 (24 November 2006).

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was subsequently dropped to KES 177,462 (US\$2,467) with the removal of the engraver.³⁴⁹

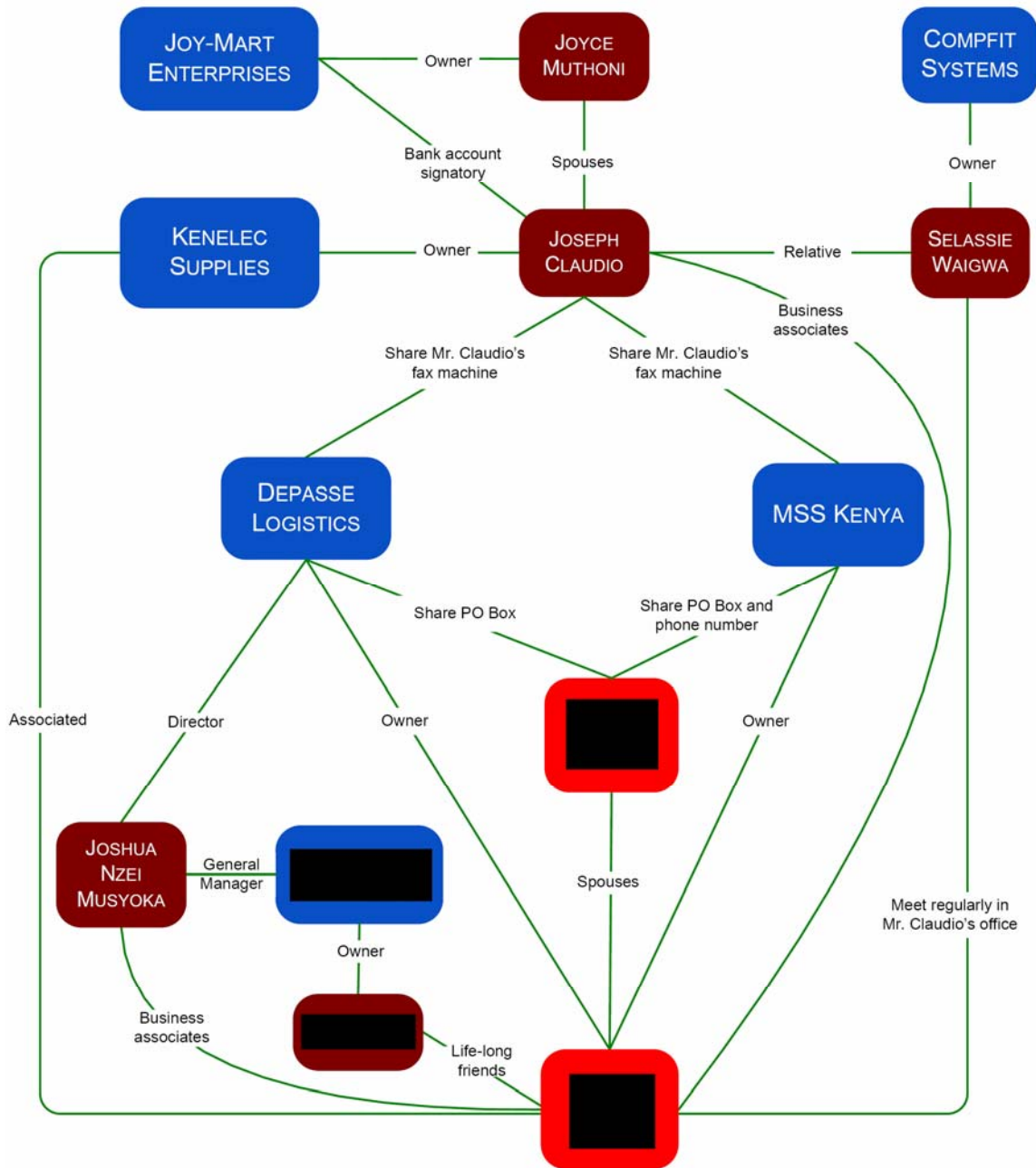
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313. After analyzing the evidence presented above, it is evident that Subject 1 intervened to steer to Compfit the contract to provide stationary to the DPU. Evidence to support this conclusion includes: (i) Subject 1 having sent the RFQ to Compfit, a company owned by Mr. Waigwa, who, in turn, was linked to her husband and had a history of bid collusion on UNOPS contracts with him; (ii) Subject 1's recommendation that the contract be awarded to Compfit despite the fact that the company was not the cheapest bidder on all items; (iii) The fact that her stated justification to award Compfit the contract—i.e., to avoid splitting an order—in fact, cost the Organisation several hundred dollars; (iv) Subject 1 continued to support the decision to award the bid to Compfit despite the company's inability to supply the engraver—the ability of which was the main justification used by Subject 1 for passing Compfit the lucrative contract; and (v) Subject 1 did not forward the contract to the LPC for review despite the fact that it was worth in excess of US\$2,500 at that time.

314. Chart F below is a conglomeration of the various charts and demonstrates the multiple links between Depasse, MSS Kenya, Company 1, Kenelec, Joy-Mart, and Compfit, as well as Subject 2 and Subject 1.

³⁴⁹ Subject 1 email to Jack Klassen (28 November 2006); UNOPS Disbursement Voucher D-211-2006-11-0097 (29 November 2006).

Chart F: Summary Chart of Links between Subject 1, Subject 2, and Associated Vendors



E. SUBJECT 2 INAPPROPRIATE LINKS TO OTHER ESARO VENDORS

315. Subject 2 maintained inappropriate links to companies that bid on or that were awarded ESARO contracts, including those owned by Mr. Joseph Claudio and Mr. James Ochola. In all cases, Subject 2’s involvement with these companies represented a

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conflict of interest for Subject 1 as an employee of the Organisation. Nevertheless, Subject 1 never reported this conflict to any staff at ESARO despite evidence that she was aware of her husband's involvement in the bidding processes for these contracts. Further, in the cases in which Subject 2 received commission payments from ESARO vendors for work done on ESARO contracts, these payments represent a breach by the vendor of the UNOPS General Terms and Conditions of contract. Additionally, in the case of one company, Subject 2 materially and improperly altered the company's invoices prior to submission to ESARO for payment.

1. Joe's Freighters

316. Joe's Freighters, another company that was awarded ESARO contracts, was associated with Subject 2. With the active participation of his wife, Subject 1, Subject 2 used his ties both to ESARO (through Subject 1) and to Joe's Freighters in order to execute a scheme to achieve these contracts through a corrupted process.

317. Subject 1 introduced Joe's Freighters to ESARO in early 2006. This company replaced Frankline Cargo ("Frankline") as ESARO's freight forwarding and clearing company, despite Subject 1's knowledge that her husband, Subject 2, was associated with Joe's Freighters. Subject 1 failed to bring this conflict of interest to the attention of others at ESARO. In addition, Subject 2 uplifted Joe's Freighters invoices in furtherance of his corrupt efforts.

Background

318. Mr. Joseph Claudio and his wife, Ms. Joyce Muthoni, own Joe's Freighters which was incorporated in 1991 in Nairobi.³⁵⁰ Joe's Freighters' principal business is reportedly freight forwarding and custom clearance. According to a competitor, Joe's Freighters was not well-known in the clearing business.³⁵¹

319. The Post Office Box listed for Joe's Freighters is the same as that for Mr. Claudio's other companies: Kenelec, Diesel Care Ltd., and Joy-Mart. Likewise, the fax number for Joe's Freighters is that of the facsimile machine in Mr. Claudio's personal office.³⁵² As stated earlier, Mr. Claudio is affiliated with Kenelec and Depasse, and his wife owns Joy-Mart. When ESARO management challenged Joe's Freighters staff on the company's bona fides, they were initially reluctant to provide their head office

³⁵⁰ Certificate of Incorporation for Joe's Freighters (29 January 1991); ESARO Supplier Profile Form for Joe's Freighters (undated).

³⁵¹ Francis Kasuki interview (24 February 2007); George Katio interview (26 February 2006).

³⁵² Suppliers list signed by Staff Member 10 (30 March 2006); Customs Agent's License for Joe's Freighters (15 March 2006); Kenelec Supplies business card for Subject 2 (undated); LPO 2006-095 (8 May 2006) for Kenelec Supplies; Joseph Claudio interview (22 February 2007). Mr. Claudio also provided this number (605337) to the Task Force when requesting sight of documents upon which the Task Force relied for its adverse finding against him. Joseph Claudio email to the Task Force (18 April 2007).

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location. They eventually said that Joe's Freighters is run from the office of Mr. Claudio's other company, Kenelec.³⁵³

320. All goods imported into or exported out of Kenya by UNOPS must clear customs. Accordingly, ESARO hires the services of a freight forwarding and customs clearance agent to facilitate these transactions. Until early 2006, UNOPS had a contract with Frankline to provide these services. The contract had a fixed price and a company staff member was stationed at UNOPS.³⁵⁴

321. In February 2006, Staff Member 7, the Operations Manager, asked Subject 1 to find a new clearing company because he was dissatisfied with Frankline's performance. Frankline's contract was then terminated and use of their services discontinued. Staff Member 7 asked Subject 1 to contact a few companies that could replace Frankline and see which was best before awarding a contract to any individual company.³⁵⁵

322. Joe's Freighters never bid on an award or won a contract with ESARO. There was no bidding process and no systems contract.³⁵⁶ Staff Member 7 subsequently wrote a letter approving Joe's Freighters to clear goods for UNOPS.³⁵⁷

323. Joe's Freighters was linked to Subject 1's husband, Subject 2, and his company Aero Logistics. The link, and Subject 1's awareness of this link, is confirmed by an email sent by Subject 1 to "joefreight@aerologistics.org."³⁵⁸ Moreover, Subject 2 called ESARO staff to discuss Joe's Freighters' business. He also contacted ESARO staff in order to find out whether UNOPS had any shipments for the company, as well as to determine the status of payments owed to Joe's Freighters.³⁵⁹ Further, Subject 2 also contacted the ESARO Finance Office to press for payment of Joe's Freighters' invoices.³⁶⁰

324. Joe's Freighters purportedly has an office at the airport, where other customs agents are generally located. Mr. Claudio told the Task Force that he owns an office building at the airport known as "Ken House."³⁶¹

³⁵³ The Task Force note-to-file (20 February 2007); Staff Member 5 interviews (20 and 26 February 2007); Compfit Systems Certificate of Registration for VAT (24 November 2001); Subject 2 business card for Aero Logistics.

³⁵⁴ Francis Kasuki interview (24 February 2007); George Katio interview (26 February 2006).

³⁵⁵ Subject 1 interview (23 February 2007); Staff Member 13 interview (27 February 2007); Subject 3 interview (22 February 2007); Staff Member 7 interview (24 February 2007). See also Francis Kasuki interview (27 February 2007); George Katio interview (27 February 2007).

³⁵⁶ Subject 3 interview (22 February 2007).

³⁵⁷ Staff Member 7 letter "To whom it may concern" (21 June 2006).

³⁵⁸ Subject 1 email to joefreight@aerologistics.org (9 March 2006).

³⁵⁹ Subject 3 interviews (22 and 27 February 2007).

³⁶⁰ Staff Member 14 interviews (27 February and 1 March 2007).

³⁶¹ Staff Member 5 interviews (20 and 26 February 2007); Joseph Claudio interview (22 February 2007); Subject 2 business card for Aero Logistics; Joshua Musyoka business card for Aero Logistics; Joseph Claudio letter to the Task Force (26 March 2007). Compfit Systems, run by Mr. Claudio's brother-in-law and which was a participant in the fraudulent bid for GPS Systems described in this Report, also operates from the same location at the airport, Ken House. Compfit Systems Certificate of Registration for VAT (22 November 2001).

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325. The letterhead for Joe's Freighters lists the phone number for the airport office as 827301/2. Indeed, these are the same phone numbers that appear on the Aero Logistics business cards of Subject 2 and Joshua Musyoka.

326. Two of Subject 2's close business associates, Joshua Nzei (also known as Joshua Musyoka) and Company Representative 1, signed paperwork and collected payment on behalf of Joe's Freighters.³⁶² These individuals were both connected to Subject 2 through his companies, Depasse Logistics and Aero Logistics (see Interim Report).

327. Mr. Claudio initially denied to the Task Force that he had ever heard of Joshua Musyoka or Joshua Nzei, but later conceded that "Joshua Nzei" had worked for Joe's Freighters until May 2006.³⁶³ He also confirmed that Joshua Nzei and Joshua Musyoka were actually the same person, as well as that Aero Logistics and Joe's Freighters worked together.³⁶⁴

328. Joe's Freighters took over all customs clearing jobs for ESARO, from Frankline, and has been doing business with UNOPS without any contract. Joe's Freighters did not receive a purchase order, but rather, the company was given instructions by way of oral instruction or memo.³⁶⁵ Because of a lack of a written contract between ESARO and Joe's Freighters, unlike with Frankline with which ESARO did have a contract, there was neither a formal agreement in place with ESARO nor an agreed pricing schedule. Although this may not have been of particular concern if Joe's Freighters had only been used for one occasional task, in fact, Joe's was used by ESARO on a regular basis: Over the course of 2006, Joe's Freighters issued approximately 10 invoices to the Organisation, totaling approximately US\$3,750.³⁶⁶

329. Once UNOPS starting doing business with Joe's Freighters Subject 1 became the sole contact person at UNOPS for the company and staff at Joe's Freighters spoke only to her.³⁶⁷ Thus, it was Subject 1 herself who provided any and all instructions from ESARO to Joe's Freighters.³⁶⁸

330. Significantly, Subject 1 did not inform Staff Member 7 that her husband was affiliated with Joe's Freighters.³⁶⁹

331. Subject 1 denied any connection between her husband, Subject 2, and Joe's Freighters. However, based on the following evidence, the Task Force finds Subject 1's claim that she did not know her husband was involved in this business to be simply not

³⁶² UNOPS Disbursement Voucher D-211-2006-03-0110 (31 March 2006) (signed by Joshua Nzei on 6 April 2006); Aero Logistics Local Purchase Order for Techbiz Ltd (27 June 2006); Joe's Freighters invoice 109 (29 May 2006) (signed by Company Representative 1).

³⁶³ Joseph Claudio interview (22 February 2007); Joseph Claudio email to the Task Force (9 March 2007).

³⁶⁴ Joseph Claudio letter to the Task Force (26 March 2007).

³⁶⁵ Subject 3 interview (22 February 2007).

³⁶⁶ Joe's Freighters Invoice 109 (29 May 2006); Summary of UNOPS ESARO payments to Joe's Freighters (undated).

³⁶⁷ Staff Member 13 interview (27 February 2007).

³⁶⁸ Subject 1 email to Joe's Freighters (8 September 2006).

³⁶⁹ Staff Member 7 interview (24 February 2007).

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credible.³⁷⁰ As noted above, Subject 1 sent an email to joefreight@aerologistics.org with the subject heading “Joshua Musyoka.”³⁷¹ Mr. Musyoka is the Operations Manager for Aero Logistics, Subject 2’s company.³⁷² The use by Subject 1 of the domain name of Aero Logistics, her husband’s company, for emails to the supposedly unconnected Joe’s Freighters clearly demonstrates that Subject 2 was providing services to UNOPS under the guise of Joe’s Freighters and that Subject 1 was fully aware of her husband’s involvement with the company.

332. Subject 1 asked Joe’s Freighters to clear a staff member’s car through customs which had been purchased for this staff member at Subject 1’s recommendation by Subject 2.³⁷³ Subject 1 made a similar unilateral decision to hire Joe’s Freighters, without having consulted with other staff at ESARO in relation to another staff member’s car.³⁷⁴ Further, staff witnessed Subject 2 discussing Joe’s Freighters’ business in front of Subject 1.³⁷⁵ Moreover, Task Force investigators found evidence that Subject 1 received email correspondence relating to Joe’s Freighters, which was also copied to her husband.³⁷⁶

333. In contrast to Mr. Claudio’s claim to the Task Force that the association between Joe’s Freighters and Aero Logistics lasted only three months, in fact, the two companies were still collaborating on ESARO projects eight months later. Subject 1 was fully aware of the link between the two companies as she was informed by ESARO staff.³⁷⁷

334. Finally, both Subject 1 and her husband played an active role in making sure UNOPS paid Joe’s Freighters. On one occasion, Subject 1 asked the Chairman of the LPC, Staff Member 11, to certify an invoice from the company for payment. Staff Member 11 was one of several certifying officers at ESARO. (Subject 1 did not inform the Chairman of the LPC that her husband was affiliated with this company in her email

³⁷⁰ She also denied knowing that Mr. Claudio is the owner of Joe’s Freighters. Subject 1 interviews (7 December 2006 and 23 February 2007).

³⁷¹ Subject 1 email to joefreight@aerologistics.org (9 March 2006).

³⁷² Joshua Musyoka business card (taken from ESARO Operations); Joshua Musyoka letter to Robert Livingston (2 May 2006).

³⁷³ Staff Member 19 interview (6 December 2006).

³⁷⁴ Staff Member 9 interview (26 February 2006).

³⁷⁵ Staff Member 14 interviews (27 February and 1 March 2007).

³⁷⁶ PDS Logistics email to Subject 1 (25 July 2006).

³⁷⁷ In November 2006, a consignment of traffic vests and environmental masks for the Diplomatic Police Unit, ordered by ESARO from Armatech Kenya Ltd, arrived without the masks. The ESARO Portfolio Manager emailed Subject 1 to complain. In his email, he noted that the Delivery Note was from Joe’s Freighters. However, he told Subject 1 that he would be contacting Aero Logistics to sort out the problem. Subject 1 herself dealt with Joe’s Freighters on this matter. James Ochola email to Subject 1 (7 September 2006) (attaching Armatech quote); Armatech Kenya Ltd. Invoice no. 70906 (3 November 2006); Jack Klassen email to Subject 1 (18 November 2006); Staff Member 15 interviews (28 February and 1 March 2007); Joe’s Freighters delivery note no. 0567 (17 November 2006); Joe’s Freighters invoice no. 126 (20 November 2006); African Cargo Handling Ltd tax invoice to Joe’s Freighters (10 November 2006); African Cargo Handling Ltd Notification of Arrival of Cargo to Joe’s Freighters (10 November 2006); Subject 1 email to Joe’s Freighters (15 November 2006).

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to him.)³⁷⁸ Similarly, Staff Member 14 stated that Subject 1 pushed UNOPS finance staff to expedite payment to Joe's Freighters.³⁷⁹

335. Subject 1, however, did not inform other ESARO staff, including those staff members whose personal cars were being cleared through customs by the company, of her husband's links to Joe's Freighters.³⁸⁰

336. On 29 May 2006, Company Representative 1 submitted an invoice on behalf of Joe's Freighters for clearing services.³⁸¹ This invoice, Invoice 108, was one of several he signed on behalf of Joe's Freighters.³⁸²

337. Company Representative 1 provided the Task Force with a version of Invoice 108 which listed a total value of KES 12,760. Next to the typed prices were handwritten prices which were much higher than the typed prices—totaling KES 17,400.³⁸³ Company Representative 1 informed the Task Force that he and Subject 2 had created a false version of Invoice 108 with the uplifted prices in an internet café. The increased invoice (for KES 17,400) signed by Company Representative 1 was submitted to ESARO for payment and duly paid by the Organisation. Company Representative 1 stated that the difference between the two invoices was to be paid as a kickback.³⁸⁴

338. A second identical invoice for the same amount was submitted as Invoice 109 on the same day and also duly paid.³⁸⁵ This would indicate that UNOPS was double billed.

339. Mr. Claudio claimed no knowledge regarding the uplifting of invoices. He called his accountant during his interview with Task Force investigators. His accountant confirmed that the value listed in Joe's Freighters accounts for Invoice 108 was the lower amount—namely, KES 12,760. Mr. Claudio finally conceded that “someone must have a hidden agenda.”³⁸⁶

340. Later, the same accountant for Joe's Freighters claimed to the Task Force that the prices on Invoice 108 had been increased subsequent to the creation of the original

³⁷⁸ Subject 1 email to Staff Member 11 (27 July 2006).

³⁷⁹ Subject 1 email to Greg Lindstrom and Staff Member 1 (27 October 2006); Staff Member 14 interviews (27 February and 1 March 2007).

³⁸⁰ Staff Member 19 interview (6 December 2006); Staff Member 9 interview (26 February 2006).

³⁸¹ Joe's Freighters Invoices 108 (29 May 2006).

³⁸² Joe's Freighters Invoice 106 (11 May 2006); Joe's Freighters Invoices 108 and 109 (29 May 2006); Joe's Freighters Invoice 111 (19 June 2006).

³⁸³ Company Representative 1 interview (7 December 2006); Invoice 108 (29 May 2006) (two versions).

³⁸⁴ Company Representative 1 interview (24 February 2007) (“Subject 2 said to Company Representative 1 that he had an agreement with UNOPS staff to add to Joe[s] Freighters invoices to partly pay the guys at UNOPS. Staff Member 13 and Subject 1, and said Staff Member 14 (Subject 2's cousin) would help push for payment...It had been agreed with [Mr.] Claudio that the profits on the genuine invoices were not sufficient to pay off everyone involved in [the] process, specifically, Subject 1 for her part in getting [Mr.] Claudio the deal to clear the goods in UNOPS.”)

³⁸⁵ Disbursement Voucher no. D-211-2006-06-0067 (27 June 2006), Disbursement Voucher no. D-211-2006-06-0107 (5 July 2006).

³⁸⁶ Joseph Claudio interview (22 February 2007).

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Invoice 108 since the latter was under-priced.³⁸⁷ The Task Force does not find this claim plausible.

341. The UNOPS cheque for the value of the uplifted invoice was, in fact, cashed in the same bank account as seven other payments to Joe's Freighters. Mr. Claudio's lawyer has confirmed to the Task Force that this bank account is in the name of "Joe's Freighters Limited" and the signatories on the account are Joseph Karuoro Claudio and Joyce Muthoni Karuoro. Therefore, any distribution of the uplifted amount would have to be on the basis of their corresponding agreement to release the fund from the account in one way or another.³⁸⁸

The Task Force Evaluation

342. Subject 1 introduced the company Joe's Freighters to ESARO in early 2006. Joe's Freighters replaced Frankline Cargo as ESARO's freight forwarding and clearing company. Although Subject 1 knew that her husband was associated with the company she did not bring this obvious conflict to the attention of others at ESARO. In light of this evidence, Subject 1's claim to the Task Force that she was unaware of her husband's involvement with Joe's Freighters does not survive careful scrutiny.

343. According to Company Representative 1, Subject 2 uplifted Joe's Freighters invoices in order to defraud the Organisation and personally benefited from doing so. The Task Force believes that the evidence provided by Company Representative 1's testimony on this matter is credible, as his claims were supported by documents. Further, with respect to other matters contained in this Report his testimony has been corroborated.

344. As noted above, the evidence regarding the doctoring of Invoice 108, as well as the failure of Joe's Freighters to provide supporting documents for invoices submitted to ESARO, calls into question the veracity of all of Joe's Freighters' invoices.

2. Kenelec Supplies

345. As discussed below, Kenelec Supplies, a company closely linked to Subject 2, paid Subject 2 money in breach of the company's contractual warranty with ESARO. Kenelec was awarded an ESARO contract to supply bitumen to the Seychelles. Subject 2's work for Kenelec in connection with this contract constitutes a contractual breach of warranty by Kenelec. Further, Subject 1 was aware of Subject 2's involvement and failed to report this fact.

³⁸⁷ David Odhiambo letter to the Task Force (19 March 2007).

³⁸⁸ Mutuku Advocates letter to the Task Force (22 June 2007) (providing the details of the owner of Bank Account 0010201200626, held at Equity Bank Ltd.); Copy of cashed UNOPS cheques to Joe's Freighters. The reverse side of these cheques shows that the cheque was cashed in Account 0010201200626 at Equity Bank Limited. See, e.g., Cheque nos. 887522 (5 May 2006), 887540 (12 June 2006), 887373 (27 June 2006), 887400 (5 June 2006), 887628 (18 August 2006), 887701 (13 September 2006), 887800 (27 October 2006), 887822 (1 October 2006).

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Background

346. Kenelec was incorporated in 1985. It has previously supplied bitumen to ESARO offices in Dubai and Egypt.³⁸⁹

347. The company is owned by Mr. Claudio and his wife.³⁹⁰ As noted above, Mr. Claudio is closely connected to Subject 1's husband, Subject 2. Subject 2 is a regular visitor to Mr. Claudio's offices. In addition, Mr. Claudio provided Subject 2 with the use of his fax number for business deals for Depasse. Moreover, Aero Logistics is based in Ken House, an office building owned by Mr. Claudio, and is located near the airport.³⁹¹

348. In January 2006, an ITB was issued for bitumen to repair the roads in the Seychelles Islands after the tsunami of December 2004.³⁹² Only two companies were considered in the bid analysis.³⁹³

349. The Procurement Review and Advisory Committee (PRAC) recommended Kenelec for a contract worth up to US\$774,207. In May 2006, Staff Member 6 and Subject 1 approved a purchase order to Kenelec for just under US\$450,000 worth of bitumen.³⁹⁴

350. On 8 May 2006, a LPO, prepared by Subject 1, was issued to Kenelec for the purchase of a bitumen for US\$444,279.³⁹⁵ Although UNOPS paid Kenelec the full amount of the purchase order (US\$460,000) delivery had yet to be completed at the time of this Report.³⁹⁶

351. A number of anomalies during the process of the contract award to Kenelec raise questions as to the integrity of the procurement exercise. In summary, these anomalies are:

- There were few responses to the ITB. The UNOPS Procurement Review and Advisory Committee (PRAC) raised concerns about this (particularly since the firms invited were pre-qualified) as well as about the shorter than normal bid submission period.³⁹⁷ Subject 1 was instructed by the Operations Manager to find out why other bidders had not responded;³⁹⁸
- The PRAC submission signed by Subject 1 conceded that the short bid period was a mistake but that it was too late to remedy this mistake. Subject 1 said only BP Africa and Kenelec submitted bids by the closing date.³⁹⁹ This is not

³⁸⁹ Joseph Claudio statement (26 March 2007).

³⁹⁰ Joseph Claudio statement (22 February 2007).

³⁹¹ Selassie Waigwa interview (28 February 2007); Subject 2's Aero Logistics Business Card; Joseph Claudio interview (22 February 2007).

³⁹² ITB: ESARO-05-022 (issued 20 September 2005).

³⁹³ PRAC Submission (27 March 2006).

³⁹⁴ The exact figure was US\$444,278.76. ESARO LPO 2006-095 (8 May 2006).

³⁹⁵ LPO 2006-095, awarded to Kenelec Supplies (8 May 2006).

³⁹⁶ Staff Member 5 interviews (20 and 26 February 2007).

³⁹⁷ Christian Provencher email to Subject 1 (15 March 2006).

³⁹⁸ Staff Member 7 and Subject 1 email correspondence (13 and 14 February 2006).

³⁹⁹ PRAC submission for Kenelec Supplies (27 March 2006).

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true. The Task Force located evidence that a third bidder, Granada Trading, submitted a bid prior to the deadline. This third bid was not included in the bid analysis prepared by Subject 1.⁴⁰⁰

- There is a lack of documentation regarding this contract in the procurement files. Only one document is attached to the LPO in the main ESARO procurement files.

352. When considered individually these anomalies may not provide conclusive evidence of wrongdoing. However, when considered together, as well as in context of the totality of the evidence set forth in this report, these facts raise serious questions as to the integrity of the bidding process.

353. Subject 2 visited Dubai in March 2006 to source a bitumen supplier for the Seychelles through MicroSun and Solutions, the company with which he subsequently created MSS Kenya.⁴⁰¹ He was clearly aware of the ESARO bid.

354. Granada Trading, the other bidder that was excluded from Subject 1's analysis for no apparent reason, was represented by James Ochola. Mr. Ochola was Subject 2's associate and assisted in creating MSS Kenya.

355. The bid was won by Kenelec. Subject 2 has close links to its owner, Mr. Claudio, and as discussed above, the evidence demonstrates that these two individuals colluded together to corrupt the integrity of other ESARO contracts (see discussion on Joy-Mart and Joe's Freighters). Other members of Mr. Claudio's family—including Mr. Claudio's brother-in-law, Selassie Waigwa, and his daughter—also colluded with Subject 1 and Subject 2 (see Sections on GPS equipment and the bicycles for the Democratic Republic of the Congo).

356. Additionally, once Kenelec was awarded the contract Subject 1 argued for an up front payment to Kenelec of ninety percent of the contract's value. ESARO Finance staff noted that this was very unusual—generally UNOPS advanced to suppliers no more than forty percent of the agreed-upon value of the contract.⁴⁰² However, in this case, Subject 1 pushed for fast payment to Kenelec, saying “My seat is hot on this procurement.” She claimed that Kenelec would refuse to ship the bitumen until they had received advanced payment.⁴⁰³ By contrast, Mr. Claudio told the Task Force that the company never demanded payment upfront and that this arrangement would have had no affect

⁴⁰⁰ Granada Trading response to ITB for ESARO Procurement Project, Seychelles, ESARO Case no. 00046960 (31 January 2006)

⁴⁰¹ Bluye Haddis interview (3, 16, and 17 April 2007). While MSS Kenya was not formally set up until May 2006, Subject 2 was already seeking to do business through the parent company, MicroSun and Solutions.

⁴⁰² Subject 1 email to Staff Member 9 (7 August 2006); Staff Member 14 interviews (27 February and 1 March 2007). Staff Member 14 is Subject 2's cousin but is not suspected by the Task Force of collaborating with Subject 2 and Subject 1 in their scheme.

⁴⁰³ Subject 1 emails to Anthony Martin (7 June 2006).

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on his ability to carry out the deal.⁴⁰⁴ In any case, a ninety percent advanced payment of US\$399,850 was made by ESARO to Kenelec on 30 May 2006.⁴⁰⁵

357. Subject 2 discussed the procurement with Company Representative 1. Subject 2 told Company Representative 1 that, through Subject 1, he had helped Mr. Claudio secure a contract to supply bitumen to the Seychelles.⁴⁰⁶

358. The Task Force does not reach a conclusion in this Report as to the probity of the bidding and award process relating to the bitumen for the Seychelles. Of particular concern to the Task Force however is the fact that after the company's contract with ESARO was secured Subject 2 then worked with Kenelec and Mr. Claudio on the supply of the bitumen to the Seychelles, and, therefore, received money from Kenelec in connection with its contract with ESARO.

359. Staff Member 7 was the ESARO officer in charge of this procurement exercise. However, as his assistant, Subject 1 oversaw many aspects of the execution of the project, in addition to her lead role in the initial procurement exercise as Submitting Officer.⁴⁰⁷

360. The UNDP representative in the Seychelles forwarded to Subject 1 minutes of a meeting held in the Seychelles to discuss the deal. Joseph Claudio of Kenelec was noted as having been present, as was Subject 2, although he presented himself as a representative of Aero Logistics.⁴⁰⁸

361. Mr. Claudio told the Task Force that Subject 2 was recommended to him as a reliable logistics person.⁴⁰⁹ Mr. Claudio proffered that Subject 2 would have assisted in the logistics, but after ESARO removed the inland shipment of the bitumen from the contract there was no role for him.⁴¹⁰ Mr. Claudio said Subject 2 was paid a "token" fee of about KES 10,000 in addition to Subject 2's airfare to the Seychelles and accommodation when there.⁴¹¹ In total, Subject 2 received approximately KES 40,000 (US\$570) in payment.⁴¹²

⁴⁰⁴ Joseph Claudio interview (22 February 2007).

⁴⁰⁵ UNOPS Atlas payment voucher 00079162. A bank guarantee was provided by the company to ensure delivery. See Equity Bank Ltd letter to Kenelec Supplies (26 May 2006).

⁴⁰⁶ This evidence is hearsay and the specific fact of Subject 1 assistance is not directly corroborated. Nonetheless, other evidence provided by Company Representative 1, and detailed elsewhere in this Report has been extensively corroborated. The Task Force believes Company Representative 1 to be a credible witness and his account of Subject 2's statement to him to be truthful. Notwithstanding this, the statement, without corroborative evidence, is viewed by the Task Force to have insufficient probative value to support a finding that Subject 1 helped steer the contract to Mr. Claudio. The Task Force reserves its position as to whether she did provide such assistance. Company Representative 1 interview (7 December 2006).

⁴⁰⁷ PRAC submission for Kenelec Supplies (27 March 2006); Subject 1 email to Staff Member 9 (7 August 2006); Subject 1 and Christian Provencher email correspondence (15 to 23 March 2006); Subject 1 emails to Joseph Claudio (6 and 7 December 2006).

⁴⁰⁸ Sagar Chandra Rai email to Subject 1 (24 April 2006).

⁴⁰⁹ Joseph Claudio interview (22 February 2007).

⁴¹⁰ *Id.*

⁴¹¹ *Id.*

⁴¹² Mutuku Advocates email to the Task Force (8 May 2007).

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362. Mr. Claudio initially denied knowing Subject 2 very well or having any knowledge as to whether or not he was affiliated with other companies. Mr. Claudio also claimed to the Task Force that he did not know the identity of the owner of Aero Logistics.⁴¹³ Mr. Claudio insisted that Subject 2 had not been part of the negotiations for the bitumen deal nor had he associated with Subject 2 with respect to any other ESARO contracts.⁴¹⁴ Mr. Claudio later admitted to investigators that he knew that Aero Logistics was Subject 2's company.⁴¹⁵

363. Mr. Claudio's assertions that he was not very familiar with Subject 2 are entirely untenable in light of their personal history together. First, Subject 2 frequently visited Mr. Claudio's Kenelec offices.⁴¹⁶ Second, numerous documents located by the Task Force link Subject 2 to Kenelec. Third, Subject 2 and Mr. Claudio corresponded on the Seychelles bitumen deal as well as on other ESARO contracts.⁴¹⁷ Fourth, the minutes from the meeting held in the Seychelles Islands confirm that the two men were both connected to the deal. Fifth, a business card listing Subject 2 as Commercial Director of Kenelec (see figure below) is evidence of Subject 2's ties to Kenelec, Mr. Claudio's company.⁴¹⁸ Sixth, Mr. Claudio's admission to the Task Force that his company (Joe's Freighters) and Subject 2's company (Aero Logistics) worked together, in addition to the links between Subject 2 and Mr. Claudio's other company, Diesel Care Ltd., render implausible Mr. Claudio's statement that he was not very familiar with Subject 2.

364. Mr. Claudio initially claimed that he was ignorant as to Subject 2's relationship with Subject 1, but later admitted to Task Force investigators that he saw Subject 2 with Subject 1 at church and that "they could be having a relationship together."⁴¹⁹

365. Subject 2 was also actively involved in obtaining payment for Kenelec. For example, he called the ESARO Finance Office to follow up on Kenelec's invoices.⁴²⁰

366. When the Task Force presented Subject 1 with a Kenelec business card which named Subject 2 as a Commercial Director of the company, Subject 1 claimed that she was ignorant of any links between her husband and the company.⁴²¹

⁴¹³ Joseph Claudio interview (22 February 2007).

⁴¹⁴ *Id.*

⁴¹⁵ Joseph Claudio letter to the Task Force (26 March 2007).

⁴¹⁶ Selassie Waigwa interview (28 February 2007).

⁴¹⁷ Joseph Claudio emails to Subject 2 (5, 12, 14, 19, and 21 July; 25 August; 4, 5, 12, 16, 19, 20, 21, and 27 September; 2 October 2006) (as noted in Subject 2's Yahoo inbox) (recovered from Subject 1's laptop computer). See also Joseph Claudio email to Subject 1 (12 May 2006) (confirming that "Claudio" is Joseph Claudio of Kenelec).

⁴¹⁸ Sagar Chandra Rai email to Subject 1 (24 April 2006) (containing Meeting Minutes and Subject 2's business card for Kenelec Supplies).

⁴¹⁹ Joseph Claudio interview (22 February 2007).

⁴²⁰ Subject 3 interviews (22 and 27 February 2006).

⁴²¹ Subject 1 interviews (7 December 2006 and 23 February 2007).

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Figure: Subject 2's Kenelec Supplies business card

367. In her testimony to the Task Force, Subject 1 insisted that she had no knowledge of any involvement on the part of her husband in the Kenelec contract to supply bitumen to the Seychelles.⁴²² However, her alleged lack of knowledge is implausible. In fact, Subject 1 was fully aware that her husband was involved in the planning and the execution of this procurement exercise, and failed to inform UNOPS management about her husband's involvement in the deal.⁴²³

368. Subject 1 received a copy of the minutes of a meeting attended by her husband, with the UNDP representative in the Seychelles, the representative from the Government of the Seychelles, Joseph Claudio, and Fred Kisilu, the manager of Kenelec. Subject 2 identified himself there as a representative of Aero Logistics. The purpose of this meeting was to discuss logistical issues with regard to delivery of the bitumen, storage by Kenelec, and its internal transport from the port to the point of use.⁴²⁴

369. In fact, it was Subject 1 herself who suggested to UNDP that "it would be wise" to have Kenelec's logistician visit the Seychelles "to go down and have a look at the capacity for storage in the Seychelles and determine the type of container (20ft or 40ft) to use." Given Mr. Claudio's assertion that Subject 2 was intended to provide logistics to Kenelec on this deal, Subject 2 was presumably at the meeting in the Seychelles in the capacity of logistician for Kenelec.⁴²⁵ Therefore, in effect, Subject 1 recommended to her superiors that her own husband work on the UNOPS project.

⁴²² *Id.*

⁴²³ Staff Member 7 interview (24 February 2007).

⁴²⁴ Sagar Chandra Rai email to Subject 1 (24 April 2006).

⁴²⁵ Subject 1 email to Staff Member 5 (10 April 2006); Joseph Claudio interview (22 February 2007).

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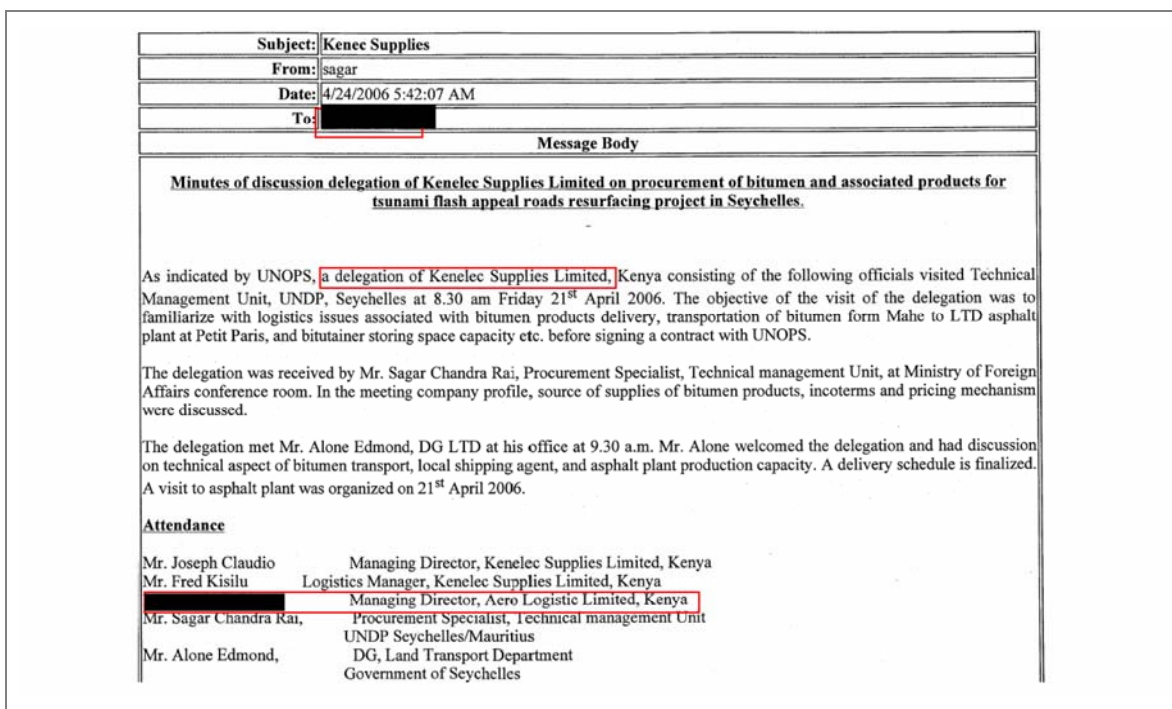


Figure: Kenelec Supplies email no. 187 to Subject 1 (24 April 2006)

370. Subject 1 confirmed to the Task Force that she was aware that her husband had been in the Seychelles at this time with Kenelec but contended that he was there to support Kenelec in general and not to work on the UN contract.⁴²⁶ The Task Force finds this argument highly questionable.

371. Rather, Subject 1 was aware of an ongoing relationship between her husband and Kenelec. She sent Kenelec a request for an Expression of Interest in August 2006 and copied her husband on this correspondence. She wrote “[k]indly note and work on.” If Subject 1 had not been aware of her husband’s work for the company there would have been no reason for her to forward him this correspondence.⁴²⁷

372. At no time, did Subject 1 alert her supervisor of her husband’s involvement with Kenelec and the resulting conflict of interest.⁴²⁸

The Task Force Evaluation

373. The Task Force finds that the anomalies in the bidding process involving Kenelec casts doubt upon the integrity of the bidding exercise. Equally suspect is Subject 1’s

⁴²⁶ Subject 1 interview (23 February 2007).

⁴²⁷ Subject 1 email to Subject 2 and Kenelec (17 August 2006). Additionally, in September 2006, Mr. Claudio and Subject 2 apparently entered into a business arrangement together for dealing involving the transport of cigarettes on behalf of British American Tobacco. As noted in the Interim Report, Subject 1 assisted by providing Subject 2’s company Aero Logistics a reference to BAT. See Subject 2 email to Nasreddin Ibrahim (undated) (2 October 2006) (contained in Mr. Ibrahim’s email to Subject 2).

⁴²⁸ Staff Member 7 interview (26 February 2007).

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subsequent action to secure an improper advantage to the company in the form of a needless upfront payment of ninety percent of the contract's value—a practice that was seldom used at ESARO. Moreover, Subject 1 recommended to ESARO that her own husband visit the Seychelles as part of the Kenelec team.

374. For these reasons, Subject 1's repeated denials of any knowledge of Subject 2's involvement in Kenelec's supply of bitumen to the Seychelles are not credible. Further, she failed to inform UNOPS management of her husband's involvement with the Kenelec deal—a clear conflict of interest for her.

375. Mr. Claudio has attempted to downplay his relationship with, and knowledge of Subject 2. The payment by Kenelec of KES 40,000 to Subject 2 breaches Article 19 of the UNOPS standard terms and conditions as per their LPO which states: "The vendor warrants that no official of the United Nations has received or will be offered by the vendor any direct or indirect benefit of any kind . . . in connection with or arising from this Order or the award thereof." By making a payment to Subject 2, Kenelec gave an indirect benefit to Subject 1, and, thereby, breached UNOPS protocol.

3. Diesel Care Limited

376. Subject 2 sought to secure ESARO contracts for Mr. Claudio's other company, Diesel Care Limited ("Diesel Care"). Subject 1 assisted Subject 2 in his efforts on behalf of Diesel Care, and failed to inform ESARO management of the obvious conflict of interest presented by her husband's involvement with the company.

Background

377. Diesel Care is owned by Mr. Claudio and his wife, Ms. Muthoni. As explained above, Mr. Claudio is affiliated with Kenelec, Joe's Freighters and Depasse, while his wife is affiliated with Joy-Mart.

378. Diesel Care shares the same telephone, fax and PO Box numbers with Kenelec (see above).⁴²⁹

379. Diesel Care was not actually awarded any ESARO contracts. However, the company's transactions with ESARO are important to discuss because Subject 1 yet again failed to disclose to ESARO staff the links between her husband and a company seeking ESARO business.

380. Subject 2 listed himself as the Commercial Director of Diesel Care in correspondence with ESARO and on his business card (see figure below).⁴³⁰

⁴²⁹ Subject 1 email to Staff Member 10 (24 March 2006).

⁴³⁰ Diesel Care business card (undated) (identifying Subject 2 as Commercial Director).

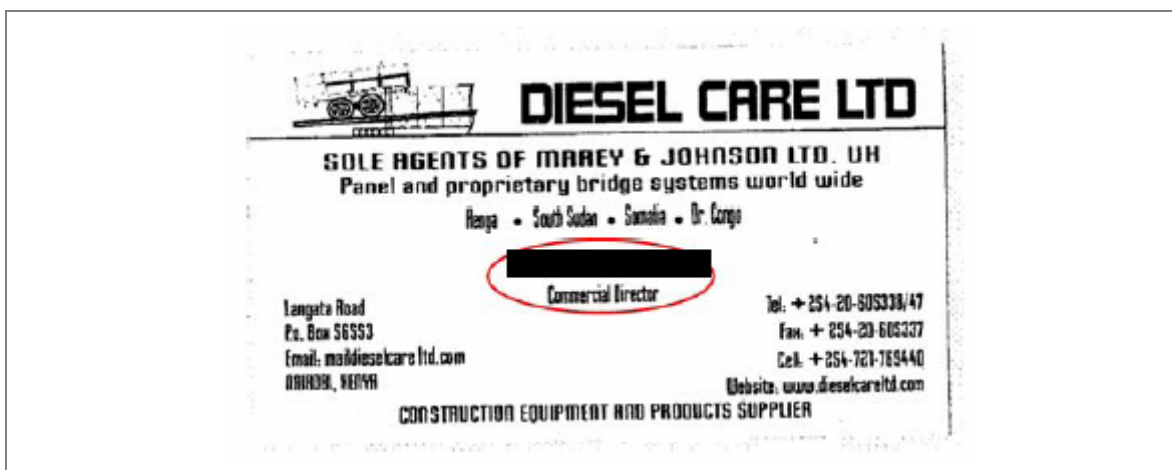
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Figure: Subject 2’s Diesel Care Ltd.’s Business Card

381. In March 2006, Subject 2 submitted a bid in the name of Diesel Care to ESARO for the supply of a ferry landing ramp in Kisangani (Democratic Republic of the Congo). He signed Diesel Care’s proposal in his capacity as its Commercial Director.⁴³¹

382. Subject 2 subsequently handled all further correspondence between UNOPS and Diesel Care. Subject 3 was also aware that Subject 2 was involved in the bid. The two exchanged numerous emails on the subject in February and March 2006. Subject 3 initially denied to the Task Force that he knew Subject 1’s husband was involved with Diesel Care. However, Subject 3 later confirmed to the Task Force that in early 2006 Subject 2 had asked him both for the chance to submit a quote whenever an ITB was issued for the deal and for an introduction to the Project Manager responsible for the deal.⁴³² Diesel Care did not, however, receive the contract for the ramps.⁴³³

383. Subject 1 was also aware of her husband’s links to Diesel Care and involvement in ESARO bids. The company’s bid for the ferry landing ramps received by Subject 1 was signed by her husband.⁴³⁴

384. In March 2006, a procurement exercise commenced for heavy trucks for a UNOPS project in Ethiopia.⁴³⁵ Subject 1 had specifically requested to advertise the bid in Ethiopia and East Africa in addition to using the suppliers list from Copenhagen.⁴³⁶ On 24 March 2006, Subject 1 forwarded a list of suppliers to be invited to bid for heavy-duty trucks for a project in Ethiopia to Staff Member 6 for approval. She included Diesel Care—which listed Subject 2 as the contact person—in this list although she failed to

⁴³¹ Subject 2 letter to ESARO (30 March 2006) (attaching Diesel Care response to UNOPS-DRC-2006-01-001).

⁴³² Joseph Claudio email to the Task Force (26 March 2007).

⁴³³ RFQ UNOPS-DRC-2006-01-001; Subject 2, Subject 3 *et al.* email correspondence (21 February and 6, 15, 20, 21, and 30 March 2006).

⁴³⁴ William Odongo email to Subject 1 (12 April 2006) (attaching Diesel care bid submission letter).

⁴³⁵ ESARO case no. ED-X-06-27 (25 April 2006).

⁴³⁶ Subject 1 email to Geert Wilders (13 March 2006).

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notify Staff Member 6 that her husband worked for the company.⁴³⁷ There is no reason why Staff Member 6 would otherwise have been aware of her husband's involvement with Diesel Care.

9) Construction Equipment Supplier	Diesel Care Ltd	[REDACTED]	www.dieselecareltd.com	25420605338/47	254 20605337	mail@dieselecareltd.com	P. O. Box 26553 Nairobi-Kenya	Kenya	UNOPS-ESA
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Figure: Excerpt from suggested supplier list for Zambezi Trucks (sent by Subject 1 on 24 March 2006)

385. Subject 1 told the Task Force that she was unaware of any links between her husband and Diesel Care.⁴³⁸ Mr. Claudio denied that Subject 2 was connected in any way to Diesel Care.⁴³⁹ Subject 1's statements, as well as those of Mr. Claudio, are simply not credible.

386. To the contrary, there is an abundance of evidence indicating that Subject 1 was fully aware that her husband was acting on behalf of Diesel Care. In mid-March 2006, Subject 2 wrote to ESARO introducing the company. Two weeks later, Subject 2 also submitted to ESARO a tender for ferry landing ramps which he signed as Commercial Director of Diesel Care.⁴⁴⁰ As noted above, when Subject 1 created a list of suppliers for trucks for a different bid she included Subject 2 in this list as a representative for Diesel Care. On 30 March 2006 the Regional Director signed this list.⁴⁴¹

387. When the Task Force presented Subject 1 with the suppliers list, including her husband's name as a contact person for Diesel Care, she initially was silent when questioned about the identity of the person who created this list. When Task Force investigators pointed out to Subject 1 that the title of the list was written as "[c]reated by Sheila Y," she eventually admitted that she and Subject 3 were both responsible for drafting the list. She claimed, however, that the bid was not sent out to this list of suppliers and that Staff Member 7 must have removed Diesel Care from the list.⁴⁴²

388. Staff Member 7 affirmed that Subject 1 never told him about her husband's involvement with Diesel Care.⁴⁴³ Staff Member 7 stated that neither Subject 1 nor Subject 2 informed him of Subject 2's connection with this company.⁴⁴⁴

389. In fact, Subject 1 did send the ITB to Diesel Care. This was a deliberate act as demonstrated by the fact that she had to resend the bid after making an initial error in the

⁴³⁷ Subject 1 email to Staff Member 10 *et al.* (24 March 2006); Suppliers list signed by Staff Member 10 (30 March 2006).

⁴³⁸ Subject 1 interview (23 February 2007).

⁴³⁹ Joseph Claudio interview (22 February 2007).

⁴⁴⁰ Subject 2 letter to ESARO (16 March 2006); Diesel Care tender for Project 46522 (24 January 2006).

⁴⁴¹ Suppliers list signed by Staff Member 10 (30 March 2006)

⁴⁴² Subject 1 interview (23 February 2007).

⁴⁴³ Staff Member 7 interview (24 February 2007).

⁴⁴⁴ Staff Member 10 interview (13 April 2007).

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company's email address.⁴⁴⁵ Additionally, when Subject 1 signed off as Purchasing Officer on the submission to PRAC for final approval to award the contract to another vendor, Zambezi Investments, the submission noted that "Diesel Care limited [sic] declined" to bid.⁴⁴⁶

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390. Subject 3, as he admitted to the Task Force, was aware of the fact that Subject 2 was Subject 1's husband. Nevertheless, Subject 3 failed to report Subject 1's involvement via her husband with an ESARO Bidder.

391. Subject 1's statements to the Task Force regarding her lack of knowledge of her husband's links to Diesel Care are untruthful, as are her statements regarding the inclusion of her husband's name as a representative of Diesel Care in the supplier list for the trucks mentioned above. These denials on the part of Subject 1 are in sharp contrast to her active involvement in pushing UNOPS to award contracts to companies associated with her husband whilst keeping ESARO management ignorant of her husband's involvement with Diesel Care.

4. Zambezi Investments

392. As discussed below, Subject 2 and Subject 1's brother, the husband and brother of Subject 1, respectively, worked on ESARO's contract with Zambezi Investments ("Zambezi") for the supply of trucks to the Organisation. Subject 1 was aware of their links to Zambezi and specifically to the ESARO contract. She failed to inform any staff member at ESARO of this conflict of interest. In addition, she issued instructions to her brother in connection with the performance of the contract.

Background

393. Zambezi is owned by Mr. James Ochola, along with two associates.⁴⁴⁷ Mr. Ochola incorporated Zambezi in Nairobi in 2004 as a vehicle for exploiting occasional business opportunities.⁴⁴⁸

394. Mr. Ochola had clear business links with Subject 1's husband, Subject 2. Mr. Ochola assisted Subject 2 in setting up the latter's company, MSS Kenya (see above) and in bidding on ESARO contracts on behalf of this company. Further, Mr. Ochola is listed under his nickname as the official contact for MSS Kenya in correspondence with

⁴⁴⁵ ESARO case no. ED-X-06-27 (25 April 2006); Subject 1 email to Diesel Care *et al.* (25 April 2006); Subject 1 email to Diesel Care Ltd (25 April 2006) (resent) (attaching signed page of ITB ED-X-06-27).

⁴⁴⁶ PRAC submission for ETH/02/R52 (26 May 2006) (signed by Subject 1 as Purchasing Officer). There is an earlier signed version of the last page of the PRAC submission dated 12 May 2006. See also UNOPS Shortlist of Participating Firms (undated).

⁴⁴⁷ The two co-owners are Michael Ombuoro & Musile Nzambu. Neither of these persons features in UNOPS correspondence and there is no evidence to suggest they had any role to play. James Ochola interview (26 February 2007).

⁴⁴⁸ James Ochola interview (26 February 2007).

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ESARO.⁴⁴⁹ Additionally, Mr. Ochola also acted as a broker and middleman for other companies which bid on ESARO contracts. These included: Granada Trading, which competed against but ultimately lost out to Kenelec for the bitumen award (described above).⁴⁵⁰

395. Subject 1 and Mr. Ochola maintained similar social circles. For example, they were both invited to a birthday party thrown by David Ochanda, another ESARO bidder.⁴⁵¹

396. In April 2006, an ITB for a dump truck, a tanker truck and a grader was issued for an ESARO project in Ethiopia. Only FIAT-Iveco was to be acceptable for standardization purposes.⁴⁵² As noted above, Subject 1 had specifically requested to advertise the bid in Ethiopia and East Africa, in addition to using the suppliers' list from Copenhagen.⁴⁵³ Also described above, Subject 1 included her husband's name as a representative of Diesel Care on the list of suppliers to be sent bid solicitations. Subject 1 then sent Diesel Care the ITB.⁴⁵⁴

397. UNOPS staff in Copenhagen expressed surprise at the poor response to the solicitation of bids. Subject 1 replied that all the suppliers on a pre-approved list had

⁴⁴⁹ Subject 1 interview (23 February 2007); James Ochola interview (26 February 2007); James Otieno letter to Subject 1 (6 September 2006); Subject 1 email to Staff Member 5 *et al.* (7 September 2006); James Ochola email to Subject 2 (30 November 2006) (signed "Regards kaka") (reviewed during Mr. Ochola's interview dated 26 February 2007); James Ochola email to Subject 2 (18 September 2006) (as noted in image of Subject 2's inbox dated 27 September 2006, recovered from Subject 1's laptop computer); Subject 1 email to James Ochola (14 September 2006) (attaching bid evaluation); James Ochola email to Subject 1's brother (5 June 2006) (reviewed during Mr. Ochola's interview on 26 February 2007); MSS Ethiopia (salesmss@ethionet.et) email to James Ochola (18 July 2006) (reviewed during Mr. Ochola's interview on 26 February 2007); Bluye Haddis interview (3 April 2007); MSS Kenya email to Subject 1 (6 September 2006) (reviewed during Mr. Ochola's interview on 26 February 2007); RFQ-2006-09-01 forwarded from MSS Kenya to james_ochola@yahoo.co.uk (6 September 2006).

⁴⁵⁰ Granada Trading response to ITB for ESARO Procurement Project, Seychelles, ESARO Case no. 00046960 (31 January 2006); Suppliers database – Motor vehicles 2006 (11 April 2006); ITB UNOPS-DRC-2006-04-003 (12 April 2006); Subject 1 emails to James Ochola (3 April and 12 May 2006) (attaching ITB ESARO-05-002); Mr. Ochola also represented Armatech in an ESARO procurement exercise for reflective jackets and environmental masks for the police. When Armatech supplied the police equipment, Subject 2's company, Aero Logistics, handled the delivery of the material. See James Ochola email to Subject 1 (7 September 2006) (attaching Armatech quote).

⁴⁵¹ Subject 1's business correspondence with both Mr. Ochola and Mr. Ochanda was formal, referring to them as "Dear sir." Another invitee to the party was Cecilia Mailu, who had previously sent Subject 1 a vendor profile on behalf of James Ochola. Subject 1 was on friendly terms with her, referring to her as "C" in her response. Subject 1 email to David Ochanda (12 September 2006); Subject 1 email to James Ochola (12 May 2006); Subject 1 email correspondence with Cecilia Mailu (7 and 8 June 2006); Subject 1 email to James Ochola *et al.* (18 November 2006); Subject 1 emails to David Ochanda (4 September 2006) (attaching RFQ-2006-09-01 and accepting the invitation to the party); David Ochanda email to Subject 1 (6 September 2006).

⁴⁵² ESARO case no. ED-X-06-27 (25 April 2006) Article 2.3; Subject 1 email to James Ochola, Diesel Care *et al.* (25 April 2006); Subject 1 email to Diesel care Ltd (25 April 2006) (resent) (attaching signed page of ITB ED-X-06-27).

⁴⁵³ Subject 1 email to Geert Wilders (13 March 2006).

⁴⁵⁴ ESARO case no. ED-X-06-27 (25 April 2006); Subject 1 email to Diesel Care *et al.* (25 April 2006); Subject 1 email to Diesel Care Ltd (resent) attaching signed page of ITB ED-X-06-27 (25 April 2006).

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received the ITB but that many had declined to bid. She did not offer any explanation as to why this had occurred.⁴⁵⁵ Amongst those companies that had declined to bid was Diesel Care, the company her husband represented.⁴⁵⁶

398. Subject 1, along with UNOPS staff in Copenhagen, was involved in evaluating the bids. The Copenhagen team recommended that the contract be awarded to two companies: Iveco, an Italian company, and Bukkehave, a Danish company. Subject 1 responded that the proposal from Bukkehave offered a different brand of trucks than that which was requested, and, therefore, should be disqualified. Zambezi managed to offer Iveco-manufactured trucks at a substantially lower price (approximately US\$30,000 less for each truck) than Iveco's own dealer. Subject 1 also queried the decision of Copenhagen to award the bid to Iveco, which submitted a more expensive bid. Ultimately, Subject 1 and staff in Copenhagen awarded the contract for trucks to Zambezi rather than Iveco, while Bukkehave was to supply the grader.⁴⁵⁷ Subject 1 submitted the award to the Procurement Review and Advisory Committee (PRAC) for approval.⁴⁵⁸ An award was granted for \$295,000.⁴⁵⁹

399. The requirement was subsequently altered to include an additional dump truck. Subject 1 mistakenly requested an additional tanker truck from Zambezi. In turn, Mr. Ochola of Zambezi made a "slight" increase to his shipping price."⁴⁶⁰ The Copenhagen team found and corrected Subject 1's mistake. The team also expressed skepticism about Zambezi's sudden increase in shipping price noting that an additional US\$21,000 was a substantial, rather than a "slight," increase in price.⁴⁶¹

400. Subject 1 recommended that the increase be approved without returning the case to the PRAC.⁴⁶² Subject 1 also requested permission from Copenhagen to change the purchase order. Copenhagen staff, however, noted that Zambezi's original price for the single tanker truck had been increased as well as the shipping costs.⁴⁶³

401. Subject 1 instructed Subject 3 to amend the purchase order to reflect the increased purchase price.⁴⁶⁴ When the Regional Portfolio Manager, Frederic Claus, asked Subject 1 about the price increase she admitted to him that she had increased the purchase price on the LPO because the supplier had quoted the wrong price. Mr. Claus told Subject 1 it

⁴⁵⁵ Subject 1 and Eric Dupont email correspondence (11 May 2006).

⁴⁵⁶ PRAC submission for ETH/02/R52 (26 May 2006) (signed by Subject 1 as Purchasing Officer).

⁴⁵⁷ ITB ED-X-06-27, Article 2.3 (25 April 2006); Overview bids for supply of equipment for ETH/02/R52 (undated); Eric Dupont email correspondence with Subject 1 (11 May 2006).

⁴⁵⁸ PRAC submission for ETH/02/R52 (26 May 2006) (listing Subject 1 as Submitting Officer).

⁴⁵⁹ PRAC award letter (31 May 2006).

⁴⁶⁰ James Ochola email to Subject 1 (23 May 2006).

⁴⁶¹ Subject 1 email correspondence with Geert Muijsers (8 and 9 June 2006).

⁴⁶² *Id.*

⁴⁶³ Subject 1 email correspondence with James Ochola, Geert Muijsers, and Frederic Claus (9 to 12 June 2006); Zambezi Investments response to ITB 2006-04-75 (5 May 2006) (signed by Mr. Ochola); Zambezi Investments response to ITB 2006-04-75 (undated) (attached to the previous bid); Julie Klassen email to Staff Member 3 *et al.* (19 April 2007); Linda Telles email to Geert Muijsers *et al.* (19 April 2007).

⁴⁶⁴ Subject 1 email to Subject 3 (12 June 2006).

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was not her decision as to whether to change the price and that Zambezi was bound to its original quote.⁴⁶⁵

402. Mr. Claus held the company to its original offer and the parties executed the contract with the original price.⁴⁶⁶

403. Subject 1 suggested paying fifty percent of the value of the contract up front to Zambezi, ostensibly for budgetary reasons. Mr. Claus refused to allow this.⁴⁶⁷

404. Zambezi had contracted to deliver the three trucks by October 2006.⁴⁶⁸ In November 2006, the trucks still had not arrived. In response, Subject 3 contacted the company to find out what had happened to delay the delivery.⁴⁶⁹ Frederic Claus, the Regional Portfolio Manager, then asked Subject 1 to draft to Zambezi a “warning letter” threatening to blacklist it from future business with the Organisation if the trucks were not delivered soon.⁴⁷⁰ Mr. Claus eventually sent the letter himself after criticizing Subject 1 for failing to produce the letter in a reasonable time period.⁴⁷¹ Ultimately, the contract with Zambezi was cancelled in April 2007 due to non-performance.⁴⁷²

405. The anomalies detailed above raise the spectre of a corrupt procurement process. In summary, these anomalies are:

- the inclusion of Diesel Care and, specifically, Subject 2, as the company’s representative, on the original list of invitees (see above);
- few responses to the ITB;
- Subject 1’s advocacy for a fifty percent up front payment to Zambezi; and
- Subject 1’s unilateral decision to alter the price in the Local Purchase Order to assist the vendor.

406. Given the involvement of her husband and her brother with Zambezi Investments with respect to the contract to supply trucks these anomalies cast doubt on the integrity of the bidding exercise.

407. Mr. Ochola worked closely with Subject 2 on matters surrounding this UNOPS contract. Specifically, Mr. Ochola forwarded the specifications for the bid to Subject 2. A week later, Mr. Ochola sent Subject 2 a copy of Zambezi’s letterhead. On that same

⁴⁶⁵ *Id.*

⁴⁶⁶ Staff Member 8 interview (2 March 2007).

⁴⁶⁷ Subject 1 email to Frederic Claus (5 June 2006); Frederic Claus email to Dimby Randrianaina (5 June 2006).

⁴⁶⁸ UNOPS note-to-file on Zambezi Investments (23 April 2007).

⁴⁶⁹ James Ochola email to Subject 1 (28 August 2006); Subject 1 email to James Ochola (6 November 2006); Subject 3 email correspondence with Frederic Claus (9 to 15 November 2006); Subject 3 email to James Ochola (15 November 2006).

⁴⁷⁰ Frederic Claus email to Subject 1 (16 November 2006). The email refers to letters to “both suppliers.” It is unclear if this means CMC Motors or Iveco in addition to Zambezi.

⁴⁷¹ Frederic Claus email to James Ochola (16 November 2006) (attaching letter); Subject 1 email to Staff Member 7 (17 November 2006).

⁴⁷² Staff Member 5 letter to James Ochola (26 April 2007).

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day, Mr. Ochola wrote to Subject 2 that “we will work through you on this matter.” Three weeks later, Mr. Ochola then sent Subject 2 correspondence between Zambezi and ESARO staff regarding the trucks deal.⁴⁷³

408. Despite originally making false statements about his connections to Subject 2, Mr. Ochola eventually admitted to the Task Force that Subject 2 had approached him and offered to help sort out any problems Zambezi encountered during the implementation of the ESARO contract for dump trucks.⁴⁷⁴

409. Mr. Ochola commented that Subject 2 always seemed to know about ESARO’s concerns with project delays well before Mr. Ochola himself had been told by ESARO. For example, before Mr. Ochola received a two-week notice of cancellation from ESARO as a result of delivery delays, Subject 2 said he would prevent the cancellation for a certain consideration. Although Mr. Ochola claimed that he accepted Subject 2’s assistance, he denied ever paying Subject 2 any money for this assistance. Given that Mr. Ochola described Subject 2 as someone who offered assistance in facilitating matters with the UN—in exchange for a commission—it seems unlikely that Subject 2 would have agreed to work for free in this case.⁴⁷⁵

410. Subject 1’s brother.⁴⁷⁶ Subject 1’s brother is employed by Cisco Systems but has been involved in UNOPS contracts with Subject 1, Subject 2 and Mr. Ochola. He declined to be interviewed by the Task Force, citing commercial confidentiality and noting that “one of the pillar stones of business is integrity.”⁴⁷⁷

411. In addition to assisting with the creation of MSS Kenya (see above), Subject 1’s brother was a key player in the Zambezi deal. Subject 1’s brother was involved in the initial stages of the deal sourcing suppliers for the trucks in Ethiopia on behalf of Zambezi and Mr. Ochola.⁴⁷⁸

412. In November 2006, when Mr. Ochola forwarded the specifications for dump trucks to Subject 2 he also sent an email to Subject 2 attaching two documents, one called “logo,” and one called “image.” This email was then forwarded to Subject 1’s brother. In turn, Subject 1’s brother informed his sister, that “we shall have the same from Zambezi to UNOPS.”⁴⁷⁹

413. Subject 1 responded to her brother that he should “put this communication in the Zambezi letterhead, not the CMC please.” According to Mr. Ochola, CMC Motors was the authorized Iveco agent in Nairobi.⁴⁸⁰ Subject 1’s brother then asked Subject 1 to

⁴⁷³ James Ochola emails to Subject 2 (30 November 2006) (reviewed during Mr. Ochola’s interview on 26 February 2007).

⁴⁷⁴ James Ochola interview (26 February 2007).

⁴⁷⁵ *Id.*

⁴⁷⁶ Subject 1 interview (23 February 2007); James Ochola interview (26 February 2007).

⁴⁷⁷ Subject 1’s brother email to the Task Force (2 April 2007).

⁴⁷⁸ James Ochola emails to Subject 1’s brother (18 July and 18 August 2006) (reviewed during Mr. Ochola’s interview on 26 February 2007).

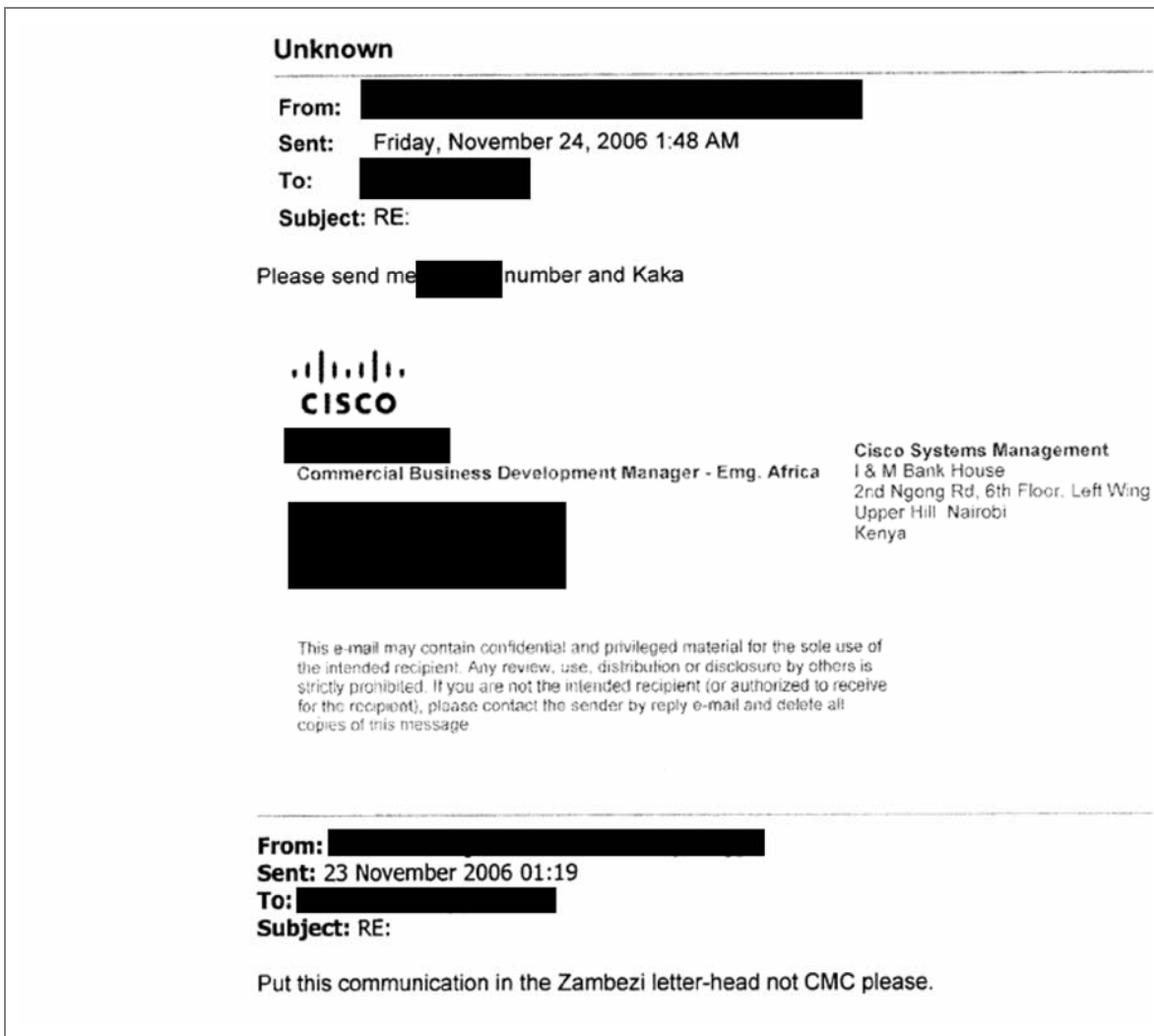
⁴⁷⁹ Subject 1’s brother email to Subject 1 (23 November 2006).

⁴⁸⁰ James Ochola letter to Subject 3 (15 November 2006) (copied to Subject 1); Subject 1 email to Frederic Claus (15 November 2006) (forwarding the letter); James Ochola interview (26 February 2007); James

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forward “Martins [sic] number and Kaka.”⁴⁸¹ The “Martin” referred to in this email is Subject 2. “Kaka” is the nickname of James Ochola.⁴⁸² Subject 3 told the Task Force how several months earlier, in March 2006, Subject 1 had instructed him to send a quote, which CMC had submitted to UNOPS, to Subject 2. Subject 3 surmised that Subject 2 had a “connection” to CMC in that the latter knew people at that company.⁴⁸³

414. The email chain indicates that Subject 1 was aware of both her husband’s and her brother’s links to Zambezi Investments contract to supply trucks to ESARO. Moreover, Subject 1’s email to Subject 1’s brother amounts to an instruction to her brother regarding Zambezi’s performance of the ESARO contract.



Ochola email to Subject 2 (22 November 2006) (contained in Subject 1’s brother correspondence with Subject 1 dated 23 and 24 November 2006).

⁴⁸¹ James Ochola interview (26 February 2007); James Ochola email to Subject 2 (22 November 2006) (contained in Subject 1’s brother correspondence with Subject 1 dated 23 and 24 November 2006).

⁴⁸² James Ochola interview (26 February 2007).

⁴⁸³ Subject 3 interview (15 May 2007).

Figure: Email exchange between Subject 1's brother and Subject 1 (23 and 24 November 2006)

415. Further, Subject 1 also misused her position with the Organisation to intervene on behalf of Zambezi. She asked Subject 3 to serve as witness to her signature on documentation with the UNOPS letterhead giving a formal recommendation for Zambezi to the Equity Bank on behalf of the United Nations. Subject 3 refused to participate and serve as her witness because he knew only senior management were supposed to sign letters on UNOPS letterhead.⁴⁸⁴

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416. Mr. Ochola told the Task Force that he only found out about the relationship between Subject 1 and her brother “after the trucks deal.” This is not true. In addition to the evidence cited above of Subject 1's brother communications with Subject 1 regarding the trucks deal in November 2006, Mr. Ochola and Subject 1's brother were discussing this contract and others as early as August 2006.⁴⁸⁵

417. Mr. Ochola also misrepresented his relationship with Subject 2 to the Task Force.⁴⁸⁶ Mr. Ochola's links to Subject 2 have been described elsewhere in this Report (see discussion concerning MSS Kenya). In addition, Mr. Ochola falsely informed the Task Force that he had never used Subject 1's UN laptop. By contrast, the Task Force found evidence that Mr. Ochola used the laptop, kept in Subject 1 and Subject 2's home, at least six times between September and December 2006 to log into his private email account—including receiving ESARO correspondence on the subject of the Zambezi Investments truck bid.⁴⁸⁷

418. First, Subject 1 had clear social links with Mr. Ochola (see discussion concerning MSS Kenya). She failed to disclose this connection to any ESARO staff. Second, Subject 1's brother, was also involved in sourcing the trucks for Zambezi on this contract. Subject 1 was aware of this connection as she issued an instruction to her brother concerning the performance of the ESARO contract. Third, Subject 1's husband worked alongside Zambezi on this contract agreeing to intervene on behalf of Zambezi with ESARO when the company was performing poorly. In sum, due to her multiple connections to persons involved with the Zambezi contracts, Subject 1 had a clear, considerable and continuing conflict of interest. At no point did she disclose this conflict of interest to her superiors.

419. Subject 1 also exceeded her authority by unilaterally ordering the alteration of a LPO to benefit Zambezi.

⁴⁸⁴ Subject 3 interview (22 February 2007).

⁴⁸⁵ James Ochola email to Subject 1's brother (18 August 2006) (reviewed during Mr. Ochola's interview on 26 February 2007).

⁴⁸⁶ James Ochola interview (26 February 2007).

⁴⁸⁷ Forensic images recovered from Subject 1's laptop. See, for example, James Ochola email to Sally Gitonga (28 November 2006); Images of James Ochola's Yahoo inbox (12 September, 5 and 30 October, 29 November, and 1 December 2006) (recovered from Subject 1's brother's laptop).

420. In sum, Subject 1 performed a pivotal role in securing the ESARO contract for Zambezi. Until her intervention, it was not even being considered for the contract. Zambezi was not in the business of supplying trucks, and was essentially a broker. Due to the company's poor performance, the contract with Zambezi was ultimately cancelled. As a result, the Organisation has incurred a loss of both time and money. This loss can be attributed to Subject 1's actions.

F. BICYCLES FOR THE DEMOCRATIC REPUBLIC OF THE CONGO

421. As discussed below, Subject 1 remained an active participant in the scheme at the time she temporarily left her post on an ESARO on maternity leave. Just prior to departing on maternity in early December 2006, and concurrently with the Task Force's original visit to ESARO to investigate the allegations of corruption brought against her, Subject 1 was involved in yet another attempt to corrupt the procurement process and defraud the Organisation.

422. In November 2006, a requirement arose for bicycles for a UNOPS project in the Democratic Republic of the Congo. Subject 1 originally forwarded a suppliers list, apparently sourced from the ESARO vendor database in Copenhagen, for approval to the Project Manager.⁴⁸⁸ A bid was then issued.⁴⁸⁹ Subject 1 subsequently reported that "We did not receive good responses for the bicycles," and requested that a re-bid be issued to include suppliers in East and South Africa.⁴⁹⁰ The ESARO Project Officer commented, "Sounds strange though, that European suppliers are not able to provide good quotations for mountain bikes."⁴⁹¹

423. Nevertheless, a new RFQ was issued.⁴⁹² A few days prior to its issue Denis Odipo, Director of Subject 2's company, Depasse, emailed a list of potential companies entitled "for bicycles," to Subject 1. He subsequently updated this list in a second email: "Hereby re-worked list of companies." Both emails were sent by Mr. Odipo from Subject 1's own UN issued laptop, kept inside the private home she shared with Subject 2. The list included Comroad Construction & Company—a company run by Selassie Waigwa, owner of Compfit—which had colluded with her husband on previous bids.⁴⁹³ Subject 1 acted on Mr. Odipo's suggestion and emailed Comroad Construction & Company the same day to ask if they were in a position to bid, attaching the RFQ to the email.⁴⁹⁴

⁴⁸⁸ Subject 1 email to Robert Bekker (1 November 2006); Eric Dupont email to Subject 1 (16 October 2006).

⁴⁸⁹ RFQ-2006-11-02 (30 November 2006).

⁴⁹⁰ Subject 1 email to Robert Bekker (30 November 2006); Robert Bekker email to Subject 1 (30 November 2006).

⁴⁹¹ Subject 1 email to Robert Bekker (30 November 2006); Robert Bekker email to Subject 1 (30 November 2006).

⁴⁹² RFQ-2006-11-02-A (6 December 2006).

⁴⁹³ Denis Odipo email to Subject 1 (undated) (recovered from Subject 1's laptop); Denis Odipo email to Subject 1 (6 December 2006) (recovered from Subject 1 laptop).

⁴⁹⁴ Subject 1 email to Comroad (6 December 2006).

424. Subject 1 had previously received additional suggestions from other familiar sources. Subject 1 received an email containing other possible bicycle suppliers from Christine Claudio, the daughter of Joseph Claudio, with whom Subject 1's husband was closely involved. From the tone of the emails, it appears that Ms. Claudio is a friend of Subject 1. Ms. Claudio recommended her father's company, Diesel Care (for which Subject 2 is the commercial manager), together with Joy-Mart, owned by her mother, which had previously participated in the bid collusion for stationery and office equipment.⁴⁹⁵

425. The involvement of bidders with a history of colluding with Subject 2 in relation to ESARO contracts, coupled with the fact that these bidders were suggested by two individuals either directly or closely involved in fraudulent activity, support a conclusion that the integrity of this bidding process was severely compromised. Subject 1 took instructions from individuals closely linked to vendors that had colluded with her husband on prior exercises to rig the ESARO bid process. Moreover, she acted upon these instructions, and requested bids from those companies suggested by these individuals.

426. Subject 2's and his associates' scheme to defraud the Organisation was still ongoing in December 2006 and Subject 1 remained an active participant despite her imminent departure on maternity leave.

G. KNOWLEDGE OF UNOPS STAFF AND SYSTEM FAILURES

427. A number of ESARO staff members were aware that Subject 2 was linked to several ESARO vendors. These staff members had concerns that the procurement system may have been compromised and raised these concerns with senior ESARO staff, including the Chair of the LPC. However, no action was taken by senior ESARO staff. Others, such as Staff Member 14 and Subject 3, were aware of the conflict of interest, but, nevertheless, failed to inform management. Staff Member 13 and Staff Member 1 tried to inform ESARO management to no avail. Staff Member 11 was made aware of concerns but failed to act. Most problematic, however, was a consistent failure by Staff Member 7 to exercise any form of oversight. When coupled with a failure of the Regional Director, Staff Member 6, to put oversight theory into practice, this, in effect, meant that LPOs were signed without any oversight.

1. ESARO Staff Knowledge of the Corrupt Activities of Subject 1 and Subject 2

a. Subject 3

428. Subject 3's job title is "Procurement Assistant." As the Procurement Assistant, he took the lead in all procurement matters until Subject 1 replaced him in this role.

⁴⁹⁵ Christine Claudio emails to Subject 1 (4 and 5 December 2006); Subject 1 email to Christine Claudio (4 December 2006); Chris Mutuku email to the Task Force (27 April 2007). Mr. Mutuku is legal counsel for Mr. Claudio.

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429. Around March–April 2006, it was agreed with the Operations Manager, Staff Member 7, that Subject 1 would take a more active role in procurement since Subject 3 was not managing well. After Subject 1 returned from procurement training in Copenhagen, Subject 3 was officially requested to hand over procurement responsibilities to her. He remained involved in procurement but Subject 1 handled the majority of procurements after the official handover. Subject 1 stated in her Response to the Interim Report that this handover took place “around about April 4th, 2006.”⁴⁹⁶

430. Subject 3 first met Subject 2 soon after Subject 1 was employed by UNOPS since Subject 2 would drop and pick her up from work.⁴⁹⁷ He became aware of Subject 2’s links to a UNOPS vendor as early as January/February 2006, shortly after Subject 1 had joined UNOPS.⁴⁹⁸

431. Regarding the supply of a laptop computer to ESARO Subject 3 issued a RFQ to established ESARO vendors. Nevertheless, Subject 1 passed him an unsolicited bid from Scepter Trading. Staff Member 7 reportedly instructed Subject 3 to include it in the bidding exercise despite the fact that the company had not been invited to bid. Scepter won the bid. Later, representatives of a different company visited UNOPS to repossess the laptop. This company had supplied the laptop to Scepter Trading but had not yet received payment from Scepter. Subject 3 was led to believe that Subject 2 had vouched for Scepter’s creditworthiness.⁴⁹⁹

432. As detailed in the Interim Report, Subject 3, at Subject 1’s instruction, assisted in passing ESARO contracts to Depasse Logistics. On at least two occasions, Subject 3 asked Subject 2 to supply multiple quotations for the same bid.⁵⁰⁰

433. Subject 3 was aware that Depasse Logistics was linked to Subject 2 from the beginning of the company’s transactions with ESARO. When Joshua Musyoka brought to Subject 3 a quotation for Depasse he told Subject 3 that the quote was from Subject 2. Further, when Subject 3 called Mr. Musyoka to ask about delays in the delivery of goods, Mr. Musyoka told him that he should call Subject 2 to find out why the goods in question had not been delivered. (Evidently, the delay was on account of Subject 2’s failure to provide the money to purchase the goods.)⁵⁰¹

434. Further, as discussed above, Subject 3 also was aware that Subject 2 was involved with another ESARO vendor, Diesel Care, concerning a contract for the supply of a ferry landing to Kisangani.⁵⁰²

⁴⁹⁶ Subject 1 interviews (7 December 2006 and 23 February 2007); Subject 3 interview (22 February 2007); Staff Member 7 interview (24 February 2007); Subject 3 email to Subject 2; Subject 1 Response to the Interim Report, p. 7. In an LPC meeting on 25 May 2006, it was noted that Subject 1 has taken over procurement from Subject 3. LPC Meeting minutes (25 May 2006).

⁴⁹⁷ Subject 3 did not know Subject 2 prior to Subject 1 joining UNOPS. Subject 3 interview (22 February 2007).

⁴⁹⁸ Subject 3 interview (20 April 2007).

⁴⁹⁹ *Id.*

⁵⁰⁰ See Interim Report, paras. 58-59, 72-73, 95, 123-125.

⁵⁰¹ Subject 3 email to the Task Force (23 April 2007) (attaching statement).

⁵⁰² *Id.*

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435. Additionally, Subject 3 was aware that Subject 1 and Subject 2 were engaged in corrupt practices on a much wider scale. Subject 3 estimated to the Task Force that only twenty percent of contracts handled during Subject 1's tenure were legitimate.⁵⁰³ He did discuss his concerns with fellow ESARO staff (Staff Member 13), but did not make his concerns known to UNOPS management.⁵⁰⁴ He told the Task Force that he had not wanted to get involved. He informed the Task Force that he was aware in retrospect that he should have reported his suspicions about Subject 1 and Subject 2's involvement with UNOPS vendors but he had felt that Staff Member 7 would believe Subject 1's rather than his account.⁵⁰⁵ In addition, Subject 3 noted that Staff Member 7 relied heavily on Subject 1 and appeared to sign off on documents she had prepared without reviewing them.⁵⁰⁶

436. Further, Subject 3 acknowledged to the Task Force that he was aware of Subject 1's and Subject 2's links to vendors during his interviews with investigators in February 2007. He listed the companies that he believed were involved in Subject 1's and Subject 2's scheme: Kenelec, Company 1, Jamii, Joy-Mart, Zambezi, Depasse, Joe's Freighters, MSS Kenya, Compfit, Three Fam and Diesel Care.⁵⁰⁷ He said that his suspicions were based, in part, on the fact that Subject 2 called him to chase up payments for some of these companies. (On this account, Subject 3 recalled speaking to Subject 2 two to three times per month). In other cases he knew that those persons who came to UNOPS on behalf of these companies were connected to Subject 2. For example, Joshua Musyoka came to the ESARO office as a representative of Depasse. With respect to other companies, Subject 3 explained that his suspicions were on account of the fact that Subject 1 had introduced the company (for example MSS Kenya) to the Organisation. Alternatively, Subject 3 suspected foul play because Subject 1 would follow up on payments for a particular company to an unusual degree—for example, with regards to ESARO's payments to Depasse.⁵⁰⁸

437. Subject 3 denied any knowledge of Subject 2's links to Diesel Care despite having been in frequent email communication with Subject 2 on the subject of the construction of a ferry landing in Kisingani throughout February and March 2006.⁵⁰⁹ Subject 3 claimed that he "must have forgotten."⁵¹⁰

438. According to Subject 3's testimony to the Task Force certain UNOPS staff members were aware of the links between Subject 2 and ESARO vendors. In particular, Subject 3 stated that Staff Member 14, Staff Member 13, William Odongo, and Staff Member 1 were all aware of Subject 2's connections to these companies.⁵¹¹

⁵⁰³ Subject 3 interview (22 February 2007).

⁵⁰⁴ *Id.*; Staff Member 13 interview (27 February 2007); Subject 3 email to Staff Member 13 (14 June 2006).

⁵⁰⁵ Subject 3 interview (22 February 2007).

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ Subject 3 interviews (22 and 27 February 2007).

⁵⁰⁹ Subject 2, Subject 3 *et al.* email correspondence (21 February and 6, 15, 20, 21, and 30 March 2006); Subject 3 interview (7 April 2007).

⁵¹⁰ Subject 3 interview (20 April 2007).

⁵¹¹ Subject 3 interviews (22 and 27 February 2007).

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439. In summary, while providing some degree of cooperation with the Task Force during his interviews in February 2007, Subject 3 failed to provide the Task Force with the full scope of his knowledge of the relevant activities. He failed to disclose to the Task Force that he had actively assisted in providing Subject 2 with contracts. In addition, only when the Task Force confronted him with conclusive proof did Subject 3 admit to his involvement in assisting the scheme to pass contracts to Depasse.⁵¹² Subject 3 denied ever having been offered or receiving money from Subject 1 or Subject 2. Nevertheless, the Task Force has no evidence to suggest that Subject 3 materially benefited from his actions.

b. Staff Member 13

440. Staff Member 13 is an Administrative Assistant with ESARO. Technically, he reported to Subject 1, who was Operations Assistant. Part of his duties included organizing the customs clearance of ESARO equipment.⁵¹³

441. Staff Member 13 told the Task Force that the Portfolio Managers and Operations Manager rarely made independent checks on paperwork. Staff Member 7 signed off on whatever Subject 1 gave him. In turn, the Portfolio Managers and Regional Director, Staff Member 6, relied on the fact that Staff Member 7 had signed off the documents.⁵¹⁴

442. In June 2006, Subject 3 and Staff Member 13 discussed the fact that Subject 3 believed specific ESARO vendors were linked to Subject 1's husband. Subject 3 reportedly was concerned as to the impact of what was happening on UNOPS, but felt there was nothing he could do to remedy the situation.⁵¹⁵

443. In contrast to Subject 3, Staff Member 13 did, however, take action. He spoke to the Chair of the LPC, Staff Member 11, and said that he was concerned that procurement processes were being abused. Staff Member 11 responded that he would deal with the issue when the bids reached the LPC.⁵¹⁶

444. In summary, Staff Member 13 when he became aware of suspicious procurement activity properly reported the matter to Staff Member 11, Chair of the LPC.

c. Staff Member 14

445. Staff Member 14 was an ESARO finance official. He was in charge of processing payments of invoices certified by either the Project Managers or the Operations Managers. He was aware of Subject 2's interest in a number of the companies mentioned above. In his statements to Task Force investigators, Staff Member 14 said it never

⁵¹² Subject 3 interview (20 April 2007); Subject 3 email to the Task Force (23 April 2007).

⁵¹³ Staff Member 13 interview (27 February 2007).

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*; Subject 3 email to Staff Member 13 (14 June 2006).

⁵¹⁶ Staff Member 13 interview (27 February 2007); Staff Member 11 interview (2 March and 17 April 2007).

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occurred to him to raise the issue of Subject 2's involvement with senior staff. He explained that he had not noted any links between companies based on the paperwork.⁵¹⁷

446. Staff Member 14 knew Subject 2 since he is, in fact, Subject 2's nephew. Staff Member 14 acknowledged that he had received requests for payment from Subject 2 for the following companies: Kenelec, Joe's Freighters and Jamii Telecommunications.⁵¹⁸

447. Staff Member 14 failed to report to anyone that Subject 2 was linked to ESARO vendors.

448. In summary, Staff Member 14 was aware of Subject 2's inappropriate links to ESARO vendors, but failed to report these to anyone. The Task Force has no evidence to suggest that Staff Member 14 was either involved in the scheme to defraud the Organisation, or benefit from it.

d. Staff Member 1

449. Staff Member 1 has recently left ESARO. He was formerly an ESARO finance officer, and a committing officer, responsible for reviewing payments once Staff Member 14 had processed them.⁵¹⁹

450. In October 2006 Staff Member 1, emailed all ESARO staff, stating his concerns that procurement procedures were not being followed. His concerns included: the financial ceiling for LPC review; the composition of the LPC; the need for at least one recognized dealer in specific items to be included in ITBs; finance staff to be informed of contracts with new vendors or discontinued contracts; and the need for one person only to be responsible for raising LPOs. Subject 1 said she would raise these issues with the LPC.⁵²⁰ No one else replied.

451. According to minutes of the subsequent LPC meeting, Staff Member 7 stated that this matter was not one which should be discussed by the LPC.⁵²¹

452. Staff Member 1 told the Task Force that he sent this email following his suspicions about Lins Consult, an architectural firm, being invited to bid for furniture. He informed Staff Member 9, his supervisor, of his suspicions. She in turn informed Staff Member 7, Operations Manager, who told him that an investigation would be held.⁵²² Staff Member 1 believes that he also raised his concerns about Lins with Staff Member 6.⁵²³ Staff Member 11, the chair of the LPC, also recalls having a "corridor" discussion with Staff Member 1, although in this discussion, Staff Member 1 did not refer to specific cases of corruption.⁵²⁴

⁵¹⁷ Staff Member 14 interviews (27 February and 1 March 2007).

⁵¹⁸ *Id.*

⁵¹⁹ Staff Member 1 interview (1 May 2007).

⁵²⁰ Staff Member 1 email to Subject 1 and all ESARO staff (17 October 2006); Subject 1 email to Staff Member 1 (17 October 2006).

⁵²¹ LPC Minutes (26 Oct 2006).

⁵²² Staff Member 1 (1 March 2007); Subject 3 interview (22 February 2007).

⁵²³ Staff Member 1 (1 March 2007); Subject 3 interview (22 February 2007).

⁵²⁴ Staff Member 11 interview (17 April 2000).

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453. In summary, when he became aware of suspicious procurement activity, Staff Member 1 properly reported the matter to his superior Staff Member 9, as well as to Staff Member 11, Chair of the LPC. The Task Force has no evidence to suggest that Staff Member 1 was either involved in the scheme to defraud the Organisation, or benefited from it.

e. Staff Member 17

454. Staff Member 17 works in the ESARO finance department as a Portfolio Assistant. Her main responsibility was the administration budget. She is not involved in day-to-day operations with regards to managing UNOPS payments, although she does, on occasion, lend a hand with these payments.⁵²⁵

455. The purchase of the new curtains for the ESARO office came to her attention because she had to ensure that there were sufficient funds in the budget to make this purchase. When the first award to El Paso was brought to her attention by Subject 1, Staff Member 17 noted that there was only one bidder and properly brought this concern to the attention of Staff Member 9. Staff Member 9 instructed Staff Member 17 that the award should be sent back to Subject 1, who was required to provide three bids at minimum. Subject 1 returned later with two additional bids.⁵²⁶

456. Staff Member 17 also noted that Lins Consult had the same email address as El Paso. She passed this information onto Staff Member 1.⁵²⁷

457. In summary, when she became aware of suspicious procurement activity, Staff Member 17 properly reported the matter to her superiors in the finance department, Staff Member 1, as well as to Staff Member 9.

f. Staff Member 12

458. Staff Member 12 is the receptionist and also runs the ESARO Document Registry.

459. The “Registry” is where vendor’s documents are stamped as “received” and distributed to the appropriate staff for action. Subject 1 would sometimes stop at the Reception/Registry first thing in the morning, on her way from the front gate to her office. Staff Member 12 noted that she was often carrying documents from vendors for Staff Member 12 to stamp as received by UNOPS.⁵²⁸

460. Staff Member 12 noted that, while it was standard practice for vendors to announce themselves at the reception upon arrival, certain vendors would go straight to Subject 1 without announcing themselves.⁵²⁹ Subject 1 would then send these vendors back to the Reception/Registry to have their documents stamped. These same vendors would also always go to Subject 1 first when they came to pick up cheques rather than to Staff Member 12, as was normal practice. When Staff Member 12 complained to Subject

⁵²⁵ Staff Member 17 interview (1 March 2007).

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ Staff Member 12 interview (1 March 2007).

⁵²⁹ *Id.*

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1 about the actions of representatives from vendor companies, Subject 1 promised to remind vendors to go to Reception/Registry rather than to come directly to her. However, Staff Member 12 noted that they did not change their behavior. The vendors whose representative would bypass him included: El Paso, Compfit, Lins, Company 1, Joe's Freighters, and Kenelec.⁵³⁰

461. Staff Member 12 noted that Subject 2 would spend time in Subject 1's office, particularly later on in the day.

462. In summary, Staff Member 12 properly confronted Subject 1 when vendors with which she was working failed to follow the correct ESARO procedures.

g. Staff Member 9

463. Staff Member 9 was the Head of Finance in the ESARO office, Nairobi.

464. She was informed by Staff Member 1 of his concerns about Lins Consult and received the email from him expressing concern over LPC oversight and the procurement procedure itself in October 2006.⁵³¹ According to Staff Member 9, she did not act upon these concerns because she believed that the matter was already under investigation by the Regional Director.

465. Staff Member 1 had asked her to look into his concerns about El Paso after he felt that Staff Member 7 had dismissed him. Nevertheless, Staff Member 9 says she had no basis for stalling payment to the company as the paperwork was in order.⁵³²

466. When Staff Member 9 found out Joe's Freighters, which was clearing her own car through customs, was owned by the husband of Subject 1 and possibly by Subject 1 herself, she did not report this information to management as she "did not want to ruffle feathers." Staff Member 9 stated that she did not know that Joe's Freighters was employed to clear equipment through customs for ESARO until October or November 2006, after the internal investigations had started. She did not then try to find out herself whether Joe's Freighters had received UNOPS payments.⁵³³

467. In summary, Staff Member 9 was aware of anomalies in the procurement process, but did not act as she believed that senior management was already dealing with these matters.

h. Staff Member 7

468. Staff Member 7 was the Operations Manager at UNOPS from September 2005 to December 2006. He had been recruited as Operations Manager with procurement duties as a specific part of his job functions.

469. Staff Member 7 stated that his duties also included oversight of local staff and a certain amount of guidance on procurement matters. However, this was mainly the job of

⁵³⁰ *Id.*

⁵³¹ Staff Member 1 interview (1 March 2007).

⁵³² Staff Member 9 interview (26 February 2007).

⁵³³ *Id.*

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Frederic Claus who had been trained on procurement matters. Staff Member 7 had no previous experience with procurement, and, therefore, would rely on Mr. Claus to provide guidance to Subject 1. Staff Member 7 told the Task Force that he carried out random checks on pricing. The former Regional Director recalled that Staff Member 7 was “very good” on procurement procedures.⁵³⁴

470. A number of ESARO staff noted that Staff Member 7 placed too much reliance on Subject 1.⁵³⁵ Staff Member 14 recalled one occasion when he held up payment to Subject 2’s company, Depasse, as the invoices were not in order. In response, Subject 1 complained to Staff Member 7, who then came to Staff Member 14’s office with Subject 1 and instructed Staff Member 14 to make the payment to Depasse.⁵³⁶

471. Staff Member 7 received and signed off on bid analyses. As standard procedure, he received the three bids and had the opportunity to check them. He initialed the LPO to signal to the Regional Director that all was well. He sat on the LPC. In short, he was involved at every stage of procurement and was grossly negligent in not checking Subject 1’s fraudulent behaviour at any stage.

472. Additionally, other staff had a sense he was overburdened but reluctant to admit this to the Regional Director.⁵³⁷

473. Staff Member 1 complained to Staff Member 7 directly about procurement practices on at least two occasions. Staff Member 7 said that his response the first time was defensive and he asked if Staff Member 1 had problems working with Subject 1. The second time, Staff Member 7 told Staff Member 1 to forget his concerns since there would be an investigation that would directly deal with these issues.⁵³⁸

474. In addition, Staff Member 7 told the Task Force that he did not act on Staff Member 1’s complaints about potential connections between Lins and El Paso since the complaint came after the Regional Director had already commenced his investigations.⁵³⁹ At an LPC meeting he publicly disregarded Staff Member 1’s email to all ESARO staff raising procurement concerns, stating that this was not a matter for the LPC.⁵⁴⁰ Additionally, Staff Member 7’s demeanour led to other local staff reportedly feeling unable to approach him with their concerns.⁵⁴¹

475. In summary, Staff Member 7 failed to exercise sufficient oversight over Subject 1.

⁵³⁴ Staff Member 7 interview (24 February 2007); Staff Member 6 interview (13 April 2007).

⁵³⁵ Subject 3 interview (22 February 2007); Staff Member 13 interview (27 February 2007); Staff Member 3 interview (2 March 2007); Staff Member 5 interviews (20 and 26 February 2007).

⁵³⁶ Staff Member 14 interviews (27 February and 1 March 2007).

⁵³⁷ Staff Member 8 interview (2 March 2007).

⁵³⁸ Staff Member 1 interview (1 March 2007).

⁵³⁹ Staff Member 7 interview (24 February 2007).

⁵⁴⁰ Staff Member 9 interviews (26 February and 12 April 2007); Staff Member 11 interview (2 March 2007); ESARO LPC minutes (26 October 2006).

⁵⁴¹ Subject 3 email to the Task Force (23 April 2007) (attaching statement).

i. Staff Member 5

476. As Portfolio Manager, Staff Member 5 took appropriate action when it became clear that MSS Kenya was not a legitimate vendor and cancelled the contract, refusing to accept Subject 1's arguments in favor of continuing the contract with MSS Kenya (see above MSS Kenya section).

j. Staff Member 10

477. Staff Member 10 joined ESARO during Easter 2004 and remained Regional Director until September 2006.

478. Staff Member 10 had instituted checks and balances in the form of instructing staff that all procurements over US\$2,500 needed to go before the LPC. He had held a series of training workshops on procurement for staff throughout his tenure, as well as instituted a double signatory policy for all cheques. Staff Member 10 told the Task Force that he relied on the signature of Staff Member 7 and the LPC process itself to confirm that the documentation was correct when signing off on cheques or LPOs.⁵⁴²

479. While Staff Member 10 told the Task Force that he required LPC minutes showing approval before signing off on LPOs, it is clear from the evidence as set forth in this report that this did not happen.

480. In summary, Staff Member 10 failed to ensure that Staff Member 7 was exercising proper oversight over procurement and failed to ensure that his own safeguards were met.

k. Staff Member 3

481. When Staff Member 3 took over as Director at ESARO, he was informed of the allegations against Subject 1. Staff Member 3 took appropriate action by instituting an assessment of the files and ordering an audit, in addition to instituting subsequent procedural changes.

l. Staff Member 11

482. Staff Member 11 has been Chair of the LPC at ESARO for the last three years.⁵⁴³ He has been described by other UNOPS staff as: a "stickler" for the rules; someone who asked a lot of questions on procurement cases at the LPC meetings; a "fearsome adherer" to the rules and regulations; and "a bit of a demon" on procedure.⁵⁴⁴

483. Staff Member 11 travels a lot and so was often absent from LPC meetings in 2006.⁵⁴⁵ When away, Frederic Claus normally chaired LPC meetings. However, Staff Member 11 received and read the minutes of meetings by email when possible.⁵⁴⁶

⁵⁴² Subject 1 interview (7 December 2006); Staff Member 6 interview (13 April 2007).

⁵⁴³ Staff Member 11 interview (2 March 2007).

⁵⁴⁴ Subject 3 interview (22 February 2007); Subject 1 interview (7 December 2006); Staff Member 6 (13 April 2007).

⁵⁴⁵ Subject 3 interview (22 February 2007).

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484. Staff Member 11 notes that he prevented Subject 1 from making presentations on procurement at meetings, in which she served as the secretary, since this was a conflict of interest.⁵⁴⁷

485. It does not appear that any of the contracts in this Final Report or the Interim Report received LPC approval.⁵⁴⁸

486. Staff Member 11 received notice of specific suspicious activities on a number of occasions. Staff Member 11 told the Task Force that he took no notice of rumours and would only act if an allegation was made in writing.⁵⁴⁹

487. First, Staff Member 13 informed the Task Force that he specifically told Staff Member 11 of his concerns (see above).⁵⁵⁰ Staff Member 11 agreed that Staff Member 13 also had reported his suspicions to him and that Staff Member 13 had informed him that “things were not being done properly.” Staff Member 11 said Staff Member 13 had asked to resign from any involvement in procurement as he was worried that he would be blamed for the problems. He could not recall if Staff Member 13 had been specific as to whether there was corruption, but was “absolutely” clear that Staff Member 13 believed that something improper was happening in procurement.⁵⁵¹ When asked if he took action or advised Staff Member 13, Staff Member 11 said Staff Member 13 should be mature enough to know what to do.⁵⁵²

488. Second, Staff Member 1 also informed Staff Member 11 of his suspicions regarding Subject 1 and her husband. Staff Member 11 recalls a “corridor conversation” with Staff Member 1, who expressed concerns to Staff Member 11 that the procurement rules were not being followed, although without referring to specific cases. Staff Member 11 told Staff Member 1 to put his complaint in writing and took no further action.⁵⁵³

489. Third, Staff Member 11 received the email from Staff Member 1 to all ESARO staff in October 2006 expressing concerns about LPC oversight and the procurement procedure itself.⁵⁵⁴ Staff Member 11 reports that he was away at the time of this email, but that he raised the issue upon his return. He recalls specifically that the minutes of the meeting taken while he was away record Staff Member 7 as stating that the email was not a matter for the LPC.⁵⁵⁵ Staff Member 11 said his view at the time was that this was a

⁵⁴⁶ Staff Member 11 interview (17 April 2007).

⁵⁴⁷ Staff Member 11 interview (2 March 2007).

⁵⁴⁸ LPC minutes (2006). The Kenelec Supplies and Zambezi Investment contracts discussed in this Report went to PRAC.

⁵⁴⁹ Staff Member 11 interview (2 March 2007).

⁵⁵⁰ Staff Member 13 interview (27 February 2007).

⁵⁵¹ Staff Member 11 interview (17 April 2007).

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ Staff Member 1 email to Subject 1 and all ESARO staff (17 October 2006).

⁵⁵⁵ ESARO LPC minutes (26 October 2006).

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matter for the Operations Manager to address.⁵⁵⁶ He did, however, note at a subsequent LPC meeting that Staff Member 1's concerns needed to be addressed.⁵⁵⁷

490. Staff Member 11 took no further action to investigate the procurement process, even though by this time he had a complaint in writing with Staff Member 1's email.⁵⁵⁸ Staff Member 11's view at the time, as stated to the Task Force, was that these matters would "have their time" eventually. He said UNOPS staff members were not policemen—i.e., if a matter was not put before the LPC, it was, in his view, not his business.⁵⁵⁹

491. Staff Member 11 told the Task Force that he heard the "very loud" rumours that were circulating over the high-priced curtains for ESARO which did not go through the LPC. He said that he took a fresh look at the issue of the curtains after receiving Staff Member 1's November email. He noted that even the Regional Director had been concerned about the cost. When asked why he did not request an *ex-post facto* LPC approval for the curtain procurement, he noted that if the Regional Director and Portfolio Manager had signed off on the procurement at the time, "In God's name, who am I to demand ex post facto LPC?"⁵⁶⁰

492. In fact, his involvement was rather more specific as Staff Member 11 himself signed the payment approval for the curtains contract. Staff Member 11 told the Task Force that he was not aware that the curtains had not been reviewed by the LPC at the time that he signed the payment approval. Moreover, at the time of his approval his role was simply to ensure that the amount invoiced matched that on the LPO and was approved by the Regional Director. He had no reason to question the approval of the LPO nor did his role in approving the payment include reviewing the correctness of the LPO's award.⁵⁶¹

493. Staff Member 11 became specifically aware in November 2006 that Subject 1 was not presenting all cases above \$2,500 to the LPC as per the local rule. In response, Staff Member 11 told the Task Force that in November 2006 he questioned Subject 1 as to why certain cases above US\$2,500 were not being presented to the LPC.⁵⁶² Subject 1 told him that she was unaware of the rule and thought that the cases were too small to bother the LPC with reviewing them. He also stated that when Subject 1 requested that the US\$2,500 threshold (above which cases had to go the LPC for approval) be raised he refused to comply with her request.⁵⁶³ Staff Member 11 failed to report Subject 1's breaches of the rules to the Regional Director, and did not discuss the matter further with anyone else.⁵⁶⁴

⁵⁵⁶ Staff Member 11 interview (2 March 2007).

⁵⁵⁷ ESARO LPC minutes (2 November 2006).

⁵⁵⁸ Staff Member 1 interview (1 March 2007); Staff Member 11 interview (2 March 2007).

⁵⁵⁹ Staff Member 11 interview (17 April 2007).

⁵⁶⁰ Staff Member 11 interview (24 May 2007).

⁵⁶¹ ESARO Disbursement Voucher D-211-2006-07-0023 (12 July 2006).

⁵⁶² Staff Member 11 interview (17 April 2007).

⁵⁶³ Staff Member 11 interview (2 March 2007).

⁵⁶⁴ Staff Member 11 interview (17 April 2007).

494. In summary, as Chair of the LPC, Staff Member 11 had a special responsibility for exercising oversight. In failing to exercise sufficient oversight over the procurement process, Staff Member 11 failed to fulfill his supervisory duties.

2. ESARO System Failures

495. There were significant and systematic failures at all levels within the ESARO procurement and oversight processes. Although systems and safeguards were in place, they were rarely applied and, therefore, easily circumvented by Subject 1. She intimidated staff below her, and benefited from a laxity of management above her. The reluctance of other staff to raise problems allowed Subject 1's improper actions to go unchecked.

X. SUBJECT 1 PARTICIPATION IN THE CORRUPT SCHEME

496. Subject 1 was a willing participant at the center of an organized and planned scheme to defraud the Organisation. (This existence of this scheme is supported by the evidence set out in this Report, as summarized in the Findings section below.) Subject 1 conspired with her husband and others in order to execute this scheme. Her participation was neither unwilling nor unwitting.

497. Despite a multitude of evidence demonstrating that Subject 1 was an active participant in this scheme she has repeatedly denied any involvement in it. Subject 1's actions, as outlined in this Report, clearly demonstrate that she intervened on behalf of companies with ties to her husband at various stages in the procurement process and acted as a full partner. Examples of her actions are listed below:

- Subject 1 instructed Subject 3 to pass contracts to her husband's company, Depasse Logistics (see Interim Report).
- Subject 1 sent RFQs to her husband and/or his associates and, thereby, thwarted any opportunity for fair competition (see, e.g., MSS Kenya, Joy-Mart, Compfit (Motorola radios) contract awards and the Section on the bicycles for the Congo).
- Subject 1, in some cases, failed to issue a RFQ before passing the bid onto her husband and his associates (see Company 1 stationary contract award).
- Subject 1 included her husband as the Diesel Care representative on a list of suppliers for the Ethiopian trucks deal for Somalia (see Section on Diesel Care).
- Subject 1 signed bid analyses which included Depasse and MSS Kenya, despite knowing that these companies were linked to her husband. Further, she signed bid analyses including the names of other companies with ties to her husband (see, e.g., Joy-Mart contract award).
- Subject 1 recommended to ESARO that contracts be awarded to her husband's companies Depasse, and MSS Kenya (see Interim Report and contract award to MSS Kenya).

- Subject 1 avoided a bidding process to allow El Paso, a company which provided goods to her personal home, to secure a contract to provide curtains at an excessive cost to the Organisation (see El Paso contract awards).
- Subject 1 also recommended that ESARO award contracts to other companies with which her husband was associated, including in cases where companies were unable to fulfill the contract without splitting it (see, e.g., Compfit contract award).
- Subject 1 advocated that Kenelec and Zambezi be provided an upfront payment of a substantial percentage of the value of their contracts with the Organisation (see Kenelec and Zambezi contract awards).
- Subject 1 directly corresponded with her brother and Mr. James Ochola with regard to securing a contract with ESARO (see MSS Kenya contract award).
- Subject 1 inappropriately provided UNOPS documents to Subject 2 and his associates (see contract award to Company 1).
- Subject 1 pushed for speedy approval of vendors associated with her husband into the Atlas system to expedite LPOs (see MSS Kenya contract award).
- Subject 1 processed invoices and documents with her own PO Box and telephone numbers on them (see Interim Report, as well as Depasse and MSS Kenya contract awards).
- Subject 1 defended companies connected to her husband after they failed to meet the required standards (see MSS Kenya and Compfit contract awards).
- Subject 1 failed to disclose her husband's links to any of the companies with which he was associated.
- Subject 1 allowed her laptop to be used for running the operations of companies associated with her husband (see, e.g., MSS Kenya and Depasse contract awards).

XI. SUBJECT 1 RESPONSES TO THE TASK FORCE

498. Subject 1's explanations to the Task Force for her actions, as well as her attempts to distance herself from the actions of others, do not survive careful scrutiny.

499. Initially, Subject 1 told the Task Force that her husband was not connected to any companies other than Aero Logistics. She later amended this statement and contended that she did not know whether her husband was connected to any companies at all. She further stated that she was not aware of any involvement on the part of her husband on any deals with ESARO.⁵⁶⁵ When questioned in February 2007 about the companies listed in this report, Subject 1 stated that she could not recall a number of these companies and that she could not be expected to remember them as she had not been in the office for two months.⁵⁶⁶ Given Subject 1's active participation in securing contracts

⁵⁶⁵ Subject 1 interview (7 December 2006).

⁵⁶⁶ Subject 1 interview (23 February 2007).

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for the several companies associated with her husband this failure of memory is not credible.

500. When confronted with evidence of her husband's involvement with various ESARO vendors, Subject 1 said she never asked him about it as "it was not her business." The Task Force notes that as a procurement officer, in fact, this was exactly her responsibility. She made a distinction, saying that Subject 2 was not specifically working with ESARO, but, rather, for the companies contracted by ESARO. For example, when Task Force investigators presented her with an email that had been sent to her and confirmed her husband's presence at Kenelec meetings with UNDP (relating to the bitumen), she denied that this signified that she should be on notice that her husband was involved with the ESARO bitumen deal. Instead, she claimed that this email merely signaled to her that her husband was generally involved with Kenelec.⁵⁶⁷ On the issue of MSS Kenya, when she finally conceded to Task Force investigators that she was aware that her husband had been involved in the deal, she claimed that she did not inform ESARO of this conflict of interest on the rationale that her husband was working for MSS Kenya, not for ESARO.⁵⁶⁸

501. When asked about the emails from vendors on her UN issued laptop, Subject 1 said she could not be expected to know who had accessed the laptop in her house while she was at work. She said, "Have you ever considered I might not know? I get in[to the office] at 7.30am and leave at 8pm."⁵⁶⁹ However, a number of the documents and emails in question were accessed early in the morning or late at night—times when Subject 1 would not be in the office. One email was accessed the night following Subject 1's first interview with the Task Force.⁵⁷⁰ She further stated that the laptop had been used by other ESARO staff and at a trade fair, where vendors may have had access to it.⁵⁷¹ The Task Force has established that no vendors had access to the laptop at the trade fair in question—at least, when it was under the supervision of anyone else but Subject 1.⁵⁷²

502. When asked as to the reason why companies were using her personal PO Box (5660-00200) for their correspondence, Subject 1 proffered that it was her husband's PO Box, and that she used a different PO Box, namely, number 5600-00100. In fact, she used the PO Box 5660-00200 throughout 2006. The Task Force showed her a United Nations Personal History Form from June 2006 and an application form signed by her in

⁵⁶⁷ Sagar Chandra Rai email to Subject 1 (24 April 2006); Subject 1 interview (23 February 2007).

⁵⁶⁸ Subject 1 interview (25 February 2007).

⁵⁶⁹ *Id.*

⁵⁷⁰ See, for example, Removable disk document access log entry (30 August 2006) (showing access times of 11:10 p.m.) (recovered from Subject 1's laptop computer); Removable disk document access log entry (17 October 2006) (showing access times of 6:28 a.m.) (recovered from Subject 1's laptop computer); Removable disk document access log entry (6 November 2006) (showing access time of 6:52 a.m.) (recovered from Subject 1's laptop computer); Removable disk document access log entry (21 November 2006) (showing access time of 7:11 a.m.) (recovered from Subject 1's laptop computer); Log of internet entries and document access dates for Subject 1 laptop; Staff Member 4 email to the Task Force (22 March 2007) (confirming the laptop's BIOS time and the time of removal of the hard drive from the laptop); Susan Mureithi note-to-file (26 February 2007).

⁵⁷¹ Subject 1 interview (23 February 2007); Subject 1 interview (25 February 2007).

⁵⁷² Staff Member 5 email to the Task Force (9 March 2007); Subject 3 interview (27 February 2007).

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September 2006. On both forms, she had listed the 5660-00200 PO Box as her address. Subject 1 then complained about the Task Force examining her personal documents.⁵⁷³ Interestingly, as recently as March 2007, two weeks after the Task Force interviewed Subject 1, she was still using the PO Box 5660-00200 for official correspondence that she forwarded to the Task Force.⁵⁷⁴



Figure: Letter from Stanbic Bank to Subject 1 (15 March 2007)

503. When Task Force investigators presented Subject 1 with her signature on documents from Depasse and MSS Kenya, evidencing that she had seen these documents bearing the PO Box number 5660-00200, Subject 1 denied that her signature was on the 9

⁵⁷³ Chartered Institute of Purchasing & Supply application for membership (19 September 2006); Subject 1 interview (23 February 2006).

⁵⁷⁴ Subject 1 was asked to provide proof of the other PO Box. She has not done so to date. A bank withdrawal receipt taken from Subject 1’s office notes a PO Box 5660-00100 address. Stanbic Bank withdrawal receipt (20 March 2006). She used the PO Box 5660-00200 on her Personal History Form in June 2006, a CIPS application in September 2006 and correspondence with her bank in March 2007. Subject 1 Personal History Form (19 June 2006); Subject 1 CIPS application form (19 September 2006); Catherine Karumba letter to Subject 1 (15 March 2007) (forwarded to the Task Force by Subject 1).

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March 2006 Depasse invoice (see figure above). In addition, she stated that she had not read the correspondence address on a quotation submitted by MSS, nor had she ever looked at the addresses listed on this correspondence (see figure above).⁵⁷⁵

504. In the Interim Report, the Task Force criticized Subject 1 for her failure to follow several procurement rules.

505. In her Response to the Interim Report, Subject 1 claimed that she was “not aware of the directions by the then Regional Director of the necessity to submit to LPC procurement of any amount over US\$2,500 until late October 2006”—i.e., much later than Staff Member 11 and others claimed that ESARO had instituted this policy.⁵⁷⁶ Further, Subject 1 claimed to have herself “initiated the process [of sending contracts over US\$2,500 to the LPC] and ensured that it [the policy] was implemented by [the] UNOPS office.” However, Subject 1’s claim seems highly unlikely given that Staff Member 11 informed the Task Force that when he questioned her as to why she was not sending certain procurements over the US\$2,500 threshold to the LPC, Subject 1 responded that even this threshold was too low.⁵⁷⁷

506. Subject 1 contends in her Response that she was unaware of the US\$2,500 threshold rule for contracts prior to late October 2006. She told investigators when initially interviewed, however, that she was in fact aware that ESARO rules required that she refer to the LPC all contracts between “US\$2,500 and US\$90,000” throughout her tenure at ESARO.⁵⁷⁸ In addition, she stated that she was aware that the normal procurement procedure was to issue an official request for a quotation, then to have it signed by a Portfolio Manager, and, finally, to request quotations from multiple vendors.⁵⁷⁹

507. Moreover, Subject 1 claimed in her Response that the genesis for the local UNOPS-ESARO rule that procurements above US\$2,500 should be reviewed by the LPC was, in fact, her own: “The new rule of submission to LPC of goods under US\$ 30,000 to US\$ 2,500 was my idea and only endorsed on the 11th of August 2006 by Mr. Randall. Then in November, we had a formal draft form for submission.”

508. Subject 1’s contention that she initiated this new rule is simply not true. According to Staff Member 11, Chair of the LPC at ESARO, in 2004 ESARO held a planning week and decided upon a US\$2,500 threshold amount for a contract to go to the LPC.⁵⁸⁰ A number of workshops were subsequently held between 2004 and July 2006 to train staff on this new policy. Staff Member 6 confirmed Staff Member 11’s testimony, and explained to the Task Force that, in light of these training sessions, he had no doubt that all ESARO staff members were aware that bids over \$2,500 must be submitted to the

⁵⁷⁵ Subject 1 interviews (23 and 25 February 2006).

⁵⁷⁶ Indeed, Staff Member 11’s testimony is corroborated by that of several other ESARO staff members at that time. See, e.g., Subject 3 interview (22 February 2007); Staff Member 5 interviews (20 and 26 February 2007).

⁵⁷⁷ Staff Member 11 interviews (20 and 26 February 2007).

⁵⁷⁸ Subject 1 interview (7 December 2006).

⁵⁷⁹ *Id.*

⁵⁸⁰ Staff Member 11 interviews (20 and 26 February 2007).

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LPC for approval.⁵⁸¹ Therefore, as a staff member at ESARO, Subject 1 should have been aware of ESARO requirements regarding procurement contracts involving over US\$2,500. Indeed, as described above, Subject 1 did attend various UNOPS-ESARO training sessions.

509. Subject 1 claimed that staff members at ESARO were trying to “set her up,” as she was not popular.⁵⁸² The overwhelming evidence gathered by the Task Force renders such a theory beyond the realm of any legitimate possibility.

510. The Task Force requested that Subject 1 voluntarily provide information regarding finances for herself and for her husband. She has provided some degree of cooperation, but has ceased responding to requests.⁵⁸³

511. Although Subject 1 did provide bank statements from her Barclays Bank account, she has failed to provide further details of the transactions for this account to the Task Force. Despite multiple requests by the Task Force that she provide investigators with copies of the cheques listed in the bank statements, Subject 1 has never produced these copies. Similarly, Subject 1 wrote in an email to the Task Force that she grants the Task Force authorization to access her UNFCU account records. Nonetheless, this email was insufficient documentation for the UNFCU to grant the Task Force access to her account records. Thus, the Task Force requested that Subject 1 write directly to the UNFCU in order to confirm that she had authorized the Task Force to access the records. Subject 1 has not confirmed to UNFCU her authorization as requested.⁵⁸⁴

512. Subject 1 has repeatedly claimed that she and her husband had only two bank accounts. However, the Task Force is aware of a third personal account belonging to Subject 1 and Subject 2 with Kenya Commercial Bank. Subject 1 failed to mention this account in her response to the Task Force’s request for full financial disclosure. This account had at least KES 600,000 in it at one time.⁵⁸⁵

513. Further, her husband, Subject 2, also has at least one additional bank account for his company, Aero Logistics. Subject 1 failed to provide the details of this Aero Logistics account, as well as those for accounts of Depasse and MSS Kenya, as per multiple requests made to her by the Task Force. Rather, Subject 1 stated that she could not provide this information since she had no control over these accounts. In addition, she stated that she was not in a position to speculate about her husband’s position or ownership of either of these companies.⁵⁸⁶

⁵⁸¹ Staff Member 6 interview (13 April 2007).

⁵⁸² Subject 1 interview (25 February 2006).

⁵⁸³ The Task Force Financial Disclosure Request (12 March 2007); Subject 1 response to 12 March 2007 Financial Disclosure Request (21 March 2007).

⁵⁸⁴ Subject 1 emails to the Task Force (22 March, 2, 3, and 9 April 2007, and 10 May 2007); The Task Force emails to Subject 1 (28 and 29 March, 16, 23, and 29 April 2007, and 8 May 2007).

⁵⁸⁵ Emails from Subject 1 to Maiyo Williams of KCB bank (31 October 2006 and 3 November 2006); The Task Force Financial Disclosure Request (12 March 2007); Subject 1 response to 12 March 2007 Financial Disclosure Request (21 March 2007).

⁵⁸⁶ Aero Logistics bank statement (15 May 2006); Joshua Musyoka letter to Robert Livingston (2 May 2006). See also the evidence discussed above regarding Company Representative 1’s payment of KES

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514. In summary, Subject 1's claims that she was unaware of her husband's links to ESARO vendors and contracts cannot be taken at face value. When presented by the Task Force with evidence implicating her in the scheme to defraud the Organisation, Subject 1 maintained her position of ignorance, and provided implausible explanations. Moreover, in view of the totality of the evidence laid out in this Report, Subject 1 was not only fully aware of her husband's links to ESARO contracts and vendors, but also an active participant in the scheme to defraud the Organisation by securing ESARO contracts for several companies to which Subject 2 was tied.

XII. FINDINGS

515. The Task Force incorporates by reference the findings of the Interim Report in connection with the award of four contracts to Depasse Logistics.

516. The Task Force further finds that UNOPS Operations Assistant, Subject 1, her husband, Subject 2, and others known and unknown (hereinafter "co-conspirators"), participated in a scheme to fraudulently steer UNOPS contracts to companies owned, controlled, or associated with Subject 2, including MSS Kenya, Company 1, Joy-Mart Enterprises, Compfit, El Paso, Lins Consult, and Depasse Logistics, in violation of procurement, financial and staff rules as well as criminal law. The goals and object of the conspiracy centered on an effort by the co-conspirators to favour these companies with respect to at least eight separate contracts awarded by UNOPS-ESARO in 2006 (in addition to the four steered to Depasse). The scheme corrupted the contract selection exercises in UNOPS and resulted in a lack of integrity and transparency in the procurement process.

517. The scheme was accomplished through the submission of purportedly independent bids from companies which appeared to be legitimate competitors, but, in fact, were colluding with one another and were entities in which Subject 1 and her husband were controlling or associated with. Friends and family of Subject 1 and Subject 2 owned, represented, and controlled other ESARO vendors. It was further part of the scheme that Subject 1 assisted these companies to become UNOPS-ESARO vendors, and steered solicitations to selected bidders owned by her husband or connected to him and his associates. In furtherance of the scheme, Subject 1, Subject 2, and their associates then submitted fictitious proposals on behalf of purportedly competing vendors. The competing proposals were, in fact, illegitimate, as they resulted from efforts of collusion orchestrated by Subject 2. The evidence identified in furtherance of the scheme includes apparent connections between the vendors and Subject 1 and Subject 2 which are evident from the ESARO documentation gathered and reviewed by the Task Force. Similarly, the bid documents reviewed show striking similarities evidencing bid rigging. In furtherance of the scheme, Subject 1 ensured that the oversight procedures were

80,000 to Subject 2, by way of cheque made out to Depasse, showing that Subject 2 uses this account. Equatorial Commercial Bank deposit advice for Depasse Logistics account no. 1010100742 (28 July 2006); Company 1 cheque (28 July 2006); Company 1 bank statement (28 July 2006); Company Representative 1 interview (7 December 2006); Aero Logistics Local Purchase Order for Techbiz Ltd (27 June 2006); Techbiz Ltd delivery note (30 June 2006); Subject 1 email to Task Force (8 May 2006).

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circumvented to allow the scheme to succeed, using the false bids to create fictitious bid analyses. Subject 1 also avoided the oversight procedures, such as LPC review. Once awarded, Subject 2 was an active—if covert—participant in the performance of ESARO contracts, both those awarded to his own companies and those with which he was associated.

518. Subject 1's participation in the scheme was integral to its success. Subject 1, a UNOPS staff member with responsibilities for UNOPS-ESARO procurements, and in a position to influence the process, engaged in acts designed to further the scheme to achieve the contracts and obtain payment from the Organisation.

519. In the Interim Report, the Task Force found that Subject 1 had in early 2006, shortly after she was employed by UNOPS, initially instructed Subject 3, the then Procurement Assistant, to pass contracts to her husband's company, Depasse Logistics. Later, once Subject 1 became the *de facto* procurement officer, she personally controlled which companies received requests for quotations during the solicitation process. The Task Force finds that in furtherance of this scheme, Subject 1 would send requests to her husband's private email address, as well as the email addresses of companies which he owned or with which he was associated.

520. In addition, the Task Force finds that Subject 1 facilitated the scheme by means of the following actions (or inactions): (i) her drafting and signing bid analyses which recommended that ESARO award contracts to companies owned by or associated with her husband (ii) her failure to submit contracts to the LPC for review, and to adhere with other proper procurement procedures in the award of contracts; (iii) her recommendation that ESARO award contracts to companies which were not the cheapest, but were associated with her husband or his associates; (iv) her improper disclosure of UNOPS documentation to vendors; (v) her processing of invoices and documents with her own PO Box and telephone numbers on them for MSS Kenya and Depasse; (vi) her defence of companies connected to her husband, even after they had failed to meet the required standards; (vii) her failure to disclose to any ESARO staff the links between her husband and the majority of the vendors addressed in this Final Report; and (viii) her failure to engage in proper and fair solicitation processes for the contracts concerning the companies identified herein which were associated with her husband.

521. Subject 1 was issued a UNOPS laptop to assist in her work which was improperly used by other persons not employed by UNOPS or ESARO, including her husband, Subject 2, in furtherance of the scheme to defraud the Organisation.

522. Subject 1 was an active participant in the scheme. When viewed cumulatively, her actions to secure contracts for companies associated with or owned by her husband demonstrate that she acted with the intent to defraud the Organisation and improperly favour the subject companies. In light of the plethora of evidence connecting Subject 1 to this scheme, it is evident that Subject 1 was more than a mere innocent actor, but an active participant.

523. Subject 2, Subject 1's husband, also played a central role in the scheme. Subject 2 owned Aero Logistics, a company which shared contact details and employees

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(Company Representative 1 and Joshua Musyoka/Nzei) with Depasse Logistics and MSS Kenya—two other companies operated by Subject 2. Indeed, Subject 2 is also associated with several more companies discussed in this Report: namely, Company 1, Compfit Systems, Joy-Mart Enterprises, Kenelec Supplies Ltd., Zambezi Investments, and Joe’s Freighters.

524. In furtherance of the scheme, Subject 1 sent requests to bid on UNOPS contracts to Subject 2’s personal email address, as well as to those of representatives of companies that he controlled. Companies controlled by Subject 2—namely, Depasse Logistics and MSS Kenya—submitted bids for UNOPS-ESARO contracts. Subject 2 coordinated the submission of bids by various bidders on the same contracts. In the case of the Company 1s’ stationary contract, Company Representative 1 supplied cogent and credible evidence that Subject 2 had rigged the bids. Further, the Task Force finds that a proper inference can be drawn from the totality of evidence demonstrating that Subject 2 played a pivotal role in rigging bids submitted for additional contract awards. This evidence includes Subject 2’s links to the various individuals and companies that submitted purportedly independent bids for ESARO contracts, as well as many of the individuals who represented bidders. Indeed, many of these individuals are associated with Aero Logistics, Subject 2’s company. Further, a number of the bidding companies shared contact information with Aero Logistics. Therefore, Subject 2 and Aero Logistic were often the central link between various bidders for the same contract.

525. Subject 2’s role in manipulating the bidding processes is also evidenced by his participation in the actual performance of these contracts—this participation was secretive and was not disclosed by Subject 1 to any ESARO staff members. The Task Force finds that Subject 2 was involved in vendors’ performance of contracts subsequent to ESARO’s awarding contracts to them. This involvement included: (i) sourcing the goods to be supplied; (ii) serving as the liaison with ESARO for several of the companies; (iii) requesting payment for the companies from ESARO; and (iv) collecting payments from the Organisation on behalf of several companies.

526. The scheme was further accomplished with the participation of other vendors and individuals.

A. MSS KENYA CONTRACT

527. The Task Force finds that MSS Kenya, a company owned by Subject 2 was awarded a contract to provide a sea container and IT equipment to the Kenyan Diplomatic Police Unit. It is evident that MSS Kenya obtained the contract through corrupt acts. The Task Force has determined that Subject 2, along with his associates Mr. James Ochola, Subject 1’s brother and Mr. Denis Odipo (also a Director of Depasse—Subject 2’s other company), created and controlled MSS Kenya and used it to exploit an ESARO contract.

528. The Task Force finds that Subject 1 was aware of her husband’s involvement with the company on this contract and assisted him in the execution of this scheme. In that regard, Subject 1 passed information regarding ESARO contracts to James Ochola, who

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was involved with MSS Kenya. Further, Subject 1 compromised the bidding process for the contract ultimately awarded to MSS Kenya by issuing the RFQ to four individuals who were all connected socially to her and to each other in some way. One of the email addresses that Subject 1 sent the RFQ was that of MSS Kenya—namely, *mss_kenya@yahoo.co.uk*.

529. Subject 1 was an active participant in this process and was well aware that her husband's company—and Subject 2 personally—were involved in the bidding exercise. In addition to making the initial recommendation to award the contract to MSS Kenya, Subject 1 also signed for delivery of electrical goods by MSS Kenya.⁵⁸⁷ Subject 1's manipulation of the bidding process as well as her failure to disclose to anyone at ESARO that her husband was, in fact, the owner of the vendor to which the contract was assigned, resulted in the Organisation being supplied with poor quality, overpriced goods by a supplier with direct links to her. It also resulted in the compromise of the integrity of the process.

530. Subject 2 was also an active participant in the scheme to steer a UNOPS contract to MSS Kenya acting in association with other known and unknown individuals. Given the totality of circumstances, it is evident that Subject 2 owns or controls MSS Kenya, and not only was aware of, but also participated as well in the scheme to steer a contract to his company. The Task Force additionally relies on the following facts to reach this conclusion: (i) Subject 2 established MSS Kenya; (ii) Subject 2 was involved in the subsequent performance of the contract; (iii) MSS Kenya's contact details were identical to those of his other company, Aero Logistics; (iv) the email account *mss_kenya@yahoo.co.uk*, to which the original invitation to bid was sent, was accessed on several occasions using Subject 1's United Nations laptop computer kept in the private home she shared with her husband; (v) other documents, which included MSS in their title, were accessed from this computer; and (vi) Subject 2 had ties to the other individuals to which the invitation to bid was sent.

531. The Task Force finds that Mr. James Ochola—variously also known as “Kaka” and “James Otieno”—was involved in MSS Kenya's transactions with ESARO. Since Mr. Ochola was involved in establishing MSS Kenya, the Task Force does not find credible Mr. Ochola's denial of any involvement with the company. Further, Mr. Ochola and Subject 1's brother, relied on Subject 1 to provide them with information regarding UNOPS contracts. Mr. Ochola, in turn, used this information and proposed to Subject 1's brother the use of MSS Kenya to bid on certain UNOPS contracts.

532. In addition, the Task Force finds that Metro Trading colluded with MSS Kenya, sharing bid information with each other. This information was sent by a Mr. Tom Onyango of Metro Trading to Mr. James Ochola. The Task Force understands that Mr. Tom Onyango is Mr. Thomas Ochola, brother of Mr. James Ochola.

533. Mr. Denis Odipo was involved in the establishment of MSS Kenya, but otherwise his role, if any, in obtaining the MSS Kenya DPU contract is unknown to the Task Force. Similarly, there is no evidence that Mr. Bluye Haddis, owner and CEO of the parent

⁵⁸⁷ Receiving and Inspection Reports for MSS Kenya deliveries (12 and 13 October 2006).

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company MicroSun and Solutions Plc., based in Dubai, was involved in any corrupt activities.

534. The contract awarded to MSS Kenya was initially for KES 603,704 (US\$8,261); however, the actual amount paid was KES 232,800 (US\$3,235) as the delivery of the sea container by MSS Kenya was cancelled by UNOPS. No precise calculation can be made as to the actual loss incurred by the Organisation since, in this instance, goods were delivered by MSS Kenya. The Task Force finds that the payment made to MSS Kenya indirectly benefited UNOPS staff member, Subject 1, since it was made to a company owned by her husband. As such, this payment represents a breach of warranty.

B. COMPANY 1 CONTRACT

535. Company 1 was awarded a contract to supply the ISDR office with six months' worth of stationery supplies. The process was tainted by corrupt acts as set for the herein.

536. There is evidence of inappropriate links between Depasse and Company 1 prior to ESARO's award of the stationary contract to Company 1. An email attaching the original stationary assessment sent from Company 1's email address included an attachment entitled "DE PASSE XL.doc." Subject 1 received this assessment and forwarded it to ISDR. Second, the Task Force finds that Subject 2 and Company Representative 1, together with the assistance of Mr. Musyoka, prepared two earlier fictitious bids in the names of the companies Depasse and Company 1. While Subject 1 had a draft of the Company 1 bid, the Task Force found no evidence that she received the bids in final form. However, it can reasonably be deduced based upon a totality of the circumstances that the impetus for these two bids was the transmission of information by Subject 1 to Subject 2 regarding ISDR's needs. Indeed, Company Representative 1 was in possession of original UNOPS documentation concerning the requisition, as well as an UNOPS email. Subject 1 inappropriately passed these UNOPS documents to persons unconnected to the Organisation. For an unknown reason, the two final versions of the bids appear not to have been considered. Nonetheless, the two documents indicate an intention by Depasse and Company 1, and their respective owners, Subject 2 and Company Representative 1, to engage in bid collusion.

537. Further, the Task Force finds that Company Representative 1's description of events with respect to the award and performance of the Company 1 stationary supply contract is credible. The totality of evidence supports Company Representative 1's testimony that the bids submitted by Company 1, Joy-Mart, and Rison & Grace were fraudulent; that Subject 2 set the bid prices; that Subject 2 was involved in the performance of the contract; and, finally, that Subject 2 collected a KES 450,000 (approximately US\$6,500) kickback for his involvement with the deal. The evidence also supports the conclusion that Subject 1 was not only aware of, but also, an active participant in this scheme to defraud the Organisation through the stationary contract awarded to Company 1.

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538. Further, the evidence supports the finding that the companies Joy-Mart and Rison & Grace were also involved in the bid-collusion, while Subject 2's companies Depasse and Aero Logistics were involved in the performance of the contract.

539. The evidence supporting Company Representative 1's description of Subject 1 and Subject 2's involvement in corrupting the bid process includes various documents that Company Representative 1 presented to the Task Force. These documents record the following: (i) the involvement of both Depasse and Aero Logistics in the supply of the stationary; (ii) the involvement of Subject 2 and Joshua Musyoka/Nzei in the bidding exercise; (iii) Company 1's payment of the kickback to Subject 2, as well as the fact that Subject 1 distributed UNOPS documents to her husband and his associates; (iv) the striking similarities in the handwriting of the bids submitted by Company 1 and Rison & Grace; (v) the fact that Rison & Grace does not appear to be a real company; and (vi) the lack of evidence of a RFQ having been sent out to any other independent companies. With regards to the absence of evidence of a RFQ having been issued, in fact, instead of creating a RFQ, Subject 1 simply instructed her husband to obtain a stationery needs assessment. This assessment, purportedly from Company 1, was sent to Subject 1 in an email entitled "De Passe.xls," the name of her husband's company. In addition, Subject 1's violated ESARO policy by signing a LPO for more than US\$2,500 without holding a LPC. Moreover, Subject 1 failed to alert anyone at ESARO of her husband's business association with Company Representative 1, as well as the known associations between Subject 2, Mr. Musyoka, and Company Representative 1. Evidence detailed in this report indicates that these individuals engaged in bid collusion with respect to other UNOPS-ESARO contracts.

540. The involvement of Subject 1 and Subject 2 in the corruption of bidding exercise for the stationary contract is further corroborated by the following evidence: (i) that Subject 1 and Subject 2 similarly corrupted the award of previous contracts to Depasse, the competitor bidder in this instance (see Interim Report); and (ii) following an initial email request from ISDR for the supply of office equipment Subject 1 immediately produced two strikingly similar bids. These bids were from Depasse, owned by her husband, and Company 1, owned by Company Representative 1, a longtime friend of her husband.

541. The Task Force did not locate evidence to suggest that any of the staff members mentioned by Subject 2 to Company Representative 1 personally received any benefit from this contract—that is, with the exception of Subject 2's wife, Subject 1, who indirectly benefited as a result of the approximately US\$6,500 kickback paid to her husband.

542. The value of the contract awarded to and received by Company 1 was KES 1,624,620 (US\$22,113). No precise calculation can be made as to actual loss incurred by the Organisation as a result of the fraudulent bidding process leading to this contract since goods were delivered by Company 1. At a minimum, however, the loss can be calculated as an amount equivalent to the kickback paid to Subject 2—namely, KES 450,000, (approximately US\$6,500). Further, this payment to Subject 2 was made in connection with a United Nations contract, and indirectly benefited UNOPS staff member

Subject 1. For this reason, this payment represents a breach of contractual warranty. Further, as discussed herein, corruption carries with it the intangible cost of compromising the integrity of the process. Damages sustained by the Organisation can also be calculated in terms of the unjust enrichment to the company—the entire value of the contract.

C. JOY-MART ENTERPRISES CONTRACT

543. Joy-Mart was awarded a contract to supply IT equipment to ISDR. The Task Force finds that striking similarities in the bids submitted by all three vendors for this contract suggest that they were drafted by the same individual(s). In addition, the three bidders—Joy-Mart, Depasse, and Company 1—are linked to one another, and maintain associations with Subject 2. Viewed together, and in the context of the other exercises detailed herein, the evidence supports a conclusion that the contract was achieved through corrupt acts and collusive efforts by the parties and Subject 2.

544. The Task Force finds that Subject 1 was not only aware that bid collusion had occurred, but was an active participant in the effort. For example, Subject 1 sent out the RFQ and drafted the bid analysis. In addition, Subject 1 was aware that Depasse, owned by her husband, was one of the bidders for the contract and nevertheless failed to disclose this conflict of interest to any ESARO staff member. Further, Subject 1 also failed to alert anyone at ESARO of the fact that Company Representative 1 of Company 1 was her husband's friend and business associate.

545. Subject 2's precise actions and assistance in the case of this contract award are unclear from the documents found by the Task Force in the UNOPS files. However, Subject 2's role in submitting the three tainted bids is properly established by a preponderance of the evidence. The evidence supporting this conclusion includes: (i) Subject 2's ownership of Depasse, one of the bidders who submitted fraudulent bids; (ii) Subject 2's relationship with the owner of Company 1, Company Representative 1; (iii) Subject 2's relationship with Mr. Claudio, husband of the owner of Joy-Mart; and (iv) the fact that Depasse and Joy-Mart share fax numbers. Subject 2's involvement is corroborated by the fact that this is not the only instance in which the Task Force has evidence that Depasse and Company 1, as well as Depasse and Joy-Mart, have collaborated previously in connection with a corrupted bidding exercise. The numerous other instances of Subject 2's involvement in bid rigging with respect to other companies discussed further corroborates this inference of Subject 2's involvement with the bid collusion.

546. The exact role of Joy-Mart, its owner Joyce K. Muthoni, and her husband Mr. Claudio in the scheme to steer the contract to Joy-Mart is unknown. The Task Force was unable to locate evidence of any payment, direct or indirect, having been made to Subject 1 or Subject 2 in connection with the award of this contract. Nonetheless, it is clear that three strikingly similar bids were received and processed, and that Joy-Mart was the beneficiary of a bid rigging scheme. Further, Joy-Mart received payment, which was deposited into a bank account listed in its UNOPS Atlas Vendor Profile.

547. The Task Force has no evidence that MackPhilisa and Copy Cat were involved in bid collusion, or otherwise acted inappropriately.

548. The value of the contract awarded to and received by Joy-Mart was KES 1,348,300 (approximately US\$18,350). No precise calculation can be made as to actual loss incurred by the Organisation in this instance as goods were delivered. However, this company was unjustly enriched by the value of the contract.

D. COMPFIT SYSTEMS CONTRACTS

549. Compfit has been awarded two UNOPS-ESARO contracts. These contracts were to supply Motorola Radios and stationary. This vendor was also recommended by Subject 1 for the award of a third contract to supply GPS equipment.

550. There are clear indications of corrupt activity during the bidding process for the contract for the supply of GPS. The Task Force finds that the bids submitted were manipulated in furtherance of a scheme to secure that Compfit won the contract. The other bids came from Subject 2's company, Depasse, and from Kenelec, which was owned by Mr. Claudio, a relative of Compfit's owner, Mr. Waigwa. Ultimately, this contract was not awarded to Compfit on account of objections raised by other United Nations staff members as to the excessive prices charged by the company.

551. The Task Force finds two of the bids (from Depasse and Kenelec) were prepared in collusion to allow the third bid (submitted by Compfit) to win. The two alternative bids were clearly drafted from the same template. One of Mr. Waigwa's employees at Compfit signed the supposedly competing bid of Depasse. Notably, the three bids were all excessive, but within the same range, resulting in Compfit winning the contract with an overpriced bid. Further, there are strong ties between all three companies. The owner of Compfit, Selassie Waigwa, is a close relative of Joseph Claudio, the owner of the second bidder, Kenelec. Both these individuals met regularly with Subject 2, the owner of the third bidder, Depasse. Mr. Waigwa shares offices with Subject 2's other company, Aero Logistics. Mr. Claudio and Mr. Waigwa both made false statements to the Task Force about their connections to Subject 2 and to each other. These factors are clear indications of collusion and evidence of the existence of the conspiracy.

552. The Task Force finds that Subject 1 was aware of this bid collusion, and assisted in the effort. Subject 1 copied the RFQ to her husband's email address. In an email recommending the award to Compfit, Subject 1 attached the bid analysis, which listed Depasse as one of the bidders. Although she was aware that Depasse was her husband's company, Subject 1 did not disclose this fact to ESARO staff at this or any other time. Additionally, even a cursory review of the Depasse and Kenelec bids would have revealed them to have been drafted by the same individual(s).

553. Compfit was awarded a contract to provide Motorola Radios to the DPU, which it did so at exorbitant prices.

554. The Task Force is of the view that this bid was also tainted and that Subject 2, as owner of MSS Kenya, colluded with the owners of the other bidders to steer the contract

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to Mr. Waigwa's company, Compfit. The evidence to support this conclusion includes: (i) Mr. Waigwa's initial multiple misrepresentations to the Task Force about his relationship with Subject 2 and Mr. Claudio; (ii) Subject 2's and Mr. Waigwa's regular meetings; the sharing of information pertaining to this contract between Mr. Waigwa and Subject 2; (iii) Compfit's involvement in other rigged bids with Subject 2's company, Depasse (see discussion of the GPS equipment bid above); (iv) the correspondence between MSS Kenya and Compfit; and (v) the ties between Mr. Ochola of MSS Kenya and Mr. John Kamau of CP Intertrade, the third bidder.

555. The evidence also supports the conclusion that Subject 1 was aware of, and participated in, this collusive effort in furtherance of the scheme. Subject 1 emailed the RFQ to her husband's email address, as well as the email addresses of companies and individuals associated with him. She also included in the bid analysis a quote from her husband's company MSS Kenya, a company she knew to belong to her husband. Further, she failed to present the contract to the LPC for review.

556. The second contract awarded to Compfit for the supply of stationary to the DPU was also obtained through fraud.

557. After a thorough review of the evidence presented above, the Task Force concludes that Subject 1 intervened to steer the contract for stationary to Compfit. This conclusion is based on the following evidence: (i) Subject 1 sent the RFQ to Compfit, a company owned by Mr. Waigwa who has links to her husband and a history of bid collusion with her husband on UNOPS contracts; (ii) she recommended the award of the contract to Compfit, despite the fact that the company was not the cheapest bidder on all items; and (iii) Subject 1 did not forward the contract to the LPC for review.

558. The Task Force finds that Compfit and Mr. Waigwa were aware of, and participated in, the scheme to steer contracts to Compfit. Mr. Waigwa's participation can properly be inferred from the following evidence: (i) Mr. Waigwa as owner of Compfit benefited from the scheme; (ii) Mr. Waigwa signed the Compfit bid of 22 August 2006 for the GPS equipment which was for an excessive price, but matched closely the price of the two other bids that were clearly drafted from the same template; (iii) Mr. Waigwa is related to Mr. Claudio owner of Kenelec and another bidder for the GPS equipment; (iv) Mr. Waigwa meets regularly with Subject 2, whose companies Depasse and MSS Kenya also bid on the GPS equipment and Motorola Radio contracts; and (v) Mr. Waigwa shared information with Subject 2 concerning the Motorola Radios bids. The exact illicit involvement, if any, of Mr. Waigwa in the third procurement for stationary is unknown.

559. The Task Force finds that Subject 2 participated in the corruption of the procurement process for the award of the GPS and Motorola Radios to Compfit. In both cases, he was copied on the RFQ by Subject 1, and his companies, Depasse and MSS Kenya, were competing bidders. The Task Force believes that Subject 2's involvement in the other instances of bid rigging outlined in this Report is further evidence that his and his companies' involvement was neither coincidental nor innocent. The involvement of Subject 2, if any, in the third procurement for stationary is unknown.

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560. Mr. Claudio of Kenelec is also believed to have participated in the GPS bid rigging. Mr. Claudio claims that the signature of his name on the GPS bid is a forgery. The Task Force finds no reason to question the veracity of the signature, particularly, in light of the fact that Mr. Claudio made false statements to the Task Force on numerous occasions. For example, he initially denied that he knew that Compfit was owned by his relative Mr. Selassie Waigwa.

561. The Task Force finds that all four companies, Depasse, MSS Kenya, Kenelec, and Compfit, and their owners Subject 2, Mr. Claudio, and Mr. Waigwa, engaged in bid collusion as described herein.

562. The Task Force has no evidence that either Subject 1 or Subject 2 derived a personal benefit from the award of the Compfit contracts. Mr. Waigwa denies having provided any benefit to them.

563. The precise loss attributable to the corruption of the award of the Compfit contracts is difficult to specify as goods were supplied—except, with respect to the stationary contract, the engraver was returned. (In the case of the GPS contract, the initial bids did include significantly uplifted prices, but the Organisation did not incur any loss because the high prices were noted by UNOPS staff prior to the contract having been awarded.) Nonetheless, the Organisation did suffer harm, and, therefore, incurred financial damages in connection to the two contracts awarded to Compfit since they were awarded as a result of a fraudulent bidding process. Further, the companies which achieved these contracts were unjustly enriched through the ability to achieve the contracts.

E. EL PASO AND LINS CONSULT CONTRACTS

564. El Paso and its sister company Lins Consult were awarded UNOPS contracts to supply furniture and curtaining. The Task Force finds that these contracts were achieved through corrupt acts. Subject 1 assisted in this scheme to steer contracts to these companies.

565. El Paso secured two contracts to supply curtains for the ESARO offices at greatly marked up prices. The Task Force finds that the evidence, and all reasonable inferences to be drawn therein, demonstrates that the bids for the curtains were engineered by Mr. and Mrs. Koech, and that Subject 1 was an active participant in steering the contract to El Paso. El Paso and the other bidder, Lins Consult, have shared owners and controllers, who admit submitting parallel bids for other ESARO contracts (e.g., the supply of furniture). Originally, Subject 1 presented only the El Paso bid to the budget officer; only later, did she provide two further bids. There is no evidence that a proper bid solicitation exercise was conducted or that either of the two curtaining contracts was presented to the LPC, despite their value in excess of US\$2,500.

566. After reviewing the evidence presented above, the Task Force concludes that Subject 1 steered the ISDR furniture contract to Lins Consult. Further, all four bidders in this exercise, and, in particular, the Koechs, colluded when submitting their bids.

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567. Two of the bidders, El Paso and Lins Consult, are each owned by the Koechs, who admitted that their two companies shared information with respect to UNOPS-ESARO bids. This includes an admission by Mrs. Koech that she dictated the prices for both the El Paso and Lins Consult bids for the furniture. The two other bidders, Centurion Engineering and Rook Consulting, also have links to the Koechs. Particularly compelling is the evidence that three of the four bids submitted with regards to this contract appear to be drafted by the same individual—most likely, Mrs. Koech, as she acknowledged to investigators that she had drafted the El Paso and Lins Consult bids.

568. Subject 1's participation and/or acquiescence in this scheme is supported by the following evidence: (i) Subject 1 was the UNOPS officer who received and processed the ISDR request and handled the procurement; (ii) she drafted the bid analysis and would have reviewed the strikingly similar bids; and (iii) she failed to submit the bids for LPC review both initially and when the contract price was amended.

569. Further, there is evidence that suggests Subject 1 received indirect benefits from Mrs. Koech in connection to the award of contracts to El Paso and Lins Consult. Evidence exists that Subject 1 was supplied curtaining, lighting, and furnishings from Mrs. Koech. Although Subject 1 denies receiving any curtaining from Mrs. Koech, Mrs. Koech claimed that she had supplied curtaining to Subject 1 and that it was provided at a fair market price. Mrs. Koech provided the Task Force with a few documents in support of her contention, but the Task Force finds these to be inconclusive.

570. Company Representative 1 has stated that Subject 2 was paid KES 20,000 by the Koechs. However, this evidence is uncorroborated.

571. The Task Force is unable to identify a precise monetary amount for the loss incurred by the Organisation attributable to the actions of Subject 1 in securing contracts for El Paso and Lins Consult. This does not, however, mean that there was no loss, or that it cannot be calculated. The curtains and furniture were undoubtedly above market rate. Therefore, the loss can be deemed to be the difference between a fair and reasonable price and that charged by El Paso, and paid by UNOPS. The value of any benefits provided to Subject 1 and possibly Subject 2 can also be said to represent an additional loss to the Organisation, as this represents a mark up on the contract price, which, absent the corruption, would not have been paid. Further, as a result of these actions, the Organisation sustained additional damages as the integrity of the process was compromised.

F. BICYCLES FOR THE DEMOCRATIC REPUBLIC OF THE CONGO

572. The evidence concerning the intended award of a contract for the supply of bicycles for the Congo reveals that the scheme continued to exist until at least December 2006. Subject 1 remained an active participant in the scheme throughout this time period.

573. The Task Force finds that Subject 1 and Subject 2 derived a personal benefit from the scheme as: (i) Subject 2 owned the company awarded an ESARO contract or (ii) a company associated with Subject 2 or Subject 1 was fraudulently awarded the contract

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and a kickback was provided to them. The following direct or indirect benefits to Subject 2 and Subject 1 have been identified:

Subject 2 as owner of MSS Kenya received KES 232,800 (approximately US\$3,235).

Company Representative 1 provided evidence that he had paid Subject 2 KES 450,000 (approximately US\$6,500). The Task Force finds this payment to be a kickback.

Evidence suggests that Subject 1 and her husband Subject 2 may have improperly benefited from the supply of curtaining, lighting equipment, and furnishings from the Koechs, the owners of Lins Consult and El Paso. It would appear that these benefits were conferred in connection with the award of UNOPS-ESARO contracts to these companies. The Task Force does not reach the question whether Subject 2 and Subject 1 properly paid for the receipt of these good and services. If they did not, this would represent a kickback.

574. In addition to the corrupt and fraudulent scheme, the Task Force finds that Subject 2 corrupted ESARO procurement in two other ways. Firstly, Subject 2 obtained the invoices issued to ESARO by the freight forwarding company Joe's Freighters, and uplifted these prior to their submission to ESARO for payment, with Subject 2 pocketing the difference between the two costs. Secondly, Subject 2 asked for, and in some cases received, commission payments for work by ESARO vendors on ESARO contracts, namely from Kenelec and Zambezi.

575. The Task Force finds that Subject 1 was aware of her husband's links to the companies Joe's Freighters, Diesel Care, and Kenelec, but at no time made these links known to the Organisation.

G. JOE'S FREIGHTERS

576. Subject 1 introduced Joe's Freighters to ESARO in early 2006. The company replaced Frankline Cargo as ESARO's freight forwarding and clearing company. Subject 1 knew that her husband, Subject 2, was associated with the company but failed to bring this conflict of interest to the attention of others at ESARO. The Task Force finds Subject 1's claim that she was not aware of her husband's involvement with Joe's Freighters to lack credibility.

577. In addition, the Task Force finds that Subject 2 uplifted Joe's Freighters invoices in furtherance of the scheme. The Task Force finds the evidence of Company Representative 1 in respect to this matter credible as his claims were against his interest and supported by documents. Further, Company Representative 1's evidence in respect of other matters is corroborated by documents, and the Task Force believes him to be a credible witness in general. The statements made by Company Representative 1 are against his penal interest and therefore have the indicia of credibility.

578. There is also evidence of potential double billing in respect of Joe's Freighters invoices 108 and 109.

579. The Task Force has not been able to determine identity of the ultimate beneficiary of payments made to Joe's Freighters in respect of the uplifted invoices or the double billing. This money was paid into a bank account controlled by Mr. Claudio.

580. The Task Force has found no evidence that Subject 1 had knowledge of or was implicated in the Joe's Freighters invoice uplifting and double billing.

581. The total amount paid to Joe's Freighters in 2006 was KES 273,973 (approximately US\$3,759). No precise calculation can be made as to actual loss as goods were cleared and forwarded. At a minimum, however, the loss can be calculated as an amount equivalent to the uplift of invoice 108—KES 4,640 (approximately US\$60), and the value of invoice 109—KES 17,400 (approximately US\$242) which represents double billing. Therefore, at least US\$300 can be deemed as loss incurred by the Organisation.

H. KENELEC

582. Kenelec was awarded an ESARO contract to supply bitumen to the Seychelles. Certain anomalies exist with regards to the award of this contract. The Task Force has not identified evidence that the award of this contract was corrupted.

583. The Task Force does, however, find that Subject 1 was aware of Subject 2's involvement with Kenelec, as well as his connection with the bitumen contract secured by Kenelec, and failed to report this conflict of interest to the appropriate persons at ESARO.

584. Mr. Claudio admitted to the Task Force that Subject 2 was paid KES 40,000 (approximately US\$570) by Kenelec in connection with the contract to supply bitumen to the Seychelles. This payment was purportedly for Subject 2's work as a consultant on the contract. At the very least, this payment amounts to a breach of contractual warranty.

I. DIESEL CARE

585. Subject 2 sought to secure ESARO contracts for Mr. Claudio's company Diesel Care Limited. Subject 1 assisted him in his efforts and did not make ESARO management aware of the obvious conflict of interest presented by her involvement with the company.

586. Further, Subject 3 admitted to the Task Force that he was aware that Subject 2 was Subject 1's husband, but failed to inform anyone at ESARO of Subject 2's involvement with Diesel Care's attempts to obtain UNOPS-ESARO contracts.

J. ZAMBEZI INVESTMENTS

587. Zambezi Investments was awarded a contract to supply vehicles. Certain anomalies exist with regards to the award of this contract. The Task Force has not identified evidence that the award of this contract was corrupted.

588. Subject 2 and Subject 1's brother, the husband and brother respectively of Subject 1, worked on the Zambezi Investments' ESARO contract for the supply of trucks to the

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Organisation. Subject 1 was aware of their links to Zambezi and specifically to the ESARO contract. She told no one in ESARO of this conflict of interest. She also exceeded her authority when she unilaterally altered the LPO. Moreover, she issued instructions to her brother in connection with the performance of the contract.

589. Mr. Ochola made a number of false statements to the Task Force investigators when interviewed. Further, he used his contacts with Subject 1's brother to improperly gain information from Subject 1 regarding UNOPS-ESARO contracts.

590. While the Task Force does not have evidence of any direct payments, the Task Force finds, however, that it is unlikely that Subject 2's assistance to Mr. Ochola of Zambezi Investments, would have been provided absent a payment. Indeed, Mr. Ochola described Subject 2 as someone whose offers of assistance in facilitating matters with the United Nations were contingent upon commission payments.

591. The Task Force finds that Subject 1 had a pivotal role in securing the ESARO contract for Zambezi. Until her intervention, the company was not even under consideration by ESARO for the contract as Zambezi was not in the business of supplying trucks, and was essentially a broker. Due to the company's poor performance, the contract has now been cancelled. As a result, the Organisation has incurred a loss of both time and money. This loss can be attributed to Subject 1's actions.

K. ACTIONS OF UNOPS STAFF

592. Some junior staff, aware of problems in the procurement process, did make appropriate attempts to alert more senior staff of these issues. There were procurement systems in place as per the UNOPS Procurement Manual which should have, in theory, prevented the fraud from occurring. These systems were not adequately enforced, and there was insufficient oversight. The real problem, however, lay in a deliberate and calculated effort by Subject 1, her husband, and the other individuals and vendors identified herein, to circumvent these systems and defraud the Organisation.

L. SUMMARY

593. In summary, in the period of January 2006 to December 2006, the contract selection processes for the contracts ultimately awarded to MSS Kenya, Company 1, Joy-Mart Enterprises, Compfit Systems, El Paso Interiors, Lins Consult, and Joe's Freighters, with an aggregate value of approximately US\$350,000, were compromised by the actions of Subject 1, her husband, and a number of vendors, including MSS Kenya, Depasse Logistics, Compfit Systems, Kenelec Supplies, Diesel Care Ltd., Joy-Mart Enterprises, CP Intertrade, Metro Trading (or Metro Group) Jamii Technologies, Company 1, El Paso Interiors, Lins Consult, Rook Consulting Engineers, Centurion Engineering and Builders, and Zambezi Investments.

594. As a result of this scheme, the integrity of the procurement process in the bidding exercises outlined in this Report was severely compromised. Goods and services were procured for the Organisation without the use of a fair, transparent, objective, and truly competitive process. The use of fictitious and incompetent vendors caused UNOPS and

the various United Nations agencies to incur a significant financial loss as well as tangible and intangible damages. Goods and services provided were substandard, as well as overpriced, and important projects suffered directly. Importantly, damages were incurred as a result of the corruption which tainted the processes, and companies were unjustly enriched with contracts obtained through fraud.

595. Subject 1 and her husband benefited directly and indirectly from the execution of the criminal scheme detailed in this Report and the Interim Report. The sheer number of procurement exercises which were corrupted, the multiple instances of Subject 1's improper steering of contracts to companies associated with her husband in these procurement exercises, as well as her husband's links to many of the bidders, demonstrates that not only were both Subject 1 and Subject 2 aware of and actively participated in the scheme to defraud the Organisation, but were, in fact, central figures at the very heart of these fraudulent and corrupt efforts. Indeed, Subject 1 and Subject 2 were the key instigators as well as beneficiaries of the criminal scheme.

XIII. CONCLUSIONS

596. The Task Force incorporates by reference the conclusions of the Interim Report, in connection with the award of four contracts to Depasse Logistics.

A. VIOLATIONS OF THE UNITED NATIONS REGULATIONS AND RULES

597. Through her participation in the scheme identified herein, Subject 1 knowingly and purposefully violated Staff Regulation 1.2(b) by failing to uphold the highest standards of efficiency, competence, and integrity. Specifically, Subject 1 failed to act impartially, fairly, honestly, and truthfully in her dealings in the procurement exercises identified herein which resulted in the award of a contracts to MSS Kenya, Company 1, Joy-Mart Enterprises, El Paso, Lins Consult, and Compfit Systems, all companies owned and controlled by Subject 2, and his associates. Indeed, Subject 1 acted corruptly by engaging in acts designed to further the criminal scheme. As a result, all of these procurement exercises were severely tainted by fraud and corruption.

598. Subject 1 knowingly and purposefully violated Staff Regulation 1.2(g) by using her office and knowledge gained from her position as a United Nations staff member for her own private gain and the private gain of her husband, Subject 2, and his associates.

599. Subject 1 knowingly and purposefully violated Staff Regulation 1.2(m) in that she was actively associated with, and had a financial interest in a profit-making business (either directly or indirectly through her husband), namely MSS Kenya, which benefited financially from her position in the United Nations.

600. Subject 1 knowingly and purposefully violated Staff Regulation 1.2(r) in that she failed to respond fully and truthfully to the Task Force in its requests for information during its investigation of the misuse and abuse of the United Nations funds.

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601. Subject 1 knowingly and purposefully violated Section 1.6 of the UNOPS Procurement Manual in that she failed to maintain an unimpeachable standard of integrity in her business relationships at UNOPS, and used her authority and office for personal gain.

602. Subject 1 knowingly and purposefully violated Section 1.6.1 of the UNOPS Procurement Manual in that she did not preserve the integrity of the procurement process or maintain fairness in UNOPS' treatment of all suppliers. Subject 1 also allowed favored vendors access to privileged information on certain procurement cases without releasing such information to the business community at large. Subject 1 further violated this section as she maintained a personal or financial interest, directly or indirectly through her husband, in MSS Kenya, and therefore should have recused herself from any procurement exercise concerning this company.

603. The Task Force concludes that several companies, and their owners, breached the UNOPS General Terms and Conditions of Local Purchase Orders, which state that "[t]he Vendor warrants that no official of the United Nations . . . has received or will be offered by the Vendor any direct or indirect benefit of any kind." The General Terms and Conditions further provide that "[t]he Vendor agrees that breach of this provision is a breach of an essential term of this Order."⁵⁸⁸ The companies and owners for whom the Task Force has conclusive evidence that they breached this term are:

MSS Kenya, and its owner Subject 2;

Company 1, and its owner Company Representative 1; and

Kenelec Supplies, and its owner Mr. Claudio.

604. It is likely that other companies discussed in the report, similarly made payments to Subject 2, or conferred other benefits directly or indirectly on Subject 1, in breach of their contractual warranty.

B. CRIMINAL VIOLATIONS

605. Subject 1 knowingly and purposefully participated in the fraudulent scheme described above to obtain United Nations contracts and money for her husband and her husband's company through corrupt means.

606. Subject 1 knowingly and purposefully conspired with others known and unknown, including, but not limited to Subject 2, her husband, Company Representative 1, and Mr. Joshua Musyako (otherwise known as Joshua "Nzei") to steer contracts in favor the companies Depasse, MSS Kenya, Company 1, Joy-Mart Enterprises, El Paso, Lins Consult and Compfit Systems. This corrupted the procurement function and allowed her husband and their co-conspirators to improperly obtain sums of money under contracts with the United Nations not properly due and owed to them.

607. Subject 1 knowingly and purposefully violated the Kenyan Anti-Corruption and Economic Crimes Act Section 46 in that she participated in a corrupt scheme designed to

⁵⁸⁸ Local purchase order no. 2006-058 (6 March 2006).

favor her husband, their co-conspirators and the companies Depasse, MSS Kenya, Company 1, Joy-Mart Enterprises, El Paso, Lins Consult, and Compfit Systems.

608. Subject 1 knowingly and purposefully violated Sections 44 and 46 of the Kenyan Anti-Corruption and Economic Crimes Act in that she abused her position and office as a United Nations staff member by improperly conferring a benefit upon her husband and their co-conspirators and, indirectly, upon herself.

609. Subject 1, Subject 2, Company Representative 1, and Mr. Joshua Musyako (otherwise known as Joshua “Nzei”), and other co-conspirators, as well as a number of companies, including but not limited to Depasse, MSS Kenya, Company 1, Joy-Mart Enterprises, El Paso, Lins Consult, and Compfit Systems, violated Section 44 the Kenyan Anti-Corruption and Economic Crimes Act by colluding with other bidders and participating in a bid-rigging scheme to favor Subject 1’s husband, their co-conspirators, and associated companies identified above.

XIV. RECOMMENDATIONS

610. The Task Force incorporates by reference and repeats all of the recommendations of the Interim Report. The Task Force makes the following additional recommendations:

A. RECOMMENDATION PTF-R012/07/1

611. The Task Force recommends that appropriate action be taken against Subject 1 for the violations identified herein.

B. RECOMMENDATION PTF-R012/07/2

612. The Task Force recommends that UNOPS review the actions of all other UNOPS staff as detailed in this Report, and take any action deemed appropriate.

C. RECOMMENDATION PTF-R012/07/3

613. The Task Force recommends that Subject 2’s company, MSS Kenya, be immediately suspended from the vendor rosters of the entire United Nations system. This entity—including its board of directors and any personnel—should immediately be declared as ineligible to conduct any business with the Organisation for an indefinite period of time. Furthermore, the Organisation should immediately terminate any current contracts it holds with this entity.

D. RECOMMENDATION PTF-R012/07/4

614. The Task Force recommends that Company Representative 1, Mr. Joshua Musyoka, Mr. Selassie Waigwa, Mr. James Ochola, Subject 1’s brother, Mr. Mallison Koech, Mrs. Beverley Koech, Mr. Dennis Odipo, Mr. Joseph Claudio, and companies associated with these individuals including Company 1, Compfit Systems, Joe’s Freighters, Zambezi Investments, Lins Consult, El Paso Interiors, Kenelec, Joy-Mart

Enterprises, and Diesel Care, along with any additional individuals and companies referred to in this Report and the Interim Report, be immediately suspended from the entire United Nations vendor system. These entities should immediately be declared as ineligible—including its board of directors and any personnel—to conduct any business with the Organisation for an indefinite period of time. Furthermore, the Organisation should immediately terminate any current contracts it holds with these entities.

E. RECOMMENDATION PTF-R012/07/5

615. The Task Force recommends that the Organisation, as a victim of crime, refer the additional matters detailed in this Report to the appropriate authorities, including prosecutorial authorities in Kenya, for any and all action such authorities deem appropriate.

F. RECOMMENDATION PTF-R012/07/6

616. The Task Force recommends that UNOPS make efforts through all available means to seek restitution from Subject 1, Subject 2, their co-conspirators, and their companies in courts in Kenya and other relevant jurisdictions, through the civil or criminal law process. Such actions should seek not only recovery of any actual losses, but also damages to compensate for the corruption of the Organisation's procurement processes and the damage to institutional integrity and reputation.