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INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

INTERNAL AUDIT DIVISION I
OFFICE OF INTERNAL OVERSIGHT SERVICES

TO: Mr. William Lacy Swing
A: Special Representative of the Secretary-General
MONUC

DATE: 23 March 2005

REFERENCE: AUD-7-5-7 (0199/05)

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

SUBJECT: **OIOS Audit No. AP2004/620/04: Procurement of Engineering and Airfield Goods
and Services at MONUC**
OBJET: **and Services at MONUC**

1. I am pleased to present herewith our final report on the audit of the above subject, which was conducted in July-August 2004.
2. We note from Management's response to the draft report that MONUC has generally accepted the recommendations. Based on the response, we are pleased to inform you that we have closed recommendations 7 and 9 in the OIOS recommendations database, and recommendation 10 has been withdrawn. In order for us to close out the remaining recommendations (1, 2, 3, 4, 5, 6 and 8) we request that you provide us with additional information as indicated in the text of the report and a time schedule for implementing each of the recommendations. Please refer to the recommendation number concerned to facilitate monitoring of the implementation status.
3. IAD is assessing the overall quality of its audit process and kindly requests that you consult with your managers who dealt directly with the auditors and complete the attached client satisfaction survey form.
4. I would like to take this opportunity to thank the management and staff of MONUC for the assistance and cooperation provided to the auditors in connection with this assignment.

Copy to: Mr. Jean-Marie Guéhenno, Under-Secretary for Peacekeeping Operations
Mr. Marcel Savard, Director of Administration, MONUC
UN Board of Auditors
Programme Officer, OIOS
Mr. Muhammad Akram Khan, Chief Resident Auditor, MONUC

Office of Internal Oversight Services

Internal Audit Division I



Procurement of Engineering and Airfield Goods & Services at MONUC

Audit no: AP2004/620/04
Report date: 23 March 2005
Audit team: Babajide Yoloye, Auditor-in-Charge
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EXECUTIVE SUMMARY

Procurement of Engineering and Airfield Goods and Services at MONUC (AP2004/620/04)

During July-August 2004, OIOS conducted an audit of the procurement of engineering and airfield goods and services by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC). Between 2001 and 2004, the Mission's Procurement Section placed purchase orders for engineering goods and services amounting to about \$26.5 million. Some of these orders were under systems contracts. For the procurement of airfield services and goods, there was one contract in the not-to-exceed (NTE) amount of \$30.3 million.

The OIOS review of procurement under the contract for airfield goods and services revealed serious differences in contract interpretation between MONUC's Contract Management Section and the contractor. These differences led to a series of disputes between the contractor and MONUC, aggregating \$1.14 million. These disputes had gone unresolved, and some of them were pending for 16 months. Similarly, MONUC had a difference of opinion on the proper interpretation of the phrase "NTE", as indicated in the contract. While the contractor considered NTE as an overall ceiling for the entire contract, the MONUC management interpreted it to apply to individual limits of line items as well. By June 2004, the contractor had exceeded some line items by a total of \$267,736, with the contract still having six months to go. OIOS noted that the dispute resolution mechanism as provided in the contract was weak. It gave the contractor a leeway for delaying the resolution of disputes and to charge the Mission with undue costs, as there was no compulsion on the contractor to resolve the disputes quickly. Furthermore, there was no deterrent against invoicing inadmissible costs, because according to the contract, all invoices had to be paid in full, pending resolution of any disputed claims.

In certain instances, where there were delays in delivery of goods and services ordered through systems contracts, MONUC did not invoke the penalty clause. Thus the Mission had foregone about \$300,000 in penalties. Though the Mission may not want to do this in order to merely increase its income, invoking the penalty clause could encourage contractors to meet the terms of the contract and ensure timely deliveries.

The audit also showed unauthorized changes to the prices established in the systems contract, resulting in a loss of about \$300,000 by way of higher prices paid by MONUC for the ordered items.

OIOS makes a number of key recommendations including the following:

- A dispute resolution mechanism needs to be established which enables the Mission to withhold a specified percentage of the disputed claim, with the condition that the withheld amount would be released to the contractor if the dispute is not resolved within a specified period.
- The MONUC Administration should invoke the contract clause relating to penalties for late delivery of goods or services.
- The practice of requesting suppliers under systems contracts for fresh quotations at the time of placing orders and maintain the original systems contract prices should stop.

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I. INTRODUCTION

1. OIOS conducted an audit of the procurement of engineering and airfield goods and services in MONUC during July - August 2004. The audit was conducted in accordance with the standards for the professional practice of internal auditing in the United Nations organizations.
2. The Procurement Section of MONUC is responsible for procuring goods and services for all sections, including the Engineering Section. A great deal of coordination is required between various units to ensure that the Missions' operational needs are met on a timely basis. The total Engineering Section purchase orders, some of them under systems contracts, for the last three financial years are shown below (Table 1).

Table 1: Engineering Section Procurement: July 2001 – June 2004

Year	Value (\$)
2001 - 2002	2,958,737
2002 - 2003	14,951,208
2003 - 2004	8,605,470
TOTAL	26,515,415

3. Besides engineering procurement contracts, the Mission had a contract with a vendor, PAE-ESKO, to provide airfield services with a not-to-exceed (NTE) amount of \$30.3 million for the 20-month contract period ended 30th September 2004. The contract allowed the contractor to make purchases on behalf of the Mission and be reimbursed for such costs, where the Mission was either unwilling or unable to provide the goods. A cash reserve of \$553,500 was set-aside for this purpose.
4. The comments made by the Management of MONUC on the draft audit report have been included in the report as appropriate and are shown in italics.

II. AUDIT OBJECTIVES

5. The main audit objective was to determine whether the procurement of engineering and airfield goods and services was in accordance with the UN Regulations and Rules to ensure:

- Best value for money for the Organization;
- Fairness, integrity and transparency in the procurement process; and
- Delivery of goods and services of the right quality and at times and places required by the Mission.

III. AUDIT SCOPE AND METHODOLOGY

6. The scope of the audit included engineering and airfield goods and services procured by MONUC during July 2001 – June 2004. The audit approach included interviews with key personnel and review of relevant procurement records. The auditors used the Procurement Manual, Financial Regulations and Rules and the airfield services contract as sources of audit criteria.
7. The audit did not cover management of the airfield operations and the rentals of premises, which are subjects for separate audits.

IV. OVERALL ASSESSMENT

8. The Mission should invoke penalty clauses of the contract for late deliveries, as it had to forego about \$ 300,000 on the sample cases reviewed. Some clauses in the airfield services contract gave room for multiple interpretations and led to disputes amounting to \$1.14 million, which were yet to be settled due to a weak mechanism for dispute resolution. MONUC needs to discontinue the practice of seeking new prices from existing systems contractors, which OIOS estimates caused a loss of approximately \$300,000 in the cases reviewed.

V. AUDIT FINDINGS AND RECOMMENDATIONS

A. Non-deduction of late delivery penalties

9. A standard clause in MONUC procurement contracts concerns late delivery penalty, referred to as 'Liquidated Damages' clause, which allows MONUC to deduct between 0.1% and 0.2% of the purchase order value, for each day of delay, up to a maximum value of 10% of the purchase order value. OIOS noted several instances where this clause was not invoked by MONUC at the time of payment, leading to forgone recoveries of \$297,232 as detailed in Table 2 below.

Table 2: Instances where late delivery penalty clauses were not invoked

Vendor	Purchase Order Amount (\$)	Delivery Due Date	Actual Delivery Date	Delay (days)	Penalty due for the delay (\$)	Deduction due (up to maximum of 10% of order value) (\$)
COCHRANE STEEL PRODUCTS (PTY) LTD	148,620.00	19/12/03	Not yet delivered as at 08/07/04	202	30,021	14,862
COELMO S.R.L	348,309.86	24/01/04	10/03/04	47	16,371	16,371
INTERTRADE INTERNATIONAL SERVICES	108,120.00	30/04/04	01 & 12/07/04	73	15,786	10,812
ES-KO International	531,924.81	31/05/03	04/08/03	69	36,703	36,703
Total \$						78,748

Vendor	Purchase Order Amount (£(GBP))	Delivery Due Date	Actual Delivery Date	Delay (days)	Penalty due for delay (£(GBP))	Deduction due (up to maximum of 10% of goods) (£(GBP))
Vaughans of Leicester Ltd	286,973.75	29/08/03	25/11/03	88	25,254	25,254
Vaughans of Leicester Ltd	237,200.00	28/09/03	28/03/04	181	42,933	23,720
Vaughans of Leicester Ltd	286,973.75	29/10/03	01/04/04	155	44,481	28,697
Vaughans of Leicester Ltd	176,825.25	28/11/03	14/04/04	138	24,402	17,683

Vaughans of Leicester Ltd	118,600.00	29/12/03	07/06/04	161	19,095	11, 860
Vaughans of Leicester Ltd	118600.00	28/01/04	01/07/04	155	18,383	11, 860
Total GBP						119, 074
Total \$ equivalent (conversion at UN exchange rate of June 2004)						\$ 218, 484
Grand Total						\$ 297, 232

10. The reason for failure to deduct the penalties was not clear, and OIOS was not provided with a valid explanation from the Procurement Section. As a consequence, however, vendors got away with late deliveries and the terms of the contract were breached while MONUC had to live with late deliveries at the risk of hindering operations.

Recommendation 1

OIOS recommends that the MONUC Administration enforce the clause relating to penalty for late deliveries of goods and services and deduct the late delivery payments amounting to \$297,232 from the respective contractors (AP2004/620/04/001).

11. *The MONUC Administration partially accepted recommendation 1 and stated that the Procurement Section will issue appropriate guidelines so that in future, penalties can be applied when there is a "solid and defensible basis" for doing so. With regard to the recovery of liquidated damages of \$297,732 from the respective contractors, the MONUC Administration stated that there was no legal basis for such recovery since the deliveries were accepted, payments were made and the transactions had been completed. Recommendation 1 remains open in OIOS' database pending receipt of the Mission's guidelines for imposing liquidated damages for delayed deliveries.*

B. Difference between purchase order and systems contract prices

12. It is generally accepted that once a systems contract is in place for a commodity, the price would reign for the duration of the contract with the vendor. However, in MONUC, vendors who were already awarded systems contracts are requested to provide updated quotes at the time of placing orders, leading to the possibility of a price quotation that is different from the prices in the systems contract.

13. The UN standard systems contract contains a clause that states: "The contractor guarantees that the unit prices shall remain firm/fixed/valid during the entire contract". For example, paragraph 5.1 of contract number PD/CO 060/01 refers. In addition, paragraph 13.6.3 m (i) of the Procurement Manual states as one of the standard contract clauses: "No amendments or change orders shall be permitted without prior written approval of a duly authorized representative of the UN. This guarantees that the prices in the contract shall be fixed for the duration of the contract and that if there are to be changes in the systems contract the original prices in the systems contract would be substituted with the new prices as a written contract amendment".

14. Out of 22 engineering systems contracts reviewed, OIOS found two contracts where the prices of the final purchase orders were higher than the prices provided in the respective systems contract. These are as follows:

Table 3: - Instances of difference in the Purchase Order and Systems Contract prices

Commodity description	Quantity ordered	Purchase Order price	Systems Contract price	Excess per unit	Total variance
Capsules for 1.5L bottle	1,017,529	\$0.078	\$0.066	\$0.012	\$12,210.35
Caps for closing bottle	11,724,625	\$0.011	\$0.01	\$0.001	\$11,724.63
Capsules for 1.5L bottle	11,724,625	\$0.078	\$0.066	\$0.012	\$140,695.50
Capsules for 1.5L bottle	1,029,026	\$0.078	\$0.066	\$0.012	\$12,348.31
Capsules for 1.5L bottle	1,218,735	\$0.078	\$0.066	\$0.012	\$14,624.82
Electrical Panels 800A	5	DKK 106,646.60	DKK11,427.60	DKK95,219 = \$15,687	DKK 476,595 Or \$ 78,516
PVC Copper cable 4x70Sq mm	2000	DKK154	DKK64.08	DKK89.92 = \$14.81	DKK179,840 Or \$29,628
Total					\$299,747.61

15. In these instances, the Organization incurred a loss of \$299,747 by not using the systems contract prices. Furthermore, such changes in the price are unauthorized amendments to the contracts, not carried out by the due process provided in the contract and in the Procurement Manual. A further effect of this is that it effectively defeats the purpose of establishing systems contracts, which is to avoid repetitive solicitations and obtain competitive prices through consolidated volume ordering.

Recommendation 2

OIOS recommends that MONUC discontinue the current practice of requesting vendors for revised contract prices when systems contracts are in place. Instead, purchase orders based on systems contract should be raised at the applicable contract prices until the original contract is formally amended in an authorized manner (AP2004/620/04/002).

16. *The MONUC Administration did not accept the recommendation and commented that the systems contract vendors were only being asked to confirm the prices. This was being done to: (i) provide an upfront confirmation that prices are in accordance with the contract; and (ii) provide alternative prices if the requirement deviated from the contract terms e.g. minimum / maximum quantities, provision of freight costs etc. Of the \$299,747 indicated in Table 3 above, the Mission acknowledged that overpayment may have occurred in two cases, totaling \$100,000. In the other five cases, the Mission stated that the higher prices were due to orders being below the specified minimum quantities in the contract, and different freight terms being applied to that contract. MONUC clarified that it has now issued two procurement guidelines regarding payment terms for systems contracts and the procedure for use of systems contracts with the latter dealing specifically*

with the need to check pricing against the contract terms. The Procurement Section concluded that it would continue to issue requests for price confirmation since it considers this to be in the best interests of the Organization. In OIOS' opinion, the Mission's approach negates the purpose of establishing systems contracts and causes avoidable losses to the Organization. Any contact with systems contractors regarding price should be made by the Procurement Service at Headquarters. OIOS, therefore, reiterates recommendation 2. This recommendation will remain open pending confirmation by MONUC that the prices established in the systems contracts would be applied for such purchases in future.

C. Ambiguity in contract clauses relating to the airfield services contract

17. The contract for the airfield services with PAE-ESKO has several clauses that allow multiple interpretations. As a result, there were serious differences of opinion between the MONUC Administration and the contractor on various issues. By April 2004, there were pending disputes involving a total amount of \$1,141,600. The dispute resolution mechanism was weak in as much as it required the Mission to pay all the claims, pending subsequent resolution. As a result, there was little reason for the contractor to show urgency for resolution of disputes.

18. The contract allows the contractor to incur various expenses for carrying out its duties. The contractor is reimbursed monthly for these expenses. Although the contract provides guidance on the kind of expenses and the amounts that can be incurred under the contract and which are then subsequently reimbursed, in practice, there were several disputes relating to reimbursement of such expenses.

19. The weak dispute resolution mechanism and inability of MONUC Contracts Management staff to control the contractors' expenses to date has created an unsatisfactory situation. The contractor appears to believe that any expense would pass, even if MONUC staff has any objections. This also impacts negatively on the morale of MONUC staff making these objections, since their legitimate objections count for nothing.

Disagreements over "allowable costs" for the airfield services contract

20. The contract for the provision of airfield services contains general guidance on the type of costs that are allowable. However, there were numerous substantive disagreements between MONUC Administration and the contractor over what constitutes "allowable costs" under various categories of expenses. Notable amongst the disagreements was the accommodation costs for contractors' staff such as cost for DSTV Satellite, Internet, and washing machine.

21. Other category of disagreements was in the area of staff salary calculation and payments for promotions and recruitment costs. The contractors' interpretation differed from that of MONUC and there was a need for more explicit description of allowable costs. As a result of these fundamental differences in opinion, the MONUC Contracts Management did not agree to costs put forward by the contractor and a total of \$628,180 was in dispute as at April 2004.

Original NTE amounts exceeded for individual line items

22. OIOS noted that the actual costs for certain indirect line items had exceeded the amounts set out in the cost proposal forming part of the contract documents, although the overall contract value was still below the maximum NTE value of \$30.3 million. The contractor and the Mission's Contracts Management Section have opposing views on the intent of the contract – i.e., whether line

costs as stated in the cost proposal should be respected or only the overall NTE amount should be observed.

23. Details of specific instances where line costs were in excess of the contract line items were as follows:

Table 4: Instances of costs exceeding the NTE amounts

Line Item	NTE amount of the contract line item (\$)	Actual Expenditure as on 30 June 2004 (\$)	Excess expenditure as on 30 June 2004 (\$)
Phone charges	15,619.50	32,939.63	17,320.13
Per diem	11,137.50	21,620.13	10,482.63
Uniform	97,836.00	109,004.59	11,168.59
Bank charges	45,000.00	57,758.24	12,758.24
Rent Accommodation	1,267,920.00	1,483,926.63	216,006.63
TOTAL EXCESS			267,736.22

24. As indicated in Table 4 above, by June 2004 the NTE amounts for five line items had been exceeded by \$267,736. The contract still had six more months to go, and the costs were therefore likely to increase further. OIOS considers that setting of limits for individual line items in the contract becomes purposeless if they are exceeded without valid explanations.

Contract Administration contradictions

25. Paragraph 2.2 (i) of the contract provides that overall UN contract administration will be the responsibility of the Director of Administration (DOA). A review of current practices in day-to-day administration of the contract portrayed a situation where, aside from tasking the contractor to carry out services as required by the Mission and effecting payments as invoices were received, there were limited powers with the Mission to deal with issues relating to contract invoicing and what was charged to the contract. Various contradictions in the contract led to this situation.

26. Various paragraphs (e.g. paragraphs 4.6 (f) and 9.1 (a)), require the contractor to monitor its costs and that the contractor shall be paid for such costs “reasonably and prudently incurred”. However, this raises the question of whose responsibility is it to determine what is “reasonable and prudent”. This gives a leeway for interpretation, which the contractor is taking advantage of.

27. Paragraph 9.3 (b) states that where the parties are unable to agree on any issue, the parties shall consult at Mission level in order to resolve the disagreement and where this is unsuccessful, either party may initiate discussions at the headquarters-to-headquarters level at the end of a six-month period. This seems to have been generally interpreted to mean that the Mission administration, contrary to the intent of Statement of Work (SOW), does not have much power in contract administration, and that all cases should rather be referred to the headquarters. In the meantime, the contract requires that the UN pay the contractors’ invoices less, principally, amounts “agreed to be deducted by the contractor” among other deductions. It is, therefore, possible to invoice any amount as long as this falls below the overall NTE value of the contract and await the resolution of disputes from New York.

28. It was noticed that if at the end of the period of six months the case is finally referred to the Chief of the Procurement Service, New York and the case has to be resolved in favour of the UN, the contractor suffers no penalty. This is notwithstanding the fact that the amounts were inadmissible but were nevertheless paid to the contractor.

Recommendation 3

OIOS recommends that the MONUC Administration request the Procurement Service, New York to negotiate an alternative payment clause, which would allow a certain percentage of amounts in dispute to be withheld, and specify the maximum period for resolution of disputes failing which the contractor will then be entitled to receive full payment of the withheld amount (AP2004/620/04/003).

29. *The MONUC Administration partially accepted recommendation 3 and agreed that it should have the discretion to withhold disputed amounts, or a portion thereof, on the understanding that the contractor will be reimbursed for the amounts in dispute that are subsequently substantiated or supported with documents outstanding at the time of invoice presentation. MONUC did not agree that the contractor be entitled to receive full payment of the withheld amount after a specified amount of time for resolving disputes has elapsed, since the final discretion on the resolution of disputes should continue to rest with the Chief of Procurement Service according to the terms of the present contract. In OIOS' opinion, releasing full payment of the withheld amount after the lapse of a specified period will improve efficiency in the Organization and bring dispute resolution within a framework of fairness and equity. Therefore, recommendation 3 will remain open till a fair framework for dispute resolution is in place.*

Recommendations 4, 5 and 6

OIOS recommends that the MONUC Administration:

- (i) ensure, for future contracts that details of specific allowable expenses for the contractors' staff on accommodation as well as other living standard items are specified in sufficient detail in the contract to avoid disputes (AP2004/620/04/004);
- (ii) emphasize upon the Procurement Service in New York the need for issuing a clarification to the airfield services contractor indicating the need to observe the not-to-exceed limits on each line item in the contract, unless specific increases for certain line items within the overall limit for the entire contract have been authorized in writing (AP2004/620/04/005); and
- (iii) seek guidance from Procurement Service, New York on issues such as allowable accommodation costs, increases in staff salaries, recruitment costs and other issues that are currently contentious with the airfield services contractor, and explore the possibility of amending the existing contract in consultation with the contractor to eliminate the ambiguities (AP2004/620/04/006).

30. *MONUC Administration accepted recommendations 4, 5 and 6 and stated that these issues are being formally raised with the Procurement Service, New York. OIOS will keep recommendations 4, 5 and 6 open pending clarification of these issues by the Procurement Service.*

D. Risk involved in requesting contractors to undertake procurement action

31. As part of the MONUC airfield services contract (PD/C0068/03), the contractor may be required to undertake procurement actions on behalf of the Mission. Paragraph 4.6(g) requires any procurement of equipment, products, material or supplies to be carried out in accordance with the financial regulations and rules of the UN and the UN Procurement Manual.

32. OIOS found that there were inadequate controls to ensure that the contractor complied with the principles of the Procurement Manual by obtaining goods at the “best value for money” and ensuring fairness, integrity and transparency in the procurement process.

33. In one case the contractor purchased 13 generators of 20KVA capacity for use in various parts of the country. These generators were of a make not in use by the Mission and problems may arise in obtaining spares in future. In addition, the spares for the generators will have to be ordered separately leading to inefficiencies and loss of economies of scale. The overall effect is that the Mission (specifically the Generator Maintenance Unit in this example) is burdened with the responsibility of maintaining non-standardized equipment in an uneconomical manner.

34. Also, a comparison of the landed cost of these generators with those of similar capacity in use at the Mission showed that while the contractor obtained the generators at an average cost of \$12,267 each, similar generators on the MONUC property database cost only \$5,700 (a difference of \$6,567 each or more than twice the cost of a similar UN generators). This was due to an apparent flaw in the contract that did not require UN participation during the procurement process.

Recommendation 7

OIOS recommends that the MONUC Administration request the Procurement Service at Headquarters to include a procedure in the contract requiring the contractor’s purchases to be certified by the local procurement section before commitments are entered into for ensuring that the proposed prices are reasonable and that the items cannot be obtained from the UN’s registered vendors or from the existing Mission stock (AP2004/620/04/007).

35. *The MONUC Administration accepted recommendation 7 and noted that the parties have now recommitted to having the MONUC Chief Procurement Officer involved in the approval process. The process aims at minimizing future disputes, but also to ensure best value and purchase of equipment that meets minimum specifications as set out by the Organization, and is compatible with similar equipment on UN inventories. Based on the Mission’s response, OIOS has closed recommendation 7.*

E. Associations between key contractor personnel and project suppliers

36. Key personnel of the airfield services contractor (PAE-ESKO), who were later dismissed, were discovered to have been involved in running a similar company in parallel with the contractor. The key staff, including the Project Manager, Senior Accountant, and Work Order Manager formed the “New Africa Management Trading Group” and registered it in South Africa. A review of the

membership of this company showed that these key staff together with a director of a supplier to PAE-ESKO and MONUC, Jansons Trading, formed the said company.

37. The fact that the key staff of the contractor and a supplier jointly formed this company demonstrates some unwholesome business transactions. Jansons Trading is a supplier who has supplied numerous materials including uniforms and generators to the airfield services project. Jansons Trading was supplying goods to PAE-ESKO, which the latter supplied to MONUC on cost-plus basis. The fact that PAE-ESKO's staff was working along with Janson's staff in another company generated a conflict of interest where PAE-ESKO procured goods from Jansons Trading for the sake of MONUC. The above relationship between these ex-staff and the contractor demonstrates a conflict of interest that may have had an effect on the purchases made by the contractor's staff during their involvement with the UN contract.

38. The contract requires the contractor, which includes its key management staff, to carry out its obligations in conformity with sound professional, administrative and financial practices. The contractor's key staff involvement in running a parallel company leading to a conflict of interest situation, was not in keeping with this clause of the contract. Possibility existed that practices of the contractor through the activities of its key staff might not have been in MONUC's best interests.

39. There were inadequate controls to ensure that procurements made on behalf of MONUC were indeed reasonably and prudently conducted and in the interest of the UN (para 10.2 of the contract). The fact that the contractor is allowed to make purchases on behalf of the UN and charge these directly to the contract and in some instances earn a cost plus fee on such purchases require internal controls to be in place to forestall any unethical practices.

Recommendation 8

OIOS recommends that the MONUC Administration consider blacklisting Jansons Trading and New Africa Management Trading Group, after proper investigation, for violation of good faith (AP2004/620/04/008).

40. *The MONUC Administration did not accept recommendation 8. The Mission stated that only Jansons Trading was on the MONUC roster and there was no reason to remove this vendor, as no vendor could be removed for any transaction that had not been conducted through MONUC Procurement, unless there was substantive evidence that the company's actions fell within the provisions of the Procurement Manual 7.12.2 (Criteria for Suspension or Removal from the Vendor Database) "Violation of Good Faith". OIOS reiterates that a proper investigation should be conducted to determine if there was a potential conflict of interest. Accordingly, recommendation 8 will remain open till a proper investigation is conducted.*

F. Mobilization and demobilization not in accordance with contract terms

41. In accordance with paragraph 2.1 (iv) on page 18 of the scope of work for the airfield services contract, the mobilization and demobilization of each contracted employee by the contractor are subject to MONUC's *prior* approval throughout the term of the contract.

42. The dismissal and subsequent demobilization of key staff by the contractor and the subsequent mobilization of new replacements were not in accordance with this clause of the Statement of Work (SOW), which is part of the contract. According to correspondence reviewed,

MONUC had limited advance knowledge of the mobilization and demobilization of staff contrary to the terms of the SOW.

43. Though the contractor informed MONUC that the demobilization was a result of disciplinary action, MONUC was not informed of the details or background of this reason to enable it ascertain the gravity and propriety of the actions in relation to the contract. This was not in accordance with the terms of the SOW. Lack of information did not augur well for transparency in the execution of the contract and relations between the contractor and the contract managers.

Recommendation 9

OIOS recommends that the MONUC Administration formally remind the contractor that future mobilization and demobilization of staff are subject to prior approval by the MONUC management (AP2004/620/04/009).

44. *The MONUC Administration accepted recommendation 9 but emphasized that the cases identified by OIOS were isolated cases, and that in every other instance the contractor complied with the requirement to seek approval for mobilizations and demobilizations of staff. The formal communication sent to the contractor on 25 May 2004, following the summary dismissal of the three key staff in question, has adequately addressed the issue.* Based on the Mission's comments, OIOS has closed recommendation 9.

G. Rounding of unit cost led to increased payments

45. The basis of payments to a contractor should always be the exact unit price as stipulated in the contractor's cost proposal forming part of the contract. OIOS observed in the case of the contract with Chochrane Steel Products (PD/C0001/02) that the unit cost on the final purchase order was rounded from \$16.5 per unit on the cost proposal to \$17 per unit. This difference of \$0.50 per unit, however, becomes substantial (\$36,000) when the contract NTE of \$1,344,400 is reached.

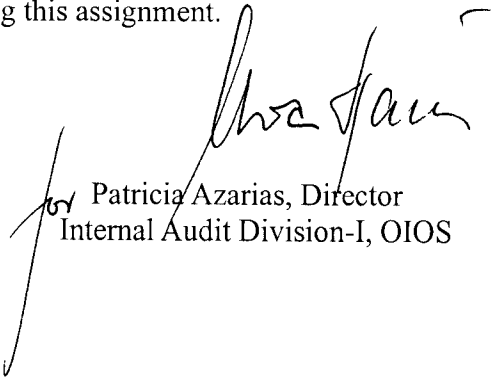
Recommendation 10

OIOS recommends that the MONUC Administration advise the Procurement Service to correct the rounded figure and recover the excess amounts paid to the contractor (AP2004/620/04/010).

46. *MONUC Administration did not accept recommendation 10. The Mission clarified that the correct unit price of \$17 was applied.* OIOS verified the Mission's response and found that there was no excess payment. Accordingly, recommendation 10 has been withdrawn.

VI. ACKNOWLEDGEMENT

47. 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.


for Patricia Azarias, Director
Internal Audit Division-I, OIOS