



INTERNAL AUDIT DIVISION

AUDIT REPORT

MONUC aerodrome operations services contract

4 March 2008

Assignment No. AP2007/620/14

United Nations  Nations Unies

INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

INTERNAL AUDIT DIVISION - DIVISION DE L'AUDIT INTERNE

OFFICE OF INTERNAL OVERSIGHT SERVICES - BUREAU DES SERVICES DE CONTRÔLE INTERNE

TO: Mr. Alan Doss
A: Special Representative of the Secretary-General
MONUC

DATE: 4 March 2008

REFERENCE: IAD:08- 01086

FROM: Dagfinn Knutsen, Director
DE: Internal Audit Division, OIOS



SUBJECT: **Assignment No. AP2007/620/14: Audit of MONUC aerodrome
operations services contract**

1. I am pleased to present the report on the above-mentioned audit.
2. Based on your comments, we are pleased to inform you that we will close recommendations 1, 2, 3 and 6 in the OIOS recommendations database as indicated in Annex 1. OIOS is reiterating recommendation 12 and requests that you reconsider your initial response concerning this recommendation. In order for us to close the remaining recommendations, we request that you provide us with the additional information as discussed in the text of the report and also summarized in Annex 1.
3. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as critical (i.e., recommendations 1, 2, 3, 8, 11, 15 and 16), in its annual report to the General Assembly and semi-annual report to the Secretary-General.

cc: Mr. Craig Boyd, OIC Administration, MONUC
Mr. Philip Cooper, Director, Department of Field Support
Mr. Paul Buades, Chief, Procurement Division, Department of Management
Mr. Swatantra Goolsarran, Executive Secretary, UN Board of Auditors
Mr. Jonathan Childerley, Chief, Oversight Support Unit, Department of Management
Mr. Byung-Kun Min, Programme Officer, OIOS

INTERNAL AUDIT DIVISION

FUNCTION

“The Office shall, in accordance with the relevant provisions of the Financial Regulations and Rules of the United Nations examine, review and appraise the use of financial resources of the United Nations in order to guarantee the implementation of programmes and legislative mandates, ascertain compliance of programme managers with the financial and administrative regulations and rules, as well as with the approved recommendations of external oversight bodies, undertake management audits, reviews and surveys to improve the structure of the Organization and its responsiveness to the requirements of programmes and legislative mandates, and monitor the effectiveness of the systems of internal control of the Organization” (General Assembly Resolution 48/218 B).

CONTACT INFORMATION

DIRECTOR:

Dagfinn Knutsen, Tel: +1.212.963.5650, Fax: +1.212.963.2185,
e-mail: knutsen2@un.org

DEPUTY DIRECTOR:

Fatoumata Ndiaye: Tel: +1.212.963.5648, Fax: +1.212.963.3388,
e-mail: ndiaye@un.org

CHIEF, PEACEKEEPING AUDIT SERVICE:

Eleanor Burns: Tel: +1. 917.367.2792, Fax: +1.212.963.3388,
e-mail: burnse@un.org

EXECUTIVE SUMMARY

MONUC aerodrome operations services contract

OIOS conducted an audit of the aerodrome operations services contract from August to September 2007. The main objectives of the audit were to: (a) assess the appropriateness of expenses claimed by the contractor, Pacific Architects and Engineers Incorporated and ES-KO International Incorporated (PAE/ES-KO); (b) assess compliance with contract terms and provisions; and (c) identify possible overpayments. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

Although the services provided by PAE/ES-KO met the requirements of the Mission, the parties to the contract interpreted certain contract terms and provisions differently. As a result, there were disputes amounting to \$2.57 million, of which \$1.68 million was still unresolved.

OIOS identified the following key issues :

- The lack of clarity in the contract provisions led to different interpretations and the Mission did not amend the contract to address these ambiguities.
- Non-compliance with the bi-annual dispute resolution provision led to delays in resolving disputes. A total of \$1.35 million awaits resolution at United Nations Headquarters (UNHQ).
- The contractor failed to provide information on actual General Administrative Costs and Project Direct Corporate Overhead Costs (GACPDCCOC) incurred.
- Payments of disputed costs from invoices pending resolution need to be withheld.
- Performance bonds had not been renewed and provisions of the Procurement Manual were not adhered to.
- Recoverable costs for medical services and other items amounting to \$144,953 were not recovered from contractors.
- The contractor exceeded the 130 per cent cap of the Notice to Proceed (a written notice authorizing the contractor to perform a service) for some services by \$384,089 contrary to the provisions of Section 4.6 (f) of the contract.

OIOS issued a total of 16 recommendations to the Mission and the United Nations Procurement Division (UNPD) to address the above weaknesses. The Mission and UNPD accepted most of the recommendations.

TABLE OF CONTENTS

Chapter	Paragraphs
I. INTRODUCTION	1 – 7
II. AUDIT OBJECTIVES	8
III. AUDIT SCOPE AND METHODOLOGY	9
IV. AUDIT FINDINGS AND RECOMMENDATIONS	
A. Contract terms and provisions	10 – 57
B. Appropriateness of contractor's costs	58 – 62
C. Quality assurance programme	63 – 66
V. ACKNOWLEDGEMENT	67
ANNEX 1 – Actions needed to close audit recommendations	
ANNEX 2 – Costs of services that exceeded 130% of the NTE in the Notice to Proceed Audit of Aerodrome Operations Services Contract	

I. INTRODUCTION

1. The Office of Internal Oversight Services (OIOS) conducted an audit of Aerodrome operations services contract at the United Nations Mission in Democratic Republic of Congo (MONUC) from August to September 2007. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

2. The United Nations entered into a contract with Pacific Architects and Engineers Incorporated and ES-KO International Incorporated (PAE/ES-KO) in February 2003 to provide aerodrome operations services at MONUC. Procurement services and contract preparation were carried out at United Nations Headquarters (UNHQ). The contract was initially for a period of twenty (20) months to 30 September 2004 (base year), but it was extended a number of times to September 2007.

3. In accordance with the terms and conditions of the contract, PAE/ES-KO was required to provide the following services at eleven airfields in the Mission:

- Management and administration of the project;
- Management of air terminal operations centers;
- Cargo operations;
- Passenger services;
- Airfield fire fighting services;
- Airfield medical services;
- Aircraft towing;
- Aircraft marshalling /start;
- Air terminal security; and
- Meteorology forecast and observations.

4. The maximum cost to MONUC for the services to be performed by PAE/ES-KO was not-to-exceed (NTE) \$30,300,000 for the base year. The NTE was incrementally increased to \$47,828,086 in October 2004, \$64,007,295 in October 2005; \$72,848,628 in October 2006; and \$81,689,962 in April 2007. The detailed breakdown of the expenses incurred under this contract from April 2003 to July 2007 is as follows:

Table 1: MONUC aerodrome contract costs (in US dollars)

Expenses	Base Year Apr 2003- Sept 2004	Option Year 1 Oct 2004- Sep 2005	Option Year 2 Oct 2005- Sep 2006	Option Year 3 Oct 2006- July 2007	Total
Direct Labour cost	\$14,106,280	\$8,071,335	\$9,189,944	\$7,462,700	\$38,830,259
Other Direct costs	9,740,540	6,281,221	4,799,449	4,063,740	24,884,950
G&A/PDO costs	1,883,898	1,133,851	1,105,162	910,588	5,033,499
Base fees	667,710	401,871	391,703	322,740	1,784,024
Performance					

fees	1,178,232	717,106	699,469	576,322	3,171,129
Total	\$27,576,660	\$16,605,384	\$16,185,727	\$13,336,090	\$73,703,861

5. As shown above, the costs include the following: direct labour costs (DLC), mobilization and demobilization costs (MDC); other direct costs (ODC) and actual costs incurred by the contractor to procure equipment property and supplies (PC) at the request of MONUC; general and administrative costs and project direct corporate costs (GACPDCOC) that should not exceed 7.9 per cent of all DLC, MDC, ODC and procurement costs; a base fee of 2.8 per cent computed on the basis of all DLC, MDC, ODC and procurement costs; and a performance fee of 5 per cent of all DLC, MDC, ODC and procurement costs.

6. During the period from April 2003 to June 2007, the Mission disputed \$2,569,763 in PAE/ES-KO expenses of which \$1,678,128 was still unresolved as at 31 August 2007. The disputes arose due to ambiguities in the contract, resulting in differing interpretations of terms and provisions.

7. Comments made by MONUC and the United Nations Procurement Division (UNPD) are shown in *italics*.

II. AUDIT OBJECTIVES

8. The major objectives of the audit were to:

- (a) Assess the appropriateness of the expenses claimed by PAE/ES-KO in accordance with the contract terms and provisions, and to identify possible overpayments;
- (b) Assess the management of the contract particularly compliance with contractual terms and provisions; and
- (c) To ascertain whether the efficiency and effectiveness of the services provided by the contractor were assessed.

III. AUDIT SCOPE AND METHODOLOGY

9. The audit covered aerodrome services provided by the contractor from February 2003 to June 2007. To carry out this audit, OIOS interviewed key staff, analyzed payments made to the contractor, assessed and tested compliance with contract terms and provisions and followed up on the implementation of the decisions of 20 September 2004 meeting and the advice provided by the Office of Legal Affairs (OLA) regarding the interpretation of the provisions governing reimbursements of the contractor's costs.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Contract terms and provisions

Need for clear contract provisions

10. Contracts should be clear and unambiguous to avoid different interpretations of the terms and provisions.

11. OIOS' review of the contract and discussions with Mission management and the contractor identified contract provisions that were not clear resulting in differing interpretations. For example, there was:

- No clear indication in the contract whether monitoring should be based on the estimated costs per applicable service or the overall NTE per location;
- An apparent contradiction between Section 9.1 (e) and 9.2, where the former provides for computation of GACPDCOC based on actual costs incurred by PAE in an amount not to exceed 7.9 per cent of all DLC, MDC, ODC and PC, while the latter section provides for GACPDCOC costs in a total amount equal to 7.9 per cent of all DLC, MDC, ODC and PC;
- No indication whether unit costs should be fixed and firm; and
- No criterion as to whether the Mission should reimburse all costs "reasonably and prudently" incurred by the contractor including such questionable costs as internet and direct satellite television connectivity at employees' residences.

12. The differences in the interpretation and application of provisions governing the reimbursement of the contractor's costs led to MONUC disputing a total of \$2,569,763 of expenses claimed by the contractor between February 2003 and March 2007.

13. Meetings were held at the Mission and at UNHQ to resolve disputes and provide clarification of the interpretations of the contract provisions. The minutes of the UNHQ meeting held on 20 September 2004, attended by UNPD, the DPKO Air Transport Section and PAE/ES-KO state that MONUC Management should allow reimbursements of costs to PAE/ES-KO as long as the following four criteria were met: (i) the costs were reasonably and prudently incurred in the performance of the contract; (ii) regarding other costs (ODC), the cost category was identified in Section 9.1.c or was consistent with costs in Annex B; (iii) the cost of a particular service at each airfield (as listed in Section 4.1 – e.g., Airfield Services at Kisangani Airfield) did not exceed 130 per cent of the NTP for that service, as set forth in Section 4.6. (f) of the contract; and (iv) the contract NTE was not exceeded. The minutes of the meeting also stated that

in view of the criteria established by the parties, MONUC would be instructed not to dispute past and future invoices for those amounts that met all four of the criteria.

14. MONUC, in its response to the recommendations agreed upon in the September 2004 meeting, requested further clarification and guidance from the Logistics Support Division, Department of Peacekeeping Operations (LSD/DPKO), as the Mission could not derive clear guidelines from the minutes and it was necessary to achieve an appropriate level of transparency and consistency in the interpretation and application of criteria "a" and "b".

15. OLA was also requested to clarify whether unit costs provided by the contractor should be fixed and firm. In its opinion dated 20 December 2004, OLA stated that it was the clear intention of the UN that the contractor's unit costs should remain fixed and firm throughout the term of the contract, which PAE/ES-KO did not object to when it submitted its proposal dated 11 November 2002. According to OLA, Section 9 of the contract sets forth the basis for compensating the contractor for the provision of services which indicated that these costs were fixed at the levels set forth in Annex B and that the contract indicated that the fixed costs could only be changed when an intervening event required such change. OIOS could not ascertain whether OLA's opinion was communicated to the contractor.

16. The contractor maintained that the contract allowed flexibility so long as the costs were: (i) incurred in the performance of the contract; (ii) were reasonable and prudent; (iii) did not exceed the amounts set forth in Annex B to the contract with respect to the services in question at any particular airfield; and (iv) did not exceed the overall NTE amounts set forth in the contract.

17. OIOS noted that the problems related to this contract had been recurring since inception in February 2003. Furthermore, the Headquarters Committee on Contracts (HCC) also raised concerns about the implementation of the provisions of the contract as reflected in the minutes of its meetings held on 13 July 2004 and 16 August 2005. The Organization missed opportunities to amend the contract in order to address the issues raised above during contract extensions.

Recommendations 1 and 2

(1) The MONUC Administration, in collaboration with the United Nations Procurement Division, should ensure that for future contracts with cost plus provisions, the contract provisions are clear and succinct to minimize the occurrence of disputes.

(2) The United Nations Procurement Division should take advantage of contract extensions to amend contracts in order to address problems identified during the implementation of the contract.

18. *The MONUC Administration accepted recommendation 1 and stated that in light of the experience with contract PD/C0068/03, all new contracts for airfield support services are now based and drafted on an all-inclusive basis to minimize the occurrence of disputes. UNPD added that the two new contracts with PAE/ES-KO and ENHAS have been executed on an all-inclusive fixed price basis. Based on the action taken by the Mission and UNPD, recommendation 1 has been closed.*

19. *UNPD accepted recommendation 2 and stated that it generally agrees that it is desirable to amend contracts to address problems identified. However, UNPD noted that all amendments require the agreement of the vendor, and that for commercial and legal reasons, it is extremely difficult to convince contractors to accept changes to contractual terms after the initial contract has been signed. Nonetheless, UNPD explained that the two new contracts with PAE/ES-KO and ENHAS have been executed on an all-inclusive fixed price basis. Based on OIOS' review of a copy of the extended contract provided by the Mission, recommendation 2 has been closed.*

Non-compliance with the bi-annual dispute resolution provision

20. Section 9.3 of the contract provides that if the parties are not able to resolve the dispute at the mission level, the parties agree to consult at UNHQ at the end of each six-month period to amicably resolve the disputes.

21. Throughout the duration of the contract, only two meetings were held at UNHQ in September 2004 and June 2005 to resolve disputes. At the time of the audit, a total of \$1,354,813 in disputed costs still awaited resolution.

22. PAE/ES-KO in the Mission preferred to refer the disputes to UNHQ for resolution, as shown in most of the correspondence with CMS. On the other hand, MONUC management informed LSD/DPKO about the status of the dispute resolution process. OIOS could not ascertain the causes for the failure to schedule bi-annual dispute resolution meetings as required by the contract. In June 2007, the Mission formally requested the Chief, UNPD to arrange for a dispute resolution meeting to be held in July 2007 at UNHQ but at the time of audit, the meeting had not yet taken place.

Recommendation 3

(3) The United Nations Procurement Division should ensure that dispute resolution meetings are held within the timeframe provided for in the contract to ensure timely settlement of disputes.

23. *UNPD accepted recommendation 3 and stated that it relies on the Mission to play its role in initiating the dispute resolution process and providing complete information on the dispute in a timely manner. However, no further action may be taken regarding the scheduling of dispute resolution meetings under the expired contract. Based on the explanation given by UNPD, recommendation 3 has been closed without implementation. However, OIOS will*

monitor the implementation of this contract provision when it conducts a follow-up or related audit on the subject.

Contractor's non-compliance with GACPDCOC provision

24. Section 9.1 (e) of the contract requires the contractor to claim general and administrative costs and project direct corporate overhead costs (GACPDCOC) actually incurred by PAE Headquarters in an amount not to exceed 7.9 per cent of all direct labor costs (DLC), mobilization and demobilization costs (MDC), other direct costs (ODC) and procurement costs (PC). Section 9.3 provides that, "the Parties agree that the GACPDCOC shall be subject to review by the UN within 120 days of the end of each calendar year during which this contract, or any extension thereof, exists, in whole or in part. Such review shall be based on, *inter alia*, the audited financial statements of PAE/ES-KO for the relevant calendar year. After such review, the UN shall notify the contractor as to the outcome of its review and, if applicable, inform the contractor as to the amount to be reimbursed by the contractor to the UN and the contractor shall pay such amount within 30 days of such notification".

25. The GACPDCOC billed by the contractor was calculated based on 7.9 per cent of total invoiced DLC, ODC, MDC and PC. The contractor explained that it was using the ceiling stated in Section 9.2 because it was not in possession of GACPDCOC actually incurred by its Headquarters. MONUC CMS had requested the contractor to provide information on actual costs incurred, but at the time of audit, the information had not been provided. The financial records available were consolidated records for PAE worldwide, and hence the GACPDCOC costs actually incurred in support of operations of PAE/ES-KO in MONUC could not be determined.

26. There was no clause in the contract to penalize the contractor for failing to submit the actual GACPDCOC records for review by the Mission. There is a risk that the computed costs based on the ceiling provided for in the contract may be excessive due to the lack of supporting documentation for actual GACPDCOC costs incurred by PAE Headquarters.

Recommendations 4 and 5

(4) The MONUC Administration should ensure that the contractor complies with Section 9.3 (d) of the contract, by providing the required supporting documentation to validate the general administrative costs and project direct corporate overhead costs claimed before settling the final invoice; and

(5) The MONUC Administration, as a lessons learned for future contracts with similar provisions, should ensure that the general administrative costs and project direct corporate overhead costs incurred by the contractor are reviewed or audited on a periodic basis.

27. *The MONUC Administration accepted recommendation 4 and stated that MONUC will continue its efforts to obtain the supporting documentation for validating the GACPDCOC from the contractor. However, if documentation is not provided, the issue will be forwarded to the final dispute resolution meeting prior to settling the final invoice. Recommendation 4 remains open pending receipt of documentation supporting PAE/ES-KO's GACPDCOC claims, duly validated by MONUC Administration.*

28. Recommendation 5 was originally addressed to UNPD, *which did not accept it, stating that GACPDCOC incurred by the contractor should be subject to periodic review, the responsibility for such review lies with the responsible officer in the Mission who normally handles queries regarding GACPDCOC.* In light of the explanation provided, OIOS is now addressing this recommendation to the MONUC Administration, *which had accepted the original recommendation, stating that it will ensure that GACPDCOC are reviewed periodically.* Recommendation 5 remains open pending OIOS' verification that GACPDCOC are being reviewed periodically.

Need to withhold payment of disputed costs from invoices pending resolution

29. The contract does not provide for withholding payment pending resolution of disputed costs for normal invoices for services rendered. However, Section 9.3 (b) (ii) provides that, "in the event that the parties are not able to resolve the dispute, or a dispute with respect to any other amounts claimed by the UN to be due to it from the Contractor, the parties agree to consult at UNHQ at the end of each six-month period for the purposes of amicably resolving such disputes. If after holding such discussions, the parties remain unable to resolve the dispute, then the amount under dispute, upon the written approval of the Chief, Procurement Division (PD), shall be deducted from the Contractor's next payment under Section 9.3(a)." The contract also provides for withholding the final contractor's invoice pending certification of satisfactory completion of services.

30. Throughout the implementation of the contract, MONUC had to pay the full amount of invoices submitted by the PAE/ES-KO less what was settled at the Mission level, because the contract did not provide for withholding disputed costs. As a result of not being able to withhold disputed costs from the invoices and the failure to schedule bi-annual dispute resolution meetings at UNHQ, some disputed costs remained outstanding. The withholding of disputed costs could have led to more timely resolution of disputes.

Recommendation 6

(6) The MONUC Administration, in collaboration with the United Nations Procurement Division, should ensure that future contracts allow the Mission to withhold the disputed costs from invoices pending resolution.

31. *The MONUC Administration and UNPD accepted recommendation 6, and stated that the new contracts (section 9.8) for airfield services for MONUC*

specify that “The contractor acknowledges and agrees that the UN may withhold payment in respect of any invoice in the event that in the opinion of the UN, the contractor has not performed its obligations in accordance with the terms and conditions of the contract or if the contractor has not provided sufficient documentation in support of the invoice.” Based on the action taken by UNPD, recommendation 6 has been closed.

Non-compliance with performance bond requirements

32. Section 13.1 of the contract requires the provision of a performance bond or similar guarantee acceptable to the UN within ten days after signature of contract by the parties. The aerodrome service contract required that the performance bond or guarantee remain in force throughout the life of the contract and for 45 days after the termination or expiration of the contract. The contract also provided that the UN shall be entitled to withhold payment from any one or more invoices if the contractor fails to produce the performance bond or similar guarantee as required under Section 13.1 of the contract. In addition, the Procurement Manual, Section 9.9.13 requires performance bonds or similar guarantees to be provided by contractors for contracts with values exceeding \$100,000 in the range of 10 to 30 per cent of the maximum contract price.

33. The contractor was to provide a performance bond in the amount of \$1,800,000 which should have remained valid throughout the life of the contract. This amount equaled approximately 6 per cent of the NTE amount of \$30,300,000. However, if the provisions of the Procurement Manual, which sets a minimum of 10 per cent of the contract price, were applied, the bond value should have been \$3,030,000. The bond was provided for the base year of the contract, from April 2003 to May 2005. Following the expiration of the performance bond, the contractor did not renew the bond as required under Section 13.1. MONUC also did not take steps to ensure the renewal of the performance bond by either requesting the contractor to do so or enforcing the contract provisions in Section 13.1.

34. Performance bonds or similar guarantees protect the interests of the UN during the contract period. Failure to comply with performance bond requirements exposes the Mission to the risk of non-recovery of the outstanding claims and disputes totaling \$1.7 million excluding potential disputes or claims that may arise before the expiration of the contract.

Recommendations 7 to 9

The MONUC Administration should:

(7) In collaboration with the United Nations Procurement Division, ensure that performance bond requirements conform to the percentage range stated in the Procurement Manual;

(8) Ensure that valid performance bonds are in place during the life of the contract; and

(9) Seek authorization from the United Nations Procurement Division to withhold the value of the performance bond from outstanding invoices in line with Section 13.1 of the contract.

35. *The MONUC Administration and UNPD accepted recommendation 7 and stated that the new contracts with ENHAS and PAE/ES-KO contain performance bond requirements that are in line with the provisions of the Procurement Manual. Recommendation 7 remains open pending receipt of documentation showing that amounts of performance bonds conform to the percentage range stated in the Procurement Manual.*

36. *The MONUC Administration accepted recommendation 8 and stated that it will ensure that valid performance bonds are always in place during the contract life. Recommendation 8 remains open pending OIOS' verification that valid performance bonds are in place during the life of the contract.*

37. *The MONUC Administration accepted recommendation 9 and stated that it had requested authorization from the Chief, UNPD to withhold the value of the bond from the outstanding invoices. Recommendation 9 remains open pending receipt of a copy of the authorization from the Chief, UNPD to withhold the value of the performance bond from outstanding invoices and evidence of performance bond value withheld.*

Outstanding claims for damaged or lost UNOE and other charges

38. Section 18.2 of the contract provides that the Contractor shall be liable for the loss or destruction of or damage to UN equipment or property provided or purchased under the contract or for the expenses incidental to such loss, destruction, or damage resulting from negligence, gross negligence or willful misconduct on the part of the contractor or the contractor's personnel.

39. Furthermore, Section 16.3 provides that the UN agrees to allow the contractor's personnel, to the extent practicable, access to the Mission's medical and hospital facilities in the event of an emergency or when their medical condition so requires. The UN also agrees, to the extent practicable and subject to the same standards applied to UN personnel, to assist with the medical evacuation of the contractor's personnel when their condition so requires. The UN shall only reimburse reasonable costs incurred by the contractor under Section 16.3 that are not covered by relevant medical insurance.

40. As of 31 August 2007, total outstanding costs submitted amounted to \$144,955, which covers claims from PAE/ES-KO and PAE-DAHER, a contractor who previously provided aerodrome services to MONUC between 2001 and 2003 (see Table 2).

Table 2: Amounts due from MONUC aerodrome contractors

Type of charge	Amount Due	Amount Recovered	Amount Outstanding
Charges for Medevac/Supplies	\$130,253	\$125,947	\$4,306
Charges for Hospitalization and Medical consultations	24,763	1,396	23,367
PSB Accident Cases	72,605	15,263	57,342
PAE-DAHER claims	59,940	--	59,940
Total	\$287,561	\$142,606	\$144,955

41. These recoverable costs do not include the costs of damaged UNOE as a result of traffic accidents that occurred in 2007, involving PAE/ES-KO's employees, because the Transport Section had not yet processed damage discrepancy reports for inclusion in the claims to be processed by the Local Property Survey Board (LPSB).

42. The claims were outstanding because the cases were still under investigation or awaiting LPSB adjudication. Representatives of the Claims and Property Survey Board Unit (CPSB) explained that the preparation of PSB/Claims and Board of Inquiry (BOI) cases depends on how quickly the supporting documentation and reports are submitted for processing. Furthermore, processing of cases is prioritized in chronological order. Cases involving contractors whose contracts are expiring are not prioritized unless requested by supervisors.

43. The outstanding amounts included \$59,940 for a damaged K-Loader (\$56,128) and a stolen defibrillator from ambulance UN-0466 (\$3,812) while in the custody of PAE-DAHER. The LPSB recommended on 10 October 2003 that the actual amount of repair costs for the K-Loader be recovered from PAE-DAHER pursuant to the provisions of paragraphs 18.2 and 18.4 of its contract with the UN. This amount was agreed upon by PAE-DAHER and the UN in the Settlement and Release Agreement signed on 14 March 2004. However, the final cost of repair was only determined by the Transport Section on 22 May 2007.

44. As of 15 May 2007, the LPSB had not processed the case of the stolen defibrillator due to the lack of complete supporting documentation. The LPSB had received the incident report dated 27 January 2005 and the write-off request from the Chief of Medical Services, dated 13 March 2007. The case was not concluded because the final report from the Security Section was still not issued.

45. Medical expenses totaling \$27,672 were still outstanding because Medex, the medical insurance company for PAE/ES-KO, refused to settle the claims for medical evacuation (\$4,306), and consultations and hospitalization (\$23,366) incurred by contractor staff. Medex was of the view that the cost of medical evacuation (medevac) from Kalemie to Bukavu was an internal flight and that the patient should have been evacuated directly to a medical facility in South Africa. Cigna refused to settle the consultation and hospitalization costs

because the medical bills, which only showed lists of names of patients and costs, did not conform to the insurer's requirements of itemizing the costs. Furthermore, Cigna indicated that some of the costs fell below the threshold of \$200 that could be claimed for reimbursement.

46. Delays in investigating and adjudicating cases have led to delays in processing and recovering claims from the contractor. Lack of clearly agreed upon formats for medical bills have also led to the failure to settle medical expenses incurred by PAE/ES-KO employees.

Recommendations 10 to 12

The MONUC Administration should:

(10) Ensure that the Local Property Survey Board expedites cases involving contracts nearing expiration;

(11) Ensure that all outstanding claims are recovered before the final payment to PAE/ES-KO; and

(12) Ensure that the contractor's medical insurance provider covers all medical expenses incurred by its employees, and establish the billing format acceptable to the insurance company.

47. *The MONUC Administration accepted recommendation 10 and stated that claims involving MONUC contractors will be processed as a matter of priority, especially with contracts that are near their expiry date. Recommendation 10 remains open pending receipt of copies of LPSB decisions on the contractor's outstanding claims cases.*

48. *The MONUC Administration accepted recommendation 11, stating that it will ensure that all outstanding claims are presented to the appropriate board and submitted to CMS for recovery before the current PAE/ES-KO contract expires, and that this matter will be referred to the final dispute resolution meeting. Recommendation 11 remains open pending receipt of documentation of the recovery of all claims by PAE/ES-KO.*

49. *The MONUC Administration did not accept recommendation 12, stating that section 16.3 of the contract provides that MONUC may not claim reimbursement for expenses incurred by the contractor's personnel using mission medical facilities. In addition, it is the contractor's responsibility to ensure the range of coverage for medical expenses by their insurance provider and establish a billing format acceptable to the medical insurance company. However, MONUC will inform the contractor accordingly. In OIOS' opinion, MONUC can claim the cost of medical services provided to the contractor's staff, in accordance with section 16.3 of the contract, which states that the UN shall only reimburse reasonable costs incurred by the contractor under Section 16.3 that are not covered by relevant medical insurance. Also, to facilitate the recovery of these medical costs, MONUC, in cooperation with the contractor, should discuss*

with the contractor's insurer its billing information requirements. Hence, OIOS reiterates recommendation 12, and requests that the Mission reconsider its initial response to this recommendation.

Contractor's failure to provide records for periodic inspection

50. Section 11.1 of the contract provides that, "the Contractor shall segregate its books and maintain separate and complete records, which shall include vouchers, import documents, procurement records, and other documentation relating to the services. Such records should be open for inspection and audit by UN auditors or its authorized agents at the Contractor's premises for a period of two (2) years from the commencement date of this contract or one (1) year from the expiration or prior termination hereof, whichever is later."

51. A comparison of PAE/ES-KO's expense records with the costs claimed from the Mission identified discrepancies over a three-year period (2003 to 2005) which the contractor could not explain. The details are shown in the table below:

Table 3: Comparison of costs reimbursed by MONUC and the contractor's costs records

Description	31/12/2003	31/12/2004	31/12/2005	31/12/2006	31/12/2007
Costs reimbursed by the Mission	\$11,310,379	\$16,309,326	\$14,499,723	\$13,926,051	\$8,544,749
Expenses per PAE/ES-KO records	11,798,225	15,969,143	14,438,331	13,926,051	8,544,749
Variations	(\$487,846)	\$340,183	\$61,392	\$0	\$0

52. OIOS noted that the contractor did not provide copies of financial statements for inspection despite repeated requests by the Mission. Regular inspection of the contractor's records would have enabled the Mission to validate the invoiced claims and identified any discrepancies.

Recommendation 13

(13) The MONUC Administration should ensure that PAE/ES-KO complies with Section 11.1 of the contract by making financial records available, in order to undertake the periodic inspections of the contractor's records.

53. *The MONUC Administration accepted recommendation 13 and stated it will conduct periodic inspections of the contractor's records in order to validate invoiced claims and investigate any discrepancies.* Recommendation 13 remains open pending receipt of documentation showing the Mission's inspection of the contractor's records.

Non-compliance with insurance provisions

54. The contractor was required under Section 12.1 of the contract to procure insurance coverage for the term of the contract and any extensions thereof. The contract insurance coverage was required for equipment and properties, worker

compensation, business automobile liability and third party claims arising from services.

55. OIOS noted that the contractor complied with the insurance provisions except for war risk coverage for third party claims arising in connection with the provision of any services as provided for in Section 12.1.4(c) under the contract. The insurance policy expired in May 2007, but was not renewed to cover the period ending 30 September 2007. The Mission requested evidence of insurance after expiration in May 2007, but no response was received.

56. The Mission may not be indemnified for third party claims if the contractor does not maintain a valid war risk insurance policy as required by the contract.

Recommendation 14

(14) The MONUC Administration should ensure that PAE/ES-KO obtains and maintains valid war risk insurance coverage for third party claims for the remaining contract term.

57. *The MONUC Administration accepted recommendation 14 and stated that it had referred the issue to the Office of Legal Affairs at UNHQ and was awaiting response.* Recommendation 14 remains open pending receipt of copies of valid war risk insurance coverage for third party claims.

B. Appropriateness of contractor's costs

Total costs of some services exceeded 130 per cent of the estimated costs in the Notice to Proceed

58. Section 4.6 (f) of the contract states that the contractor shall closely monitor its direct labor costs and other direct costs, and in the event that the contractor reasonably anticipates or subsequently determines that its costs shall exceed the estimated costs in a Notice To Proceed (NTP) the contractor shall immediately inform the Mission in writing, but shall continue to perform the services and the contractor shall be paid for such costs reasonably and prudently incurred. Upon receipt of such notification, the Mission shall issue to the contractor a Work Order and Cost Deviation Notice. However, in the event that the contractor's costs exceed the estimated costs in the NTP by more than 30 per cent, the contractor shall immediately cease performing the services and he shall not be paid in excess of the 30 per cent.

59. The MONUC CMS completed an analysis of the costs reimbursed for option years 1 and 2 and established that the cost estimates for some services such as passenger and cargo in the NTP had been exceeded by more than 30 per cent. The excess amounts totaled \$384,088 as itemized in Annex 2 were yet to be analyzed in order to determine whether the costs were permissible or not.

60. OIOS noted that the contractor did not observe the cost ceilings because the contractor believed that he had flexibility within line items provided that the overall NTE for the location was not exceeded. However, the Mission believed that the 30 per cent cost ceiling for a given service at a given location should not be exceeded.

61. The lack of a common interpretation of the NTE could lead to potential disputes in relation to permissible costs.

Recommendation 15

(15) The MONUC Administration should ensure that the Contract Management Section completes the analysis of the \$384,088 in excess of estimated charges in order to determine whether costs were permissible and inform the contractor in case of non-permissible costs and initiate a resolution accordingly.

62. *The MONUC Administration accepted recommendation 15, stating that it had initiated the analysis of permissible excess costs and that upon the completion of this exercise, a resolution will be initiated accordingly.* Recommendation 15 remains open pending receipt of copies of the results of the analysis and the resolution initiated by the MONUC Administration.

C. Quality assurance programme

MONUC did not fully comply with the Quality Assurance Provision

63. Section 5.2 requires the Mission to assess the contractor's performance of services through a Quality Assurance Surveillance Program (QASP) in a manner that reasonably and fairly measures performance against acceptable quality levels specified in the work order request and the standards of performance defined in the QASP. The contractor and the Mission were required to develop in good faith the terms, provisions and standards of performance for each work order request, against which the QASP would be applied. The contract also provided for a possible reduction in the performance fees paid to the contractor as a result of an assessment.

64. The Aviation and Movement Control (MovCon) Sections were required to implement the QASP. However, neither section implemented a QASP between February 2003 and January 2006 due to a lack of training and certification. The contractor was assessed based on internally developed criteria which, did not comply with the requirements of the contract, which required a QASP.

65. The International Air Transport Association (IATA) provided training to both Aviation and MovCon staff members in January 2006. The Aviation Section developed QASP and implemented it in February 2006 focusing on air terminal services. However, the MovCon Section had not formally developed, in collaboration with the contractor, the terms, provisions, and the standards of

performance against which the QASP should be applied for passenger and cargo services. In the absence of a QASP by the MovCon section, the Mission may not fully assess the contractor's performance in relation to cargo and passenger services.

Recommendation 16

(16) The MONUC Administration should ensure that the Movement Control Section develops and implements a suitable Quality Assurance Surveillance Programme.

66. *The MONUC Administration accepted recommendation 16, stating that its implementation is in progress. The recruitment of qualified staff to perform the recommended function is underway. Recommendation 16 remains open pending receipt of a copy of the Quality Assurance Surveillance Programme for MovCon.*

V. ACKNOWLEDGEMENT

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

STATUS OF AUDIT RECOMMENDATIONS

Recom. no.	C/O ¹	Actions needed to close recommendation	Implementation date ²
1	C	Action completed	01/01/2008
2	C	Action completed	01/11/2007
3	C	Action completed	01/12/2007
4	O	Submission to OIOS of documentation supporting PAE/ES-KO's GACPDCOC claims, duly validated by MONUC Administration	01/12/2007
5	O	OIOS' verification that GACPDCOC are being reviewed periodically	01/11/2007
6	C	Action completed	01/10/2007
7	O	Submission to OIOS of documentation showing that the amounts of performance bonds conform to the percentage range specified in the Procurement Manual	01/01/2008
8	O	OIOS' verification that valid performance bonds are in place during the life of the contract	01/01/2008
9	O	Submission to OIOS of a copy of the authorization from Chief PS to withhold the value of the performance bond from outstanding invoices and evidence of performance bond value withheld.	01/12/2007
10	O	Submission to OIOS of copies of LPSB decisions on all outstanding claims by PAE/ES-KO	Not provided
11	O	Submission to OIOS of documentation showing the of recovery of all claims by PAE/ES-KO	01/12/2007
12	O	Reconsideration by the Mission of its initial response to this recommendation	Not provided
13	O	Submission to OIOS of documentation showing the Mission's inspection of the contractor's records.	01/12/2007
14	O	Submission to OIOS of copies of valid war risk insurance coverage for third party claims	Not provided
15	O	Submission to OIOS of copies of the results of the analysis and the resolution initiated by the MONUC Administration.	01/12/2007
16	O	Submission to OIOS of a copy of the Quality Assurance Surveillance Programme for MovCon	Not provided

¹ C = closed, O = open² Date provided by MONUC in response to recommendations

ANNEX II

**Costs of services that exceeded 130 per cent of the NTE in the Notice to Proceed
Audit of Aerodrome Operations Services Contract**

Services	(1) Cost Estimates	(2) = (1)x130% Ceiling (130%)	(3) Actual expenditures (based on invoices)	(4) = (3)-(2) NTP variations	(5) = (4)/(1) % variance
	Option Year 1 (October 2004-September 2005)				
2.3 KINSHASA PAX TOTAL	\$213,786.00	\$277,921.80	\$335,178.98	\$57,257.18	156.78%
3.2. KISANGANI CARGO TOTAL	\$564,385.00	\$733,700.50	\$791,943.50	\$58,243.00	140.32%
3.3 KISANGANI PAX TOTAL	\$207,916.00	\$270,290.80	\$394,857.71	\$124,566.91	189.91%
4.1 KANANGA Cargo SERVICES TOTAL	\$2,974.00	\$3,866.20	\$8,274.55	\$4,408.35	278.23%
5.3MBANDAKA Pax	\$6,196.00	\$8,054.80	\$10,714.15	\$2,659.35	172.92%
S/total	\$995,257.00	\$1,293,834.10	\$1,540,968.89	\$247,134.79	
	Option Year 2 (October 2005-September 2006)				
2.3 KINSHASA PAX TOTAL	\$218,239.41	\$283,711.23	\$329,034.91	\$45,323.68	150.77%
3.2. KISANGANI CARGO TOTAL	\$650,112.28	\$845,145.96	\$871,005.29	\$25,859.33	133.98%
3.3 KISANGANI PAX TOTAL	\$212,622.87	\$276,409.73	\$342,180.45	\$65,770.72	160.93%
S/Total	\$1,080,974.56	\$1,405,266.93	\$1,542,220.65	\$136,953.72	
Total	\$2,076,231.56	\$2,699,101.03	\$3,083,189.54	\$384,088.51	